

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

In the Matter of:

CLAIMANT

v.

INLAND REGIONAL CENTER,

Service Agency

OAH No. 2022120285

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on February 14, 2023. The parties and witnesses appeared by audio only.

Hilberto Echeverria Jr., Fair Hearings Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

There was no appearance by or on behalf of claimant.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on February 14, 2023.

ISSUE

Is claimant eligible for regional center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) under the categories of Autism Spectrum Disorder (autism) or intellectual disability?

FACTUAL FINDINGS

Background

JURISDICTIONAL MATTERS

1. On October 19, 2022, a multidisciplinary team comprised of a psychologist, medical doctor, and program manager reviewed records to determine if claimant, an 11-year-old girl, was eligible for regional center services. Following the review, IRC determined that claimant did not qualify for regional center services under any qualifying category.

2. On November 1, 2022, IRC issued a notice of proposed action denying claimant's eligibility for regional center services because the records submitted by claimant, and subsequent intake evaluation completed by IRC, 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.

3. On November 30, 2022, claimant's mother filed a fair hearing request on claimant's behalf alleging claimant is "in need of services due to autism, speech delay, and ADHD and learning disability." Subsequent to the filing of the fair hearing request,

claimant's mother and IRC representatives also attended an informal meeting to discuss claimant's fair hearing request. Following the meeting, IRC adhered to its determination that claimant was not eligible for regional center services.

4. On December 9, 2022, OAH sent claimant's mother a notice of hearing and instructions regarding how to join the videoconference at her address of record on file with IRC and OAH.

5. On February 9, 2023, IRC sent claimant's mother a letter containing the hearing date and other pertinent hearing information, exhibits IRC intended to produce at hearing, and a list of witnesses IRC intended to call to testify on its behalf.

6. When the hearing commenced, claimant's mother was not present. Claimant's mother did not contact IRC or OAH to request a continuance or otherwise provide good cause for non-appearance. Having determined that service of the notice of hearing in this matter was proper, the hearing proceeded as scheduled.

Diagnostic Criteria for Autism

7. The American Psychiatric Association's *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

8. 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.

Testimony of IRC's Expert and Summary of Records

9. Holly Miller-Sabouhi, Psy.D., is a staff psychologist at IRC. Dr. Miller-Sabouhi holds a Ph.D. in psychology, a master of science degree in psychology, and a bachelor of arts in psychology. She has been a licensed psychologist since 2013. As a staff psychologist at IRC, a position she has held since 2016, Dr. Miller-Sabouhi conducts psychological evaluations of children, adolescents, and adults to determine eligibility for regional center services under the Lanterman Act. Prior to serving as a staff psychologist at IRC, Dr. Miller-Sabouhi worked as a clinical psychologist and clinical supervisor in different settings, where she conducted psychological evaluations of individuals, engaged in psychotherapy and family therapy services to adults and children, and conducted both counseling and trainings in the field of mental health services, among other things. Dr. Miller-Sabouhi has published in a peer-reviewed journal and received awards during her pre-doctoral study. Dr. Miller-Sabouhi is an expert in the field of psychology, and specifically, in the assessment of individuals for regional center services under the Lanterman Act.

10. Dr. Miller-Sabouhi reviewed records provided by claimant's mother and testified at the hearing. The following is a summary of Dr. Miller-Sabouhi's testimony and those records.

11. A health record printed out from an online search showed claimant had a diagnosis of “autistic disorder.” The medical record was dated August 8, 2014, and appeared to have been something obtained off the internet and forwarded to IRC’s fair hearing representative (i.e., it did not appear on any official letterhead). The record did not contain any testing for autism, did not contain any type of adaptive or psychological assessments, and did not indicate where the diagnosis of “autistic disorder” came from. The health record did not contain a DSM-5 diagnosis for autism or intellectual disability.

12. A confidential teacher assessment dated October 6, 2015, when claimant was four years old, did not contain any autism-specific testing. The evaluator only completed one measure, the Brigance Inventory of Early Development. According to the section entitled, “test behaviors,” claimant was slightly delayed in fine motor skills, daily living skills, language development, social and emotional development, and cognitive development. The assessment was only two pages and did not contain a DSM-5 diagnosis for autism or intellectual disability. The conclusion of the assessment was that claimant should receive specialized instruction to address her “educational needs.”

13. On September 18, 2015, when claimant was four years old, claimant’s school district conducted a psychoeducational assessment. The school completed a report regarding the assessment on October 29, 2015. The reason for the assessment was because claimant’s mother had requested one due to concerns with claimant’s ability to communicate. The evaluator administered the Southern California Ordinal Scales of Development (SCOSD), the Developmental Profile-3 parent/caregiver checklist, the Adaptive Behavior Assessment System – Second Edition, and the Autism Spectrum Rating Scales (ASRS). On the SCOSD, claimant’s scores were scattered from

average to delayed. Her scores were similarly scattered across all categories on the DP-3 from average to delayed. On the ABAS, claimant's scores in adaptive functioning ranged from extremely low to below average. On the ASRS, which was a checklist regarding behaviors given to claimant's mother, the scores indicated claimant exhibited behaviors that are associated with autism but noted a diagnosis of autism could not be given based on the checklist. The evaluator concluded claimant could receive special education services under the category of "characteristics often associated with autism" but did not qualify under the category of "intellectual disability."

