

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

In the Matter of:

CLAIMANT

and

INLAND REGIONAL CENTER, Service Agency

OAH No. 2023030928

DDS No. CS0003893

DECISION

Marion J. Vomhof, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on June 22, 2023.

There was no appearance by or on behalf of claimant.¹

¹ Claimant and his representative were properly notified of the date, time and place of hearing and failed to appear for the hearing. Consequently, claimant is deemed to have abandoned his appeal/fair hearing request. Despite claimant's failure

Dana Hardy, Fair Hearing Representative, represented the service agency, Inland Regional Center (IRC).

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on June 22, 2023.

ISSUE

Is claimant eligible for regional center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) as a result of an intellectual disability, autism, cerebral palsy, epilepsy, or a disability closely related to an intellectual disability or that requires treatment similar to that required for individuals with an intellectual disability (the "fifth category") that constitutes a substantial disability?

SUMMARY

Claimant failed to establish that he is eligible for regional center services as a result of an intellectual disability, autism, cerebral palsy, epilepsy, or under the fifth category. Claimant's appeal of IRC's determination that he is not eligible for services is denied.

to appear at the hearing, IRC presented evidence to support its denial of claimant's request for services.

FACTUAL FINDINGS

Jurisdictional Matters

1. On February 14, 2023, a multidisciplinary team comprised of a psychologist, medical doctor, and a senior intake counselor reviewed records to determine if claimant, a six-year-old boy, was eligible for regional center services. Following the review of claimant's records, including IRC's social assessment and the psychological evaluation conducted by C. Clarizio, Psy.D., IRC concluded that claimant does not have a developmental disability, and is therefore ineligible for services under the Lanterman Act.

2. On February 21, 2023, IRC issued a notice of proposed action denying claimant's eligibility for regional center services because the intake evaluation completed by IRC did not show claimant had a substantial disability as a result of intellectual disability, autism, cerebral palsy, epilepsy, or a disabling condition that is closely related to an intellectual disability or requires treatment similar to a person with an intellectual disability. Therefore, IRC concluded that claimant was not currently eligible for regional center services.

3. On March 21, 2023, IRC received an appeal filed by claimant's mother on his behalf seeking mediation and a review of the IRC's decision. The appeal stated that claimant "is autistic and has persistent problems with social communication and interaction . . .," and that claimant is seeking "eligibility for regional services based on a more complete evaluation that includes observations beyond one office visit environment."

4. On April 4, 2023, OAH notified claimant that mediation was set for April 17, 2023, and the hearing was set for May 8, 2023. Mediation was held on April 17, 2023; claimant's mother appeared on behalf of claimant, and Dana Hardy, Fair Hearings Representative, appeared on behalf of IRC. Claimant and IRC's request for a second day of mediation and a continuance of the hearing was granted.

5. On April 17, 2023, OAH sent claimant notice that the second day of mediation was set for May 8, 2023, and the hearing was continued to June 22, 2023, at 10:00 a.m. Claimant's mother did not appear at the second day of mediation.

6. When the hearing commenced on June 22, 2023, no one appeared on claimant's behalf. 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.

Testimony of Ruth Stacy, Psy.D. – IRC Staff Psychologist

7. Ruth Stacy, Psy.D., has worked at IRC for 33 years. She has been a staff psychologist since 2015, where her primary responsibilities include assessing individuals for regional center services and reviewing intake records to determine whether an individual is eligible for regional center services. Prior to becoming a staff psychologist, she worked as a senior counselor in IRC's intake department and a consumer services coordinator. In addition to her doctorate degree in psychology, she is a licensed clinical psychologist in California. Dr. Stacy reviewed claimant's records and formed the opinion that claimant was not eligible for IRC services. The following is a summary of Dr. Stacy's testimony and relevant records.

