

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

**In the Matter of:**

**CLAIMANT,**

**vs.**

**NORTH LOS ANGELES COUNTY REGIONAL CENTER,**

**Service Agency.**

**OAH No. 2023020728**

**DECISION**

Harden Sooper, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on May 18, 2023.

Cristina Aguirre, Due Process Officer, represented North Los Angeles County Regional Center (Service Agency or NLACRC).

Claimant was represented by her mother (Mother). Claimant did not attend the hearing. Names are omitted to protect the privacy of claimant and his family. Mother used the services of a Spanish language interpreter.

The ALJ received testimony and documentary evidence. The record closed and the matter was submitted for decision on May 18, 2023.

## **ISSUE**

Is claimant eligible for regional center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act)?

## **EVIDENCE RELIED UPON**

In reaching this decision, the ALJ relied upon Service Agency's exhibits 1 through 20, and the testimony of Mother; Odalys Esquivel, claimant's family advocate; Rosemary B. Delgado, Psy.D., claimant's therapist; and Sandy Fischer, Ph.D., NLACRC's clinical services supervisor.

## **FACTUAL FINDINGS**

### **Parties and Jurisdiction**

1. Claimant is 11 years old and lives with her sister and Mother. Mother seeks regional center services for claimant because she believes claimant has autism.

2. Service Agency is a regional center designated by the Department of Developmental Services to provide funding for services and supports to persons with developmental disabilities under the Lanterman Act, among other entitlement programs. (Welf. & Inst. Code, § 4500 et seq.)

3. On March 28, 2022, Mother submitted an intake application to Service Agency on behalf of claimant. Mother indicated she suspected claimant has autism based on "concerns and behaviors/symptoms that have been brought to parent[']s attention in the home, community, and school." (Ex. 3, p. A24.)

4. On November 16, 2022, Service Agency sent Mother a Notice of Proposed Action indicating claimant was ineligible for regional center services because she did not meet the criteria for a developmental disability under the Lanterman Act. (Ex. 1, p. A4.)

5. On February 15, 2023, Mother filed a Fair Hearing Request, stating claimant needs regional center services because she has autism. This hearing ensued.

### **Claimant's Background**

6. In an assessment conducted on October 6, 2021, Patricia Ayala, a licensed marriage and family therapist with the Child and Family Guidance Center (CFGC), diagnosed claimant with Depressive Disorder, Other Specified and found claimant eligible for mental health services. Mother brought claimant to CFGC for an assessment because claimant experienced "difficulty with adjustment from COVID-19 pandemic." (Ex. 6, p. A33.)

7. Since December 1, 2021, claimant has received outpatient mental health treatment services at CFGC from Rosemary B. Delgado, Psy.D., a psychologist who is not yet licensed. Dr. Delgado diagnosed claimant with Other Specified Disruptive, Impulse-control, and Conduct Disorder and Autism Spectrum Disorder (ASD). She referred claimant to Service Agency to determine whether she was eligible for regional center services. (Ex. 12, p. A139.)

8. According to an Individualized Educational Plan (IEP) dated March 2, 2023, claimant is eligible for special education services due to "other health impairment." (Ex. 10, p. A121.) The school district did not find claimant eligible for services based on ASD.

### **Service Agency's Denial of Eligibility**

9. Upon receiving claimant's intake application, Service Agency conducted a social assessment of claimant, reviewed claimant's medical records, and conducted a psychological evaluation of claimant. In her September 28, 2022 psychological evaluation, Evelin Garcia, Psy.D., diagnosed claimant with "Rule-out Attention-Deficit/Hyperactivity Disorder Combined Type," Generalized Anxiety Disorder, and Major Depressive Disorder. (Ex. 7, p. A53.) Dr. Garcia did not diagnose claimant with ASD.

10. Sandi J. Fischer, Ph.D., testified at the hearing. Dr. Fischer has been a licensed psychologist in California for over 30 years. She has been employed by NLACRC since 2011. She was a Staff Psychologist for NLACRC for six years and has been Co-Supervisor of NLACRC's Clinical and Intake Departments since 2017. Dr. Fischer testified she and other Service Agency personnel regularly attend symposiums to obtain the most current information about autism research and developments.

11. Dr. Fischer reviewed claimant's academic and mental health records and NLACRC's assessments to determine whether claimant was eligible for regional center services. Dr. Fischer utilized the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) diagnostic criteria for intellectual disability and autism, and also considered the Association of Regional Center Agencies Guidelines for Determining 5th Category Eligibility for the California Regional Centers (ARCA Guidelines). (Ex. 23.)

The ARCA Guidelines were developed in 2002. Although Mother did not suspect claimant has an intellectual disability, Dr. Fischer testified Service Agency always evaluates cognitive and adaptive functioning when assessing eligibility for services.

