

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

CLAIMANT

v.

SAN DIEGO REGIONAL CENTER

Service Agency

OAH No. 2022090523

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on March 22, 2023.

Neil Kramer, Fair Hearings Manager, represented San Diego Regional Center (SDRC).

Claimant represented himself.

Oral and documentary evidence was received. The record was closed, and the matter submitted for decision on March 22, 2023.

ISSUE

Is claimant eligible for regional center services under the Lanterman Act under any qualifying category?

FACTUAL FINDINGS

Background

1. Claimant is a 22-year-old man. Claimant provided documents through the SDRC intake process seeking to become eligible for regional center services.

2. Following review by a multidisciplinary team, SDRC determined that the intake documents claimant provided did not show claimant met the criteria for regional center eligibility under any qualifying category.

3. On August 26, 2022, SDRC sent claimant a letter stating that, following review of all documents provided, claimant did not qualify for regional center services under the Lanterman Act because the intake evaluation completed by SDRC did not show claimant had a substantial disability as a result of autism, intellectual disability, cerebral palsy, epilepsy, or a condition that is closely related to an intellectual disability or requires treatment similar to a person with an intellectual disability (fifth category).

4. On September 9, 2022, claimant filed a fair hearing request challenging SDRC's eligibility determination. Claimant did not specify the category for which he was seeking services. He stated only that SDRC did not take his entire medical history into consideration, that his disability began during birth, and "no current aptitude tests

were performed. Given that claimant did not specify the category for which he was seeking eligibility, all categories were considered.

Diagnostic Criteria for Autism

5. The *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5) identifies criteria for the diagnosis of Autism Spectrum Disorder. The diagnostic criteria include persistent deficits in social communication and social interaction across multiple contexts; restricted repetitive and stereotyped patterns of behavior, interests, or activities; symptoms that are present in the early developmental period; symptoms that cause clinically significant impairment in social, occupational, or other important areas of function; and disturbances that are not better explained by intellectual disability or global developmental delay. An individual must have a DSM-5 diagnosis of autism spectrum disorder to qualify for regional center services based on autism.

Diagnostic Criteria for Intellectual Disability

6. The DSM-5 contains the diagnostic criteria used for intellectual disability. Three diagnostic criteria must be met: deficits in intellectual functions, deficits in adaptive functioning, and the onset of these deficits during the developmental period. Intellectual functioning is typically measured using intelligence tests. Individuals with intellectual disability typically have intelligent quotient (IQ) scores in the 65-75 range.

Diagnostic Criteria for Fifth Category

7. Under the fifth category, the Lanterman Act provides assistance to individuals with disabling condition closely related to an intellectual disability or that requires similar treatment as an individual with an intellectual disability but does not

include other handicapping conditions that are “solely physical in nature.” (Welfare and Institutions Code section 4512, subd. (a).) A disability involving the fifth category must also have originated before an individual attained 18 years of age, must continue or be expected to continue indefinitely, and must constitute a substantial disability.

The Association of Regional Center Agencies Guidelines (ARCA Guidelines) provide criteria to assist regional centers in determining whether a person qualifies for services under the fifth category. The ARCA Guidelines provide that the person must function in a manner similar to a person with an intellectual disability or who requires treatment similar to a person with an intellectual disability.

FUNCTIONING SIMILAR TO A PERSON WITH AN INTELLECTUAL DISABILITY

A person functions in a manner similar to a person with an intellectual disability if the person has significant sub-average general intellectual functioning that is accompanied by significant functional limitations in adaptive functioning. Intellectual functioning is determined by standardized tests. A person has significant sub-average intellectual functioning if the person has an IQ of 70 or below. Factors a regional center should consider include: the ability of an individual to solve problems with insight, to adapt to new situations, and to think abstractly and profit from experience. (ARCA Guidelines, citing Cal. Code Regs., tit. 22, § 54002.) If a person’s IQ is above 70, it becomes increasingly essential that the person demonstrate significant and substantial adaptive deficits and that the substantial deficits are related to the cognitive limitations, as opposed to a medical problem. It is also important that, whatever deficits in intelligence are exhibited, the deficits show stability over time.

Significant deficits in adaptive functioning are established based on the clinical judgements supplemented by formal adaptive behavioral assessments administered by

qualified personnel. Adaptive skill deficits are deficits related to intellectual limitations that are expressed by an inability to perform essential tasks within adaptive domains or by an inability to perform those tasks with adequate judgement. Adaptive skill deficits are not performance deficits due to factors such as physical limitations, psychiatric conditions, socio-cultural deprivation, poor motivation, substance abuse, or limited experience.

