

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

In the Matter of the Eligibility of:

CLAIMANT

and

INLAND REGIONAL CENTER, Service Agency

OAH No. 2023030246

DECISION

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference and telephone on April 11, 2023.

Claimant's mother represented claimant.

Jennifer Cummings, Program Manager, Fair Hearings & Legal Affairs, represented Inland Regional Center (IRC).

The record was closed, and the matter submitted on April 11, 2023.

SUMMARY

Claimant has not met her burden to show by a preponderance of the evidence that she qualifies for regional center services after giving due consideration to the evidence of record. Her appeal is denied.

FACTUAL FINDINGS

Background and Jurisdictional Matters

1. Claimant is 22 years old. She received Special Education services under the Autism and Speech or Language Impairment categories. In 2022 she graduated from Pathways for Adult Life Skills, a program run through Perris Union High School District. Claimant lives with her family.

2. Claimant previously applied for regional center services in 2015. At that time IRC performed a comprehensive assessment of claimant, and determined she was not eligible for regional center services under any category.

3. Claimant applied for regional center services a second time on November 10, 2022. She wrote in her application she suspects she has an intellectual disability (ID) and Autism. She did not identify any other categories. As a disabling condition, claimant cites fear of germs and bacteria.

4. On February 6, 2023, IRC notified claimant that she is not eligible for regional center services because she does not have a "developmental disability" as defined under Welfare and Institutions Code section 4512. Claimant timely submitted a Fair Hearing Request on February 28, 2023. In her hearing request, claimant wrote

that she was a Department of Rehabilitation consumer but couldn't keep up with the requirements to get a job, and there was no vendor from which she could get help. She adds that she has developed germaphobia and is in the process of getting psychiatric help. Claimant does not state the category under which she believes she is eligible for regional center services.

At hearing, claimant agreed she may qualify for services under the Autism and/or ID categories, or under a disabling condition closely related to ID, or that requires treatment similar to that required for individuals with an ID ("The Fifth Category"). (Welf. & Instit. Code, §4512, subd. (a).)

Records IRC Obtained and Reviewed in Making Its Decision, and IRC's Eligibility Team Determination

5. To evaluate claimant's eligibility for regional center services IRC obtained the following materials:

- Letter from Maninder S. Arora, M.D. dated June 27, 2007;
- River Springs Charter School Psychoeducational Assessment dated January 30, 2010;
- Nichols Speech and Language Assessment Report dated January 30, 2010;
- Riverside County Special Education Individualized Education Program (IEP) dated February 26, 2010;
- Temecula Valley Unified School District Assessment dated May 2012;
- Riverside County SELPA IEP dated January 12, 2014;

- Kaiser medical records from 2015;
- Murrieta Valley U.S.D. Psychoeducational Report from 2015;
- Murrieta Valley U.S.D. Speech-Language Assessment dated September 9, 2015;
- IRC Social Assessment dated August 24, 2015;
- IRC Medical Assessment dated September 1, 2015;
- IRC Psychological Assessment by Angelika Robinson, Psy.D. dated October 7, 2015;
- IRC Eligibility Determination dated October 17, 2015;
- IRC intake application dated November 10, 2022;
- Riverside County SELPA Review of Existing Data dated May 3, 2021;
- Riverside County SELPA IEP dated May 19, 2021.

6. IRC Determination/Eligibility Team (Team) reviewed these records and determined claimant is not eligible for regional center services because she does not have a qualifying condition. The Team consisted of Holly Miller-Sabouhi, Psy.D., a licensed clinical psychologist, a physician whose name is not legible, and Mary Bacon, IRC Program Manager/Director, as documented in a document titled Eligibility Determination/Team Review dated February 1, 2023.

Testimony of Ruth Stacey, Psy.D.

7. IRC relies for its position on the opinion of Dr. Stacy, who testified in this hearing. Dr. Stacy is a staff psychologist at IRC. Dr. Stacy received her Doctor of Psychology (Psy.D.) degree from Trinity College of Graduate Studies in 2008. Her responsibilities at IRC include performing psychological assessments of children and adults to determine eligibility for regional center services. Her testimony is summarized as follows.

8. Dr. Stacy reviewed the materials listed above, the eligibility determination dated February 1, 2023, and a letter dated April 4, 2023, from Rachel Post, a special education teacher at Pathways for Adult Life Skills, which, as noted, claimant graduated from in 2022. Based on her review of the materials, Dr. Stacy testified claimant does not meet the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), criteria for Autism or ID. In addition, Dr. Stacy opined that claimant does not qualify for regional center services under the Fifth Category because she does not have a condition similar to ID, or that requires treatment similar to the treatment for ID.

9. In her analysis Dr. Stacy relies in large part, on the October 7, 2015, psychological assessment Angelika Robinson, Psy.D., provided for IRC to determine claimant's eligibility for regional center services, under the Autism category. Dr. Stacy stated that Dr. Robinson's assessment was part of the comprehensive assessment IRC performed of claimant in 2015.