14. An Individualized Education Program (IEP) plan dated October 30, 2015, just subsequent to the above-referenced psychoeducational assessment, indicated claimant began receiving special education services under the category of autism. Multiple IEPs thereafter up to 2017 also indicated claimant continued to receive special education services under the category of autism.

15. Claimant applied for regional center services to the San Gabriel Pomona Regional Center (SGPRC). SGPRC conducted a psychological assessment on January 10, 2017, when claimant was five years old. The psychologist administered the Autism Diagnostic Interview, Revised (ADIR); the Autism Diagnostic Observation Scale – Second Edition (ADOS2); the Vineland Adaptive Behavior Scales – Second Edition; and the Wechsler Preschool and Primary Scale of Intelligence – Fourth Edition (WPPSI4). On the WPPSI4, claimant's cognitive skills were found to be in the average range, meaning, she did not meet the diagnostic criteria for intellectual disability. Claimant also tested outside the range for autism on the ADIR and the ADOS. Claimant did not display any restricted or repetitive interests or stereotyped patterns of behavior. Claimant made appropriate eye gestures and eye contact and initiated social smiling.

Claimant's interaction with the evaluator was recorded as "comfortable and appropriate," and claimant engaged in reciprocal and social communication. On the Vineland, claimant's adaptive functioning was noted to be in the low to moderately low range. Overall, the evaluator issued diagnoses of language disorder and speech sound disorder and indicated Attention Deficit Hyperactivity Disorder (ADHD) should be ruled out. SGPRC found claimant was not eligible for services under any category.

16. Multiple medical records were provided that were dated subsequent to SGPRC's assessment. One record indicated "speech delay" but contained no testing to support that conclusion. Another record, which was only one page and looked like it was written on a doctor's prescription pad, stated, "autistic disorder," but similarly contained no testing or information regarding where this information was obtained.

17. On April 28, 2021, when claimant was nine years old, Gunn Psychological Services conducted a psychological assessment. The report indicated claimant was referred to Gunn Psychological Services to rule out ADHD, anxiety disorder, intellectual disability, and "competing diagnoses." The evaluator administered a comprehensive battery of tests specifically aimed at assessing claimant's adaptive and cognitive skills. No autism-specific testing was administered. Claimant's cognitive skills were found to be in the low average range. Claimant's adaptive skills were found to be variable, and scattered among different categories between delayed, below average, and borderline. The evaluator had no concerns regarding intellectual disability or autism. The evaluator gave claimant a diagnosis of ADHD and a provisional diagnosis of anxiety disorder (unspecified), and also recommended a rule-out evaluation for learning disability given claimant's family history of learning disabilities. Notably, during the interview, claimant's mother told the evaluator that claimant receives special education services for speech delay, rather than autism, suggesting that the basis for special

education eligibility was changed from autism to speech and language impairment following the SGPRC assessment.

18. Ultimately, based on the totality of the records provided, Dr. Miller-Sabouhi concluded claimant was not eligible for regional center services. Although there were indications in the records that claimant had received special education services for autism, the SGPRC assessment determined claimant did not meet the diagnostic criteria for autism or intellectual disability. Nor did the health records, most of which merely referenced autism without supporting data to show how that conclusion was reached. Finally, the Gunn psychological assessment did not contain a diagnosis of autism or intellectual disability, and instead diagnosed claimant with ADHD, which is not a condition that qualifies her for regional center services. Thus, claimant is not eligible for regional center services.

LEGAL CONCLUSIONS

Applicable Law

1. The Legislature enacted the Lanterman 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 Lanterman Act 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.)

2. 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.

3. The Department of Developmental Disabilities (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.)

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 retardation¹, cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related

¹ 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.

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.

(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 did not establish that claimant is eligible for regional center services under any qualifying category. The only expert who testified was Dr. Miller-Sabouhi, and her expert opinion that claimant does not qualify for regional center services was uncontested. Ultimately, based on the totality of the records provided, although there were indications in the records that claimant had received special education services for autism, the SGPRC assessment determined claimant did not meet the diagnostic criteria for autism or intellectual disability. Nor did the health records, most of which merely referenced autism without supporting data to show how that conclusion was reached. The Gunn psychological assessment did not contain a diagnosis of autism or intellectual disability, and instead diagnosed claimant with ADHD, which is not a condition that qualifies her for regional center services. Finally, claimant's cognitive skills across all evaluations were found to be in the average to low average range, indicating she does not meet the DSM-5 diagnostic criteria for intellectual disability. Accordingly, claimant is not eligible for regional center services and her appeal is denied.

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ORDER

Claimant's appeal is denied. Claimant is not eligible for regional center services due to a substantial disability that resulted from autism, intellectual disability, cerebral palsy, epilepsy, a condition that is closely related to an intellectual disability, or a condition that requires treatment similar to a person with an intellectual disability.

DATE: February 23, 2023

KIMBERLY J. BELVEDERE

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.