12. Dr. Fischer testified that eligibility under the Lanterman Act requires a developmental disability that is attributable to one of five specified conditions. Two of the conditions, cerebral palsy and epilepsy, are medical conditions determined by medical doctors and which are not at issue in this matter. The other three conditions, which are autism, intellectual disability, and fifth category, are determined by psychological testing and assessment. Solely psychiatric conditions do not qualify an individual for regional center services.

13. On November 15, 2022, an NLACRC interdisciplinary committee determined claimant was not eligible for regional center services because she did not have a qualifying developmental disability under the Lanterman Act. The committee included two physicians and Dr. Fischer. (Ex. 13.)

## **AUTISM**

14. The essential features of autism are (1) persistent impairment in reciprocal social communication and social interaction and (2) restricted, repetitive patterns of behavior, interests, or activities. These symptoms must be present from early childhood and limit or impair everyday functioning, and cannot be better explained by another condition, such as a mental health condition. (Ex. 14, p. A146.)

15. Dr. Fischer testified her records review did not support an autism diagnosis for claimant. She noted Dr. Garcia administered the Autism Diagnostic Observation Schedule (ADOS-2), which is the "gold standard" for assessing a person for autism, and found claimant was in the "non-spectrum" range, meaning she did not

have autism. Dr. Fischer also noted Dr. Garcia's impressions of claimant, as noted in Dr. Garcia's report, were not indicative of autism. Dr. Fischer testified she reviewed descriptions of claimant's behavior at school, both in a psycho-educational assessment report from the Los Angeles Unified School District and in other educational records containing teacher observations from as early as kindergarten. Dr. Fischer noted the descriptions did not suggest claimant had autism and provided several examples, such as claimant's ability to ask clarifying questions during a conversation or understand sarcasm. Dr. Fischer also reviewed the 2021 CFGC assessment of claimant and noted the description of claimant's interaction with the therapist performing the assessment was not consistent with a child with autism. Dr. Fischer testified she noted although claimant has adaptive delays and struggles in certain social environments, claimant's behavior "does not map onto" a diagnosis of a developmental disability.

### **INTELLECTUAL DISABILITY**

16. Intellectual developmental disorder, or intellectual disability, is a disorder with onset during the developmental period that includes both intellectual and adaptive functioning deficits. Intellectual functions include reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience. These deficits must be confirmed both by clinical assessment and individualized, standardized intelligence testing. Deficits in adaptive functioning must result in failure to meet developmental and social cultural standards for personal independence and social responsibility and limit functioning in one or more activities of daily life, such as communication, social participation, and independent living, across multiple environments, such as home, school, work, and community. (Ex. 15.)

17. Dr. Fischer testified her records review did not support a diagnosis of intellectual disability for claimant. Dr. Garcia assessed claimant's full scale IQ as 89,

which is one point below average. Dr. Fischer testified claimant's assessments revealed areas of strength and weakness. None of claimant's mental health records contained a diagnosis of intellectual disability and Dr. Fischer testified there was "no reason to suspect a developmental disability" based on claimant's cognitive assessments.

### **FIFTH CATEGORY**

18. In addition to those with an intellectual disability, cerebral palsy, epilepsy, or autism, individuals may be eligible for regional center services if they have a condition closely related to an intellectual disability or one that requires treatment similar to that required for an intellectual disability, commonly referred to as the fifth category. To determine whether a person is eligible for regional center services under this fifth category, a regional center must consider the following: (1) whether the individual functions in a manner similar to that of a person with an intellectual disability, and (2) whether the individual requires treatment similar to that required by an Individual who has an Intellectual disability. (Ex. 17.)

19. Dr. Fischer testified her records review did not support fifth category eligibility for claimant. Although claimant has adaptive delays, those delays are not attributable to cognitive impairment or a condition similar to an intellectual disability. Dr. Fischer testified none of the records she reviewed indicated claimant suffers from a condition similar to an intellectual disability or required treatment similar to an intellectual disability.

## **Claimant's Evidence**

### **DR. DELGADO'S ASSESSMENT AND TESTIMONY**

20. Dr. Delgado testified at the hearing. She is a "waivered" psychologist, meaning she is not yet licensed in California and practices under supervision. In 2021, she received a doctorate in clinical psychology from the Chicago School of Professional Psychology. Her specialty at CFGC is family therapy. Since December 2021, Dr. Delgado has seen claimant about once a week for 50 or 60 minutes and has additional sessions with Mother and claimant every other week.

21. Dr. Delgado diagnosed claimant with ASD. She is not certified to administer ADOS-2, but she administered two assessments related to autism: the Gillium Autism Rating Scale, a questionnaire answered by Mother; and the Childhood Autism Rating Scale, a questionnaire Dr. Delgado completed based on her personal observations of claimant. Dr. Delgado testified the results of these assessments were indicative of autism. The specific results of these assessments were not submitted as evidence in this matter or provided to Service Agency.

