

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

In the Matter of:

CLAIMANT

vs.

INLAND REGIONAL CENTER, Service Agency.

OAH No. 2022090642

DECISION

Administrative Law Judge Traci C. Belmore, Office of Administrative Hearings, State of California, heard this matter on November 1, 2022, by videoconference and telephone.

No appearance was made by or on behalf of claimant.

Stephanie Zermeno, Fair Hearing Representative, represented Inland Regional Center, the service agency.

The record closed, and the matter was submitted for decision on November 1, 2022.

ISSUE

Is claimant eligible for regional center services on the basis of autism spectrum disorder (ASD)?

FACTUAL FINDINGS

1. Claimant is an eight-year-old girl who has been adopted by her former foster mother.

2. Claimant's biological mother abused methamphetamine and alcohol during her pregnancy. Claimant was removed from her biological mother's care when she was three weeks old. Claimant was initially placed in foster care with her, now, mother when she was one month of age. Subsequently, claimant was sent to live with relatives. During that time claimant was physically abused. At 11 months, claimant was placed back in foster care with her, now, mother. Claimant was adopted by her foster mother at two years of age. Currently, claimant lives with her mother, older sister, and two younger foster siblings.

3. On a date not established in the record, claimant's representative submitted a referral to Inland Regional Center (IRC) for an assessment of regional center eligibility based on a diagnosis of ASD.

4. On June 16, 2022, IRC issued a Notice of Proposed Action (NOPA). The NOPA set forth the determination by IRC that claimant was not eligible for regional center services because she did not have a developmental disability as defined by the Lanterman Developmental Disabilities Act (Lanterman Act).

5. IRC received claimant's fair hearing request (FHR) on September 13, 2022, and this hearing followed.

Evaluations and Assessments

6. The Los Angeles Department of Children and Family Services prepared a multidisciplinary assessment team (MAT) summary of findings report on December 26, 2013. The report noted that claimant had slight delays in fine and gross motor skills but was "meeting all other developmental milestones."

7. On January 24, 2018, claimant underwent an assessment conducted by Haylee Finkel Turner, D.O., for fetal alcohol spectrum disorders (FASD). The assessment was done at the request of claimant's mother due to behavioral and learning issues and known prenatal exposure to alcohol. Dr. Turner stated that claimant's development was mostly on track and that she was doing well in preschool. Dr. Turner further noted that the main concerns with claimant were her "self-regulation and mood." Dr. Turner tentatively diagnosed claimant with FASD. Dr. Turner stated the diagnosis was tentative because of claimant's young age and "time must be given to assess for ability to catch-up or make progress with intervention." Further, Dr. Turner stated because of her prenatal exposure to alcohol, claimant would be at higher risk of "learning and behavioral struggles."

8. Following his evaluation of claimant, David Adams, Psy.D., wrote a psychological assessment report dated September 20, 2021. Dr. Adams evaluated claimant at the request of claimant's mother who told Dr. Adams that claimant had been diagnosed with attention deficit hyperactivity disorder (ADHD), oppositional defiant disorder (ODD), FASD, and "some kind of impulse control disorder."

9. Dr. Adams administered several diagnostic tests to claimant including the Autism Diagnostic Observation Schedule-2 (ADOS2), Questionnaire for Parents of Caregivers (CARS2-QPC), Childhood Autism Ratings Scale-2 (CARS2), and NEPSY-2 subtests. Dr. Adams did not indicate that he had reviewed any records prior to his assessments.

10. During the administration of ADOS2, Dr. Adams noted that claimant was anxious and guarded throughout most of the assessment. Claimant engaged in avoidant behavior, such as avoiding eye contact, asking to leave, and hiding under the table or in a corner. As a result, Dr. Adams stated that because of claimant's avoidant behavior, the results of the assessment "may not be as valid." Nevertheless, Dr. Adams scored claimant based upon his observations with a raw score of 10 on the ADOS2, although he did say that score "may be inflated." Per Dr. Adams, claimant's score of 32.5 on the CARS2 indicated "mild autism." As a result of the scores and with significant input from claimant's mother, Dr. Adams diagnosed claimant with ASD.

11. On December 2, 2021, claimant was evaluated by an assessment team at her school for a functional behavior assessment (FBA). The assessment consisted of record review, observation, data collection, and teacher and parent input. The report noted that claimant qualified for special education services under the eligibility of "other health impairment." It further stated that the eligibility was due to behaviors directly associated with the diagnosis of ADHD. Claimant was observed to engage in aggressive behavior and elopement to avoid a task or subject. The conclusion of the report was that claimant's off-task behavior and aggression were serious problems, while elopement was a mild problem. The report makes no mention of an ASD diagnosis, nor does it state that ASD is a contributing factor in claimant's behavior.

12. On June 9, 2022, Theodore E. Swigart, Ph.D., prepared a written report of an assessment he performed of claimant to determine if claimant was eligible to receive regional center services based on a diagnosis of ASD. Dr. Swigart's evaluation included a review of records, a clinical interview, observation of claimant, and administration of diagnostic tests including the ADOS2, CARS2, and Adaptive Behavior Assessment System (ABAS3). Dr. Swigart attempted to administer the Wechsler Intelligence Scale for Children, but was unable to complete it due to claimant's "inadequate test-taking skills."

