

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

In the Matter of:

CLAIMANT

v.

INLAND REGIONAL CENTER,

Service Agency

OAH No. 2023010714

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on March 9 and 27, 2023.

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

Claimant's mother appeared on claimant's behalf.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on March 27, 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)?

FACTUAL FINDINGS

Jurisdictional Matters

1. In November 2022, a multidisciplinary team comprised of a psychologist, medical doctor, and a Senior Intake Counselor at IRC reviewed claimant for eligibility and determined that the records reviewed did not show claimant, a six-year-old boy, has 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.

2. On January 23, 2023, claimant's mother filed a fair hearing request on claimant's behalf, seeking review of IRC's decision. Claimant's mother explained that claimant has autism, and she wanted a second opinion from an independent doctor because claimant needs IRC services.

3. On January 30, 2023, claimant's mother and IRC representatives held an informal meeting to discuss claimant's fair hearing request. Following the meeting, IRC adhered to its determination that claimant is not eligible for services.

Diagnostic Criteria for Autism

4. 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.

Evidence Presented at Hearing

TESTIMONY OF RUTH STACY, PSY.D., AND SUMMARY OF PERTINENT RECORDS

5. Ruth Stacy, Psy.D., testified on behalf of IRC. Dr. Stacy has worked at IRC since 1991. She has served as a staff psychologist since 2015, where her primary responsibility involves assessing individuals for regional center services and reviewing intake records to determine whether an individual is eligible for regional center services. Dr. Stacy also served as a Senior Intake Counselor and Senior Consumer Services Coordinator prior to becoming a staff psychologist. In addition to her doctorate degree in psychology, she also holds a Master of Arts in Counseling Psychology, a Master of Arts in Sociology, and a Bachelor of Arts in Psychology and Sociology. Dr. Stacy qualifies as an expert in the diagnosis of autism and in the

assessment of individuals for IRC services. The following is a summary of Dr. Stacy's testimony and relevant records.

6. Several Individual Education Program (IEP) plans were submitted that showed claimant receives special education services under the primary category of autism and a secondary category of speech and language impairment. Dr. Stacy explained that the criteria for autism for purposes of special education is different and much more lenient than the regional center criteria. For special education, a child must only show characteristics of autism. However, for regional center, a child must meet the full DSM-5 diagnosis and be substantially disabled. So, the fact that a child receives special education services for autism is not conclusive as proof of eligibility for regional center services.

7. A psychological assessment completed on September 23, 2020, when claimant was three years old, showed claimant likely was at the low range of the autism spectrum as per the Childhood Autism Rating Scale, Second Edition, Standard Version (CARS2-ST). The evaluator concluded that claimant should be monitored as he progressed in age for developmental and cognitive problems but did not render a DSM-5 diagnosis of autism and did not conduct any adaptive tests.

8. A speech and language assessment conducted on January 21, 2021, when claimant was four years old, showed claimant had some language skills within normal limits but "articulation and language (including pragmatics) currently present as areas of educational need." Claimant was noted to have expressive and receptive language challenges, and therefore, speech and language special education services were recommended.

9. A psycho-educational assessment conducted on January 4, 2021, when claimant was four years old, showed claimant was eligible for special education services under the categories of autism and speech and language impairment. Specifically, claimant was found to have a low level of autism on the screening tests. However, on the Vineland-3, used to assess claimant's adaptive skills, claimant was determined to have overall functioning within the low range. Of all the domains tested on the Vineland-3, claimant only had one score that fell within the range of a significant functional limitation.

10. Several medical records were provided, however, none of them contained an adaptive skills assessment or any other psychological testing.

11. A functional behavioral assessment report intervention plan, dated September 9, 2022, when claimant was five years old, contained the results of an Adaptive Behavior Assessment System, Third Edition (ABAS-3), where both claimant's parents were the raters. The scores were scattered among the various domains, which included communication, community use, functional academics, home living, health and safety, leisure, self-care, self-direction, and social skills. The results in each domain were mostly below average, and a few were in the average range. One score was in the low range. Overall, these scores do not indicate a substantial disability in the area of adaptive functioning.

12. Dr. Stacy conducted a comprehensive psychological assessment of claimant on September 13, 2022. Dr. Stacy conducted a diagnostic interview with claimant and his father and administered the CARS2-ST and the ABAS-3. She also reviewed the records noted above.

On the CARS2-ST, claimant scored in the mild to moderate autism range. On the ABAS, claimant's scores were scattered across all the different domains. They were similar to the scores achieved on the previous ABAS-3 administered on September 9, 2022. The scores ranged from below average to average and included one low score in the area of communication. Dr. Stacy wrote:

[Claimant] tells his parents, friends, or others about his favorite activities. He answers the telephone by saying hello. He sometimes looks at other's faces when they are talking to him. He sometimes follows his parent or caregiver's verbal instructions when completing tasks or participating in activities. He sometimes discusses a topic for at least three minutes, if he likes the topic.

[Claimant] sometimes looks both ways before crossing a street or parking lot. He sometimes orders his meal when eating out. He sometimes packs his own clothing and supplies for overnight trips. He sometimes uses the school library, public library, or internet to get books or reference materials.

[Claimant] states the days of the week in order. He sometimes reads and obeys common signs. He sometimes answers simple questions about a story read to him. He sometimes locates important dates on a calendar.