22. In a letter dated February 3, 2023, Dr. Delgado explained the basis for her diagnosis of ASD. She stated claimant met all the criteria for autism, citing claimant's inability to initiate or maintain reciprocal conversation with others, poor eye contact, difficulty making friends, repetitive rocking back and forth during sessions, rigid food and bedtime routines, intense interest in video games, and unusual interest in touching soft objects, among other factors. (Ex. 12.) Dr. Delgado's testimony was consistent with the statements in her letter.

23. Dr. Delgado testified she agreed with Service Agency's conclusion claimant does not have an intellectual disability. She stated autism may be more

difficult to diagnose in cases where the individual does not have a co-occurring intellectual disability because the symptoms are harder to identify and is underdiagnosed in girls compared to boys. She further opined it was insufficient for Dr. Garcia to administer only the ADOS-2 rather than multiple assessments to determine whether claimant had autism.

24. Dr. Fischer disagreed with both Dr. Delgado's diagnosis of autism and her assertion Dr. Garcia did not perform sufficient assessments of claimant. Dr. Fischer reiterated the ADOS-2 is the "gold standard" and the best measure for determining whether a person has autism because it involves direct assessment of a child rather than a questionnaire filled out by another person. She noted most people diagnosed with autism do not have a co-occurring cognitive impairment. She acknowledged claimant has sensory sensitivities, issues around food, and likes routines, all of which "can map onto part of a diagnosis of autism," but testified these symptoms are not sufficient to support a diagnosis of autism though they may indicate claimant has a more significant mental health issue than depressive disorder. She also noted claimant was not found eligible for special education services under the category of autism, despite a "much lower" bar for special education eligibility compared to a formal diagnosis of autism.

### **MOTHER'S TESTIMONY**

25. Mother testified sincerely about the challenges she faces in caring for claimant. She described claimant's insistence on separating each type of food on her plate during meals, her difficulty with transitions, and her habit of collecting feathers and rocks. Mother noted she did not realize claimant was "special" when claimant was a young child and was later in denial about it. Mother now seeks regional center

services for claimant because both Mother and claimant need help and Mother wants to prepare claimant for the future, when she is an adult.

## **ANALYSIS**

26. Considering the totality of circumstances, Dr. Fischer's testimony was more convincing than Dr. Delgado's testimony regarding whether claimant meets the criteria for a diagnosis of autism. Dr. Delgado's testimony and letter did not outweigh Service Agency's assessments and records review and Dr. Fischer's explanatory testimony, especially given Dr. Fischer's extensive experience in the field. The assessment results relied upon by Dr. Delgado were not submitted as evidence or to Service Agency for review, which diminished their evidentiary weight. Dr. Fischer also testified one of the assessments administered by Dr. Delgado is meant to track the progress of individuals already diagnosed with autism, which is not applicable to claimant. Dr. Delgado did not perform a similarly thorough records review as Service Agency. She also did not administer the ADOS-2, which Dr. Fischer testified is the best measure for determining whether a person has autism.

## **LEGAL CONCLUSIONS**

### **Burden and Standard of Proof**

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 by a preponderance of the evidence he or she meets the proper criteria. (Evid. Code, §§ 115; 500.)

## Applicable Law

2. The Legislature enacted a comprehensive statutory scheme known as 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 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.)

3. The Department of Developmental Services is the public agency 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. Under the Lanterman Act, a developmental disability is 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 intellectual disability, cerebral palsy, epilepsy, autism, and other conditions similar to intellectual disability or requiring treatment similar to that required by individuals with intellectual disability, i.e., the fifth category. (Welf. & Inst. Code, § 4512, subd. (a).)

5. Developmental disability shall not include handicapping conditions that are 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. (Cal. Code Regs., tit. 17, § 54000, subd. (c)(1).)

### **Determination of Claimant's Ineligibility for Services**

6. Claimant did not establish by a preponderance of evidence she is eligible for regional center services. She does not meet the criteria for diagnosis of an intellectual disability, ASD, or a fifth category condition. She was found eligible for special education services in the eligibility category of Other Health Impairment, and not because of autism or intellectual disability. The parties agree claimant does not have an intellectual disability or a fifth category condition. Dr. Fischer's testimony regarding why claimant is ineligible for regional center services outweighed Dr. Delgado's testimony to the contrary. Although claimant has some symptoms consistent with autism, at least some of these symptoms are attributable to her diagnosis of a depressive disorder. A psychiatric disorder is not a qualifying condition that establishes eligibility to receive regional center services.

7. Because claimant has not been diagnosed with a developmental disability as defined by the Lanterman Act, she is not eligible for regional center services.

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## **ORDER**

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

DATE:

HARDEN SOOPER

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 subdivision (b) of Welfare and Institutions Code section 4713 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.