13. Claimant fully participated during the administration of the ADOS2. She maintained eye contact with Dr. Swigart, was able to sustain a conversation, communicated both verbally and non-verbally, and accurately identified events that elicit different emotions. Dr. Swigart observed no evidence of anxiety or any of the avoidant behavior observed by Dr. Adams during his assessment. Dr. Swigart scored claimant with a raw score of 4 on the ADOS2. During this assessment, claimant scored 23.5 on the CARS2. Dr. Swigart opined that claimant's profile indicated minimal to no evidence of ASD and that claimant did not meet the diagnostic criteria for either ASD or an intellectual disability.

14. Holly A. Miller-Sabouhi, Psy.D., is on the eligibility team for ASD and intellectual disability at IRC. Dr. Miller-Sabouhi is a licensed clinical psychologist. She obtained her Ph.D. in clinical psychology in 2009 from the University of LaVerne. She also holds bachelor's and master's degrees in psychology. Dr. Miller-Sabouhi has been a staff psychologist at IRC for six years. In this capacity, she specializes in assessment and diagnosis of persons for the purpose of determining eligibility for regional center services. Dr. Miller-Sabouhi is an expert in the assessment of individuals for regional

center services. Dr. Miller-Sabouhi testified at hearing regarding the basis for her opinion that claimant was not eligible for regional center services.

15. In performing her evaluation, Dr. Miller-Sabouhi reviewed claimant's records, including the MAT report, the FBA and the reports by Doctors Turner, Adams, and Swigart. Dr. Miller-Sabouhi noted that learning disabilities, and solely psychiatric or physical disorders are generally excluded from eligibility for regional center services. Dr. Miller-Sabouhi stated that claimant at three months was not showing any signs of developmental delays. The FASD evaluation at four years of age noted that claimant was mostly on track in development. Dr. Miller-Sabouhi noted that there was no evidence of ASD in that report. Dr. Miller-Sabouhi expressed confusion with how Dr. Adams diagnosed claimant with ASD despite writing in his report that the ADOS2 score was possibly inflated and not valid. Dr. Miller-Sabouhi acknowledged that there were no records supporting the diagnoses of ADHD and ODD noted in Dr. Adams report but stated the aggressive behaviors that were reported in claimant's FASD evaluation, and the FBA seem to support those diagnoses. Neither of those diagnoses would qualify claimant for regional center services.

Ultimate Factual Finding

16. Dr. Adams diagnosed claimant with ASD. However, he stated that claimant's avoidant behaviors during the assessment were reason to question the validity of claimant's score on the ADOS2.

Dr. Turner diagnosed claimant with FASD and during her evaluation made no mention of ASD. Claimant's FBA noted aggressive behaviors but not any behaviors consistent with a diagnosis of ASD.

Dr. Swigart performed the same neuropsychological tests that Dr. Adams performed. However, claimant fully participated in the assessment with Dr. Swigart rendering his scores and opinions more persuasive. Dr. Miller-Sabouhi's evaluation included, among other things, her own assessment and a review of the reports of the other clinicians and was consistent with Dr. Swigart's assessment. The testimony of Dr. Miller-Sabouhi, based on her assessment and Dr. Swigart's report were more persuasive than the report from Dr. Adams.

The evidence did not establish that claimant has a diagnosis of ASD.

LEGAL CONCLUSIONS

1. In a proceeding to determine whether an individual is eligible for regional center services, the burden of proof is on the claimant to establish that he or she has a qualifying developmental disability. The standard of proof required is preponderance of the evidence.

2. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act. The Lanterman Act is found at Welfare and Institutions Code¹ section 4500 et seq. The purpose of the Lanterman Act is to rectify the problem of inadequate treatment and services for the developmentally disabled and to enable developmentally disabled individuals to lead independent and

¹ All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

productive lives in the least restrictive setting possible. (§§ 4501, 4502; *Association for Retarded² Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.)

3. A developmental disability is a disability that originates before an individual reaches age 18; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for that individual. (§ 4512, subd. (a); Cal. Code Regs., tit. 17, § 54000, subd. (b).)

“Developmental disability” as defined in the Act includes intellectual disability, cerebral palsy, epilepsy, autism, and disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability. (§ 4512, subd. (a); Cal. Code Regs., tit. 17, § 54000, subd. (a).)

“Substantial disability” means major impairment of cognitive and/or social functioning, and the existence of significant functional limitations, as appropriate to a person’s age, in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency. (§ 4512, subd. (l)(1); Cal. Code Regs., tit. 17, § 54000, subd. (a).)

4. Claimant has not met her burden of establishing that she is eligible for regional center services. She has failed to establish that she has a diagnosis of ASD. (Factual Finding 16.)

² The term “intellectual disability” has replaced the formerly used term of “mental retardation.”

ORDER

Claimant's appeal is denied. Claimant is not eligible for regional center services.

DATE: November 10, 2022

TRACI C. BELMORE

Administrative Law Judge

Office of Administrative Hearings