[Claimant] picks up and throws away trash or paper at home. He places dirty clothes in the proper place. He

sometimes shows respect when using other people's possessions. He sometimes keeps toys, games, and other belongings neat and clean. He sometimes cleans his room or living quarters. He sometimes makes his bed.

[Claimant] follows general safety rules at home. He calls for help if someone is hurt at home. He follows safety rules for bikes, skateboards, and other play equipment. He swallows pills or capsules with water if needed for illness.

[Claimant] attends fun activities at another person's home. He sometimes waits for his turn in games and other fun activities. He sometimes invites others to join him in playing games or other fun activities. He sometimes attends fun community activities with others, such as a movie.

Claimant's adaptive scores showed his adaptive abilities are above what would be considered substantially disabled. Dr. Stacy was aware that claimant's mother disagreed with her conclusions regarding claimant's adaptive abilities. However, Dr. Stacy indicated that the issues claimant's mother addressed regarding her disagreements pertained mostly to whether claimant had autism, which is not disputed. Claimant's mothers' concerns did not change Dr. Stacy's opinions regarding claimant's adaptive functioning.

Dr. Stacy further opined:

A diagnosis of Intellectual Developmental Disorder (Intellectual Disability) requires concurrent intellectual and adaptive functioning deficits in conceptual, social, and

practical domains. There is no indication or concern [claimant] has intellectual deficits. He also does not have adaptive functioning deficits in the required domains. [claimant] does not meet criteria for a diagnosis of Intellectual Developmental Disorder.

[Claimant] does not meet criteria for "fifth category eligibility," a disabling condition closely related to Intellectual Disability (Intellectual Developmental Disorder) or to require treatment similar to what individuals with Intellectual Disability need, as defined in Welfare and Institutions Code, Section 4512, and Title 17, California Code of Regulations, Section 54000. He also does not have a disabling condition that requires treatment similar to what individuals with Intellectual Disability require.

While [claimant] meets criteria for Autism Spectrum Disorder, he does not meet the definition of substantial disability as defined in Section 54001, California Code of Regulations. He does not have significant functional limitations in at least three of the required areas. Therefore, he does not meet the definition of "developmental disability."

It is recommended [claimant] be considered not eligible for regional center services under the category of Intellectual Disability (Intellectual Developmental Disorder), Autism Spectrum Disorder, or a disabling condition closely related

to Intellectual Disability or to require treatment similar to what individuals with Intellectual Disability require, as defined in Welfare and Institutions Code, Section 4512, and Title 17, California Code of Regulations, Section 54000.

[Claimant] mispronounces some words, and his speech is sometimes difficult to understand. It is recommended he continue to receive speech therapy.

Dr. Stacy diagnosed claimant with autism, with accompanying language impairment and without accompanying cognitive impairment. She concluded that, although claimant has mild to moderate autism, her assessment and review of all previous records did not demonstrate claimant had significant functional limitations in three or more areas of a major life activity.

CLAIMANT'S MOTHER'S TESTIMONY

13. Claimant is six years old. He has had autism since he was three and a half years old. Claimant has had a speech and language disorder since he was two and a half years old. Claimant has received special education services since he started preschool. Claimant has been "mainstreamed" in general education since he started school. Claimant receives speech and language services and behavioral services outside of the school setting. Claimant's lacks the ability to assess safety and has difficulty controlling his anger and anxiety. Claimant cannot effectively communicate. Claimant's expressive and receptive language skills are impacted. Claimant cannot initiate a conversation. Claimant lacks the capacity for independent living in that he cannot be left alone and constantly has to have someone present with him, even at school. Claimant cannot have conversations. Claimant is not aware of basic emotions.

Claimant has repetitive behavior such as hand flapping and echolalia. Claimant does not transition well in school. Claimant does not discuss topics at length, he literally “scripts” television shows and that scripting appears as conversation. Claimant cannot use a library. Claimant cannot swallow pills. Claimant cannot go to his friends’ homes without a parent being present.

Claimant’s mother was concerned by Dr. Stacy’s assessment because there were clerical errors in the report (such as the spelling of her son’s name) and because she disagreed with the adaptive skills results. Claimant’s mother usually accompanies claimant on all doctor appointments and during assessments but when Dr. Stacy administered the assessment, claimant’s father attended. Claimant’s mother felt that claimant’s father inflated some of his responses on the ABAS which painted an inaccurate picture of claimant’s adaptive abilities.

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 Services (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. No evidence was presented, nor was it claimed, that claimant was eligible under the categories of epilepsy; cerebral palsy; intellectual disability; or the fifth category. Dr. Stacy conducted a comprehensive psychological assessment and concluded claimant met the diagnostic criteria for autism, however, based on her observations and the results of the ABAS-3, claimant did not show the deficits necessary in his adaptive skills to be considered substantially disabled. In other words, while claimant may have certain challenges, especially in the area of speech and language, the expert testimony and records provided did not show claimant has a *significant* functional limitation in *three* or more areas of a major life activity as appropriate for his age (i.e. receptive and expressive language, learning, self-care, mobility, and self-direction.) Accordingly, a preponderance of the evidence does not support eligibility for regional center services under any qualifying category and claimant's 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: 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 under 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.