TREATMENT SIMILAR TO A PERSON WITH AN INTELLECTUAL DISABILITY

In determining whether a person requires treatment similar to a person with an intellectual disability, a regional center should consider the nature of training and intervention that is most appropriate for the individual who has global cognitive deficits. This includes consideration of the following: individuals demonstrating performance based deficits often need treatment to increase motivation rather than training to develop skills; individuals with skill deficits secondary to socio-cultural deprivation but not secondary to intellectual limitations need short-term, remedial training, which is not similar to that required by persons with an intellectual disability; persons requiring habilitation may be eligible, but persons primarily requiring rehabilitation are not typically eligible as the term rehabilitation implies recovery; individuals who require long-term training with steps broken down into small, discrete units taught through repetition may be eligible; the type of educational supports needed to assist children with learning (generally, children with an intellectual disability need more supports, with modifications across many skill areas).

SUBSTANTIAL DISABILITY

The ARCA Guidelines refer to California Code of Regulations, title 17, sections 54000 and 54001 regarding whether a person has a substantial disability. This means

the person must have a significant functional limitation in three or more major life areas, as appropriate for the person's age, in the areas of: communication (must have significant deficits in both expressive and receptive language), learning, self-care, mobility, self-direction, capacity for independent living, and economic self-sufficiency.

Evidence Presented at Hearing

TESTIMONY OF THEODORA NELSON, M.D.

8. Theodora Nelson, M.D., has been a pediatrician for over 30 years and has special training in the area of pediatric development and behavior. Dr. Nelson reviewed all of the records provided by claimant, which included some school records and various medical records throughout claimant's developmental history. Dr. Nelson noted that, according to claimant's discharge summary after birth, although claimant appeared jaundiced at birth and was admitted to the neonatal intensive care unit, he was a full-term baby with a normal delivery. The pregnancy was noted as normal and immediately after birth, claimant's Apgar¹ scores were normal. No records provided showed claimant has ever had a diagnosis of autism, cerebral palsy, or epilepsy.

TESTIMONY OF RACHEL VEDDER, PH.D.

9. Rachel Vedder, Ph.D., is the coordinator of psychological services for SDRC. Dr. Vedder has a Bachelor of Science in psychology and biology, a Master of Arts in psychology, and a Ph.D. in clinical psychology. Dr. Vedder, in addition to

¹ Apgar scores are assigned to newborns right after birth. This test checks a baby's heart rate, muscle tone, and other signs to signify how well a baby tolerated the birthing process.

-serving as the coordinator of psychological services, has also served as a staff psychologist for SDRC where her primary function was to evaluate individuals seeking regional center services. Dr. Vedder is an expert in evaluating individuals for eligibility under the Lanterman Act for regional center services. The following is a summary of Dr. Vedder's testimony and the records she reviewed.

10. Claimant was educated in several states during his developmental years. School records from Rhode Island, where claimant attended elementary and middle school showed claimant had some deficits in the area of math and writing and received small group instruction. A letter from the Oxnard Union High School District in California, where claimant attended high school, showed claimant attended general education classes and was never evaluated or classified as a special education student. Records from the San Diego Unified School District, where claimant attended middle school, did not show claimant received any special education services. Finally, SDRC communicated with the Catskill Special Education Office in New York, which is the district where claimant attended elementary school, and that office did not have any records showing claimant ever received special education services. None of the records contained an individualized education program plan or showed claimant suffered from an intellectual disability or was substantially disabled in three or more areas of a major life activity.

11. Claimant provided a medical record dated June 9, 2003. Claimant was almost three years old at the time of the evaluation. The report indicated claimant did not appear to have autism, showed good eye contact, and exhibited appropriate social responsiveness. The examiner was able to establish and maintain social rapport with claimant. The examiner noted claimant had cognitive skills in the low-average range, but showed a "marked" delay in the "attainment of skills in language." Claimant's

expressive language skills were also noted to be delayed compared to same-aged peers. The evaluator recommended special education, speech therapy, and occupational therapy. Given that the report did not contain any psychological testing, it is not known how these conclusions were reached (the report appeared incomplete).

12. John H. Parsons, Ph.D., conducted a psychological assessment of claimant on May 3, 2013, when claimant was 12 years old. The report noted that Dr. Parsons had reviewed a previous psychological assessment from New York dated August 19, 2009, which showed claimant had, at that time, a full-scale IQ of 75. Claimant also was noted at that time to have a mild receptive language delay. Dr. Parson's historical interview showed claimant had received speech therapy in the past and that all claimant's developmental milestones had been on target. Dr. Parsons conducted the Wechsler Intelligence Scale For Children – Fourth Edition, and found claimant's full-scale IQ to be 82. This places claimant within the upper limits of the borderline range for intelligence and is not considered to be within the range for an intellectual disability. Claimant was able to communicate effectively and his expressions were normal and responsive. Claimant was not observed to have any unusual mannerisms or facial tics, and did not appear stressed or anxious during testing. This psychological assessment did not indicate claimant had an intellectual disability, or would qualify for regional center services under any other qualifying category.