8. The American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision (DSM-5-TR), the latest version of the DSM, contains the diagnostic criteria used for intellectual developmental disorder, previously referred to as intellectual disability in the DSM-5.² The eligibility criteria set forth in the Lanterman Act govern whether claimant is eligible for services at the regional center. Specifically, in order to be eligible claimant must have a developmental disability that results from an intellectual disability, autism, spectrum disorder, cerebral palsy, epilepsy, or a disabling condition found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability, originating before the individual attains 18 years of age and that continues, or is expected to continue, indefinitely and constitutes a substantial disability for that individual. Conditions precluded from qualifying conditions are handicapping conditions that are solely psychiatric disorders, solely learning disabilities, or solely physical in nature. IRC is not required to complete an evaluation to determine eligibility.

In order to determine whether a diagnosis of a developmental disability is substantially handicapping, there must be significant functional limitations in at least three of the seven life activities outlined in Title 17 of the California Code of Regulations (Title 17).

9. The DSM-5-TR identifies criteria for the diagnosis of autism spectrum disorder (ASD), also referred to herein as autism. The diagnostic criteria include

² Neither the Lanterman Act nor the California Code of Regulations has been updated to reflect this change. For purposes of this decision, the terms intellectual disability and intellectual developmental disorder are used interchangeably.

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. To be eligible for regional center services based on autism, the individual has to meet the DSM-5-TR criteria for ASD and intellectual disability.

10. Claimant qualifies for special education services under the categories of ASD and speech or language impairment. To be eligible for special education services under California Code of Regulations, Title 5, (Title 5) an individual must have characteristics of autism but does not have to meet the full diagnostic criteria required by the DSM-5-TR. Therefore an individual can be very high functioning and still qualify for Title 5 services.

11. On June 11, 2018, a Psychoeducational Evaluation was conducted by the Corona-Norco Unified School District when claimant was 2 years and 11 months old. This was claimant's initial assessment for special education services as he transitioned from the IRC's Early Start to the school district's preschool program. Assessment tools included an interview, record review, observation, play-based assessment, and the administration of three tests.

The Vineland Adaptive Behavior Scales-3 (VABS) test results indicated that claimant's scores in communication and daily living skills, and the adaptive behavior composite, were in the moderately low range. His socialization skills and motor skills were within the adequate range. The Developmental Assessment of Young Children, Second Edition (DAYC-2) cognitive subtest results indicated that claimant's cognitive

skills were within the average range of intelligence. His communication scores were in the poor to below average range. The Childhood Autism Rating Scale-2, Standard Version (CARS2-ST) was administered due to behavioral concerns of autism, and claimant's scores fell within the range of minimal to no indication of ASD. These scores were consistent with observations made by the examiner that claimant did not display autistic-like behavior.

The assessment report concluded that claimant qualified for special education services on the basis of speech and language impairment. He did not qualify for special education services under autism.

12. Claimant's initial Individualized Education Program (IEP) dated July 10, 2018, when he was three years old, documented that he was eligible for special education services on the basis of speech or language impairments.

13. On January 7, 2022, when claimant was six years and five months old, a Psychoeducational Assessment was conducted with the El Paseo Childrens Center due to concerns regarding his educational progress in all academic areas. Assessment measures included review of records, interviews, observations, and the administration of various tests.

The Wechsler Intelligence Scale for Children, 5th Edition (WISC-V) provides a comprehensive measure of cognitive abilities. Test results indicated that claimant's non-verbal skills, represented by visual spatial and fluid reasoning, were solidly within the average range. His verbal comprehension and working memory skills were in the below average range, which is consistent with a speech/language disorder. Overall, his non-verbal skills were significantly stronger than his verbal skills.

The Social Responsiveness Scale, Second Edition (SRS-2) was completed by claimant's mother. Claimant's score of 75 fell within the moderate range. The SRS-2 is a screening tool for ASD, but the results may also be elevated if a child has attention-deficit/hyperactivity disorder (ADHD) characteristics.