Dr. Robinson administered a series of psychological assessments to claimant, including the Autism Diagnostic Observation Schedule (ADOS-2) assessment, which Dr. Stacy stated is the "gold standard" to assess the probability of autism. Dr. Robinson

also utilized the Childhood Autism Rating Scale (CARS-2), and the Vineland Adaptive Behavior Scales. In her analysis Dr. Robinson incorporated assessments done of claimant through her health provider, Kaiser, in February 2015. Dr. Stacy testified, in her clinical opinion, Kaiser comprehensively assessed claimant for Autism.

Based on the test results she administered, the Kaiser assessments, and other information, including her personal observations of claimant, Dr. Robinson determined that claimant did not meet the diagnostic criteria for Autism. The ADOS scores indicated that claimant was "[n]on-spectrum." The CARS scores indicated "Minimal to No Symptoms of Autism Spectrum Disorder." Dr. Robinson further found, although claimant was reported to exhibit the symptoms of Autism, these symptoms were not evident and/or not substantial across context and settings.

In her assessment, as noted, Dr. Robinson considered Kaiser's assessment of claimant for Autism, also using the ADOS and CARS assessments. These assessments reached the same results that claimant was "[n]on-spectrum" and found "Minimal to No Symptoms of Autism Spectrum Disorder."

10. In terms of claimant's cognitive functioning, Dr. Stacy stated that psychological assessments of claimant between 2010 and 2015 found her in the low to average intelligence range, which is inconsistent with an ID diagnosis. Dr. Stacy in particular found notable the cognitive assessment Virginia Sullivan, Ph.D. did of claimant, at Kaiser, on February 24, 2015. In her psychological assessment report, Dr. Sullivan found, based on the results of the Kaufman Brief Intelligence Test, claimant had low average cognitive skills with a Full Scale IQ of 82, Verbal IQ of 82, and a Non-Verbal IQ of 87. Dr. Stacy testified that these results are not consistent with a diagnosis of "possible borderline intellectual functioning," as another clinician at Kaiser, Debra Suzanne Demos, M.D., suggested.

11. Dr. Stacy recognized that claimant qualified for special education services under the Autism category. This did not change her opinion that claimant does not qualify for regional center services under this category. According to claimant's September 12, 2014, IEP claimant qualified for special education services under Autism and Speech or Language Impairment.

Dr. Stacy testified that under the Education Code a person can qualify for special education services if they have "characteristics" of autism even where that person does not meet the DSM-5 diagnostic criteria for Autism. Various clinicians suspected claimant had shown characteristics associated with Asperger's Syndrome, a form of Autism Spectrum Disorder. Dr. Stacy said that under the Lanterman Act regional centers must apply the DSM criteria to determine whether a person qualifies for services. The records Dr. Stacy reviewed indicates that claimant does not meet the DSM-5 diagnostic criteria for Autism.

12. Dr. Stacy did not change her opinion that claimant does not meet the diagnostic criteria of Autism based on the letter from claimant's teacher, Ms. Post. Ms. Post wrote in her letter that claimant needed assistance and supervision with all tasks, including travel, in-class domestic and daily living skills assignments, and community outings. She said that claimant was not able to be left alone due to her disability and safety concerns.

Dr. Stacy explained that claimant's anxiety, which includes germaphobia, can impair a person's functioning including concentration. She stressed that the concerns Ms. Post raises in her letter do not mean that claimant meets the Autism diagnostic criteria. Dr. Stacy stressed here that Kaiser and IRC, independent of each other, determined that claimant does not meet the Autism criteria.

13. With regard to claimant's eligibility under the Fifth Category, Dr. Stacy testified that claimant does not have a disabling condition that is closely related to ID or that requires treatment similar to that required for individuals with an ID. Dr. Stacy testified that "average to low average [intellectual functioning] is not related to ID in any way."

14. Claimant's mother did not testify. She offered only Ms. Post's letter in support of her application, which she wanted IRC to consider.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. In a proceeding to determine eligibility, the burden of proof is on the claimant to establish he or she meets the proper criteria. The standard of proof is a preponderance of the evidence. (Evid. Code, § 115.) Claimant has the burden of proof to establish her eligibility in this matter.

Statutory Authority

2. The Lanterman Act is set forth at Welfare and Institutions Code section 4500 et seq.

3. Welfare and Institutions Code section 4501 states:

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 follows:

"Developmental disability" means 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. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an

intellectual disability, but shall not include other handicapping conditions that are solely physical in nature.

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

(a) "Developmental Disability" means a disability that is attributable to mental retardation, 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. (Note: The regulations still use the term "mental retardation," instead of the term "Intellectual Disability.")

(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

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.

Evaluation and Disposition

7. Claimant did not prove by a preponderance of the evidence that she qualifies for regional center services under the Autism or ID categories, or under the Fifth Category. Dr. Stacy testified persuasively that claimant does not meet the DSM-5 criteria for Autism and ID, based on her careful review of the record. In addition, Dr. Stacy persuasively testified claimant does not have a condition closely related to ID or that requires treatment similar to that required for individuals with an ID. Dr. Stacy's opinions are well-supported in the evidence of record.

ORDER

Claimant's appeal is denied. Claimant is ineligible for regional center services under the Lanterman Act. IRC's determination that she is ineligible is affirmed.

DATE: April 14, 2023

ABRAHAM M. LEVY

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.