13. A medical record dated October 12, 2020, when claimant was 19 years old, showed claimant was admitted to a hospital for a significant mental health concern, mainly, major depressive disorder, "single episode," cannabis abuse, and nicotine dependence. Nothing in this record indicated claimant suffered from autism, intellectual disability, epilepsy, cerebral palsy, or a condition that would qualify claimant for regional center services under the fifth category.

14. Shortly after claimant's mental health hospitalization for the above incident, on December 31, 2021, when claimant was 21 years old, claimant was admitted to the emergency room with "excited delirium." Claimant had been arrested by police and resisted arrest. He had to be subdued with a stun gun. Claimant had to be sedated by paramedics prior to his arrival at the hospital. Claimant admitted to using methamphetamine, cocaine, alcohol, and marijuana. The emergency room report also indicated claimant had a significant history of depression. Nothing in the emergency room report indicated claimant suffered from autism, intellectual disability, epilepsy, cerebral palsy, or a condition that would qualify claimant for regional center services under the fifth category.

15. Dr. Vedder explained that, because nothing in the records showed claimant suffered from autism, intellectual disability, epilepsy, cerebral palsy, or a condition that would qualify claimant for regional center services under the fifth category, there was no reason to conduct additional testing. Claimant's IQ score was 82, which is above the level indicative of intellectual disability. Claimant graduated high school, has held a job, can cook, has the ability to navigate the community, and can communicate. There may be some mental health concerns; however, mental health conditions like depression do not qualify a person for regional center services.

CLAIMANT'S TESTIMONY

16. Claimant felt that SDRC did not fully consider the medical records. He noted that his mother had fallen while pregnant with him and that his heart stopped twice during labor. Claimant was also placed in an incubator. Claimant also took issue with the incident that led to his most recent hospitalization in 2021, indicating that he did not resist arrest and that his mental health issues were the result of numerous hate crimes committed against him over the years, as well as a stalking incident. Moreover,

there were certain things that happened to him during his mental health hospitalization that have caused him further distress. Claimant has suffered in many situations "because of his last name."

17. Claimant liked physical education and culinary class but struggled in everything else in school. The school helped him learn how to read slowly so he could better understand the material and get him to a point where he could graduate. Claimant enjoys horror movies as well as programs about documentaries and history. He would like to go to college to become a film director. Claimant has held jobs in the past at a sandwich shop and at the Goodwill store. Claimant is currently working with the Department of Rehabilitation to get another job.

18. Claimant believes he has an intellectual disability because he is slow when "it comes to thinking." Claimant was clear, concise, and credible in his testimony. Claimant presented as a very pleasant and polite man and followed instructions from the ALJ during the hearing.

CLAIMANT'S MOTHER'S TESTIMONY

19. Claimant's mother's testimony is summarized as follows: There were "incidents" when claimant was born. Claimant's mother fell when she was eight months pregnant. So, when claimant was born, she felt it was a miracle. She was informed to keep an eye on claimant at watch for any developmental problems.

Claimant has suffered because of his last name. The family has had to relocate 11 times throughout New York, Rhode Island, Virginia, and California. There have been many hate crimes committed against claimant and her daughter. Once the family came to California, it was "outrageous" the way claimant has been targeted and assaulted. Claimant was sexually assaulted in San Diego, and that is the reason he ended up

needing mental health treatment. Claimant had been locked in a pantry for three days, forced to do drugs, and that took a toll on him. After that incident there was a second incident as well. They have "an ongoing investigation" as a result of claimant's last arrest where the police "incorrectly" assumed claimant was her older son, who is autistic. Claimant is currently in counseling and is working with the Department of Rehabilitation to get a job. Claimant's older brother is a regional center consumer and they are fantastic with him.

LEGAL CONCLUSIONS

Applicable Law

1. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act (Welf. & Inst. Code, § 4500 et seq.) to provide a pattern of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. The purpose of the statutory scheme is twofold: To prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.) Welfare and Institutions Code section 4501 outlines the state's responsibility for persons with developmental disabilities and the state's duty to establish services for those individuals.

2. The department is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.)

3. The Lanterman Act is set forth at Welfare and Institutions Code section 4500 et seq. Welfare and Institutions Code section 4501 provides:

The State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge. Affecting hundreds of thousands of children and adults directly, and having an important impact on the lives of their families, neighbors and whole communities, developmental disabilities present social, medical, economic, and legal problems of extreme importance . . .

An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community. To the maximum extent feasible, services and supports should be available throughout the state to prevent the dislocation of persons with developmental disabilities from their home communities.

4. Welfare and Institutions Code section 4512, subdivision (a), defines developmental disability as a disability that "originates before an individual attains 18

years of age; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for that individual." A developmental disability includes "disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability." (*Ibid.*) Handicapping conditions that are "solely physical in nature" do not qualify as developmental disabilities under the Lanterman Act. (*Ibid.*)

5. California Code of Regulations, title 17, section 54000, provides:

(a) "Developmental Disability" means a disability that is attributable to mental retardation², cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation.

(b) The Developmental Disability shall:

(1) Originate before age eighteen;

(2) Be likely to continue indefinitely;

(3) Constitute a substantial disability for the individual as defined in the article.

² Although the Lanterman Act has been amended to eliminate the term "mental retardation" and replace it with "intellectual disability," the California Code of Regulations has not been amended to reflect the currently used terms.

(c) Developmental Disability shall not include handicapping conditions that are:

(1) Solely psychiatric disorders where there is impaired intellectual or social functioning which originated as a result of the psychiatric disorder or treatment given for such a disorder. Such psychiatric disorders include psycho-social deprivation and/or psychosis, severe neurosis or personality disorders even where social and intellectual functioning have become seriously impaired as an integral manifestation of the disorder.

(2) Solely learning disabilities. A learning disability is a condition which manifests as a significant discrepancy between estimated cognitive potential and actual level of educational performance and which is not a result of generalized mental retardation, educational or psycho-social deprivation, psychiatric disorder, or sensory loss.

(3) Solely physical in nature. These conditions include congenital anomalies or conditions acquired through disease, accident, or faulty development which are not associated with a neurological impairment that results in a need for treatment similar to that required for mental retardation.”

6. California Code of Regulations, title 17, section 54001, provides:

(a) “Substantial disability” means:

(1) A condition which results in major impairment of cognitive and/or social functioning, representing sufficient impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential; and

(2) The existence of significant functional limitations, as determined by the regional center, in three or more of the following areas of major life activity, as appropriate to the person's age:

(A) Receptive and expressive language;

(B) Learning;

(C) Self-care;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living;

(G) Economic self-sufficiency.

(b) The assessment of substantial disability shall be made by a group of Regional Center professionals of differing disciplines and shall include consideration of similar qualification appraisals performed by other interdisciplinary bodies of the Department serving the potential client. The

group shall include as a minimum a program coordinator, a physician, and a psychologist.

(c) The Regional Center professional group shall consult the potential client, parents, guardians/conservators, educators, advocates, and other client representatives to the extent that they are willing and available to participate in its deliberations and to the extent that the appropriate consent is obtained.

(d) Any reassessment of substantial disability for purposes of continuing eligibility shall utilize the same criteria under which the individual was originally made eligible.

7. In a proceeding to determine whether an individual is eligible for regional center services, the burden of proof is on the claimant to establish by a preponderance of the evidence that he or she meets the proper criteria. (Evid. Code, §§ 115; 500.)

Conclusion

8. A preponderance of the evidence, based on the records provided and factual findings noted above, did not establish that claimant is eligible for regional center services under any qualifying category. Dr. Nelson reviewed the documents provided by claimant and nothing in the records suggested claimant had autism, cerebral palsy, or epilepsy. Thus, claimant is not eligible for services under any of those categories. With respect to intellectual disability and the fifth category, the only expert who testified was Dr. Vedder. Based on the records provided, Dr. Vedder's uncontested expert opinion was that claimant does not meet the DSM-5 diagnostic criteria for

intellectual disability, and similarly did not qualify under the fifth category. Moreover, nothing in any records showed claimant is substantially disabled within the meaning of applicable law. Accordingly, claimant is not eligible for regional center services.

ORDER

Claimant's appeal from San Diego Regional Center's determination that he is not eligible for regional center services is denied. San Diego Regional Center's determination that claimant is not eligible for regional center services is affirmed.

DATE: April 5, 2023

KIMBERLY J. BELVEDERE
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. Each party is bound by this decision. Either party may request a reconsideration pursuant to Welfare and Institutions Code section 4713, subdivision (b), within 15 days of receiving the decision, or appeal the decision to a court of competent jurisdiction within 180 days of receiving the final decision.