The Gilliam Autism Rating Scale, 3rd Edition (GARS-3) is designed for screening and assessing for autism. According to information provided by claimant's mother, claimant's autism index score of 86 fell within the range of very likely probability of autism.

The Adaptive Behavior Assessment System, 3rd Edition – Parent Form (ABAS-3 P) was also completed by claimant's mother. All claimant's scores fell above the range that would be considered a significant functional limitation when looking at regional center eligibility.

Based on the assessment, the evaluator concluded that claimant met the special education qualifying criteria for characteristics associated with autism. The report noted under medical history that in March 2020, an autism evaluation was conducted by the Autism Center of Kaiser, however, the results of the evaluation were inconclusive and a determination of autism was not given at that time. Dr. Stacy stated that it is significant that the school district evaluated claimant in 2018 and said that he did not qualify for services under autism, and in 2020, Kaiser did not issue an autism diagnosis. To her knowledge, claimant does not have a medical diagnosis of autism through Kaiser or any other medical provider.

14. On January 26, 2023, a Psychological Assessment was completed by C. Clarizio, Psy.D. of AB Psych Consulting, an IRC vendor, to determine if claimant met the

Lanterman criteria for regional center services under ASD and intellectual developmental disorder. Claimant was seven years and six months old at the time.

The WISC-V test was administered; however, claimant was unable to sustain attention so only partial information was obtained. One of the sections that claimant did complete was the fluid reasoning index (FRI), which measures claimant's inductive reasoning skills, broad visual intelligence, and simultaneous and conceptual thinking. Overall, claimant's performance within this index was advanced for his age. Dr. Stacy testified that these results do rule out an intellectual disability.

The Autism Diagnostic Observation Schedule-Second Edition (ADOS-2) was administered. The ADOS-2 is considered the "gold standard" for assessment of ASD characteristics because it is a structured interview and a play-based interactive assessment. The results indicated that claimant had good use of non-verbal skills, including eye contact, gestures, and body language. Dr. Stacy pointed out that this is significant because the DSM-5-TR criteria for an ASD diagnosis requires a deficit in non-verbal skills. Overall, claimant's scores fell within the non-spectrum range.

The CARS2-ST is based upon information provided by the parent and upon the evaluator's observations. Claimant's scores fell within the non-spectrum range or minimal to no symptoms of ASD.

Dr. Clarizio concluded that claimant did not meet the diagnostic criteria for an ASD or intellectual development disorder. While there were symptoms of ASD, the DSM-5-TR diagnostic criteria for ASD were not met. Claimant met the deficits in social-emotional reciprocity, but he did not meet the criteria for deficits in nonverbal communication or in developing, maintaining, and understanding relationships. Regarding an intellectual development disorder, claimant was not reported by his

mother to have any deficits in adaptive functioning; rather, his adaptive functioning was reported to be above the delayed range.

15. Dr. Stacy concluded that claimant does not meet the criteria for a diagnosis of ASD or an intellectual disability, and that he is not eligible for regional center services under the Lanterman Act under any qualifying diagnosis.

LEGAL CONCLUSIONS

Applicable Law

1. The Legislature enacted the Lanterman Act (Welf. & Inst. Code, § 4500 et seq.) to provide an array 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. The 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.)

3. 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; 500.)

4. 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.

5. 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.

6. 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.

(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.

7. 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

8. A preponderance of the evidence did not establish that claimant is eligible for regional center services under any qualifying category. Based on the records provided, the opinion of Dr. Stacy that claimant does not meet the DSM-5-TR diagnostic criteria for intellectual disability or ASD were uncontested.

9. Claimant failed to appear and present any evidence to support his contention that he is eligible for regional center services, and thereby failed to meet his burden of proof to establish that he is eligible to receive services under the Lanterman Act based on any substantially disabling diagnosis. The evidence presented by IRC established that claimant does not have a condition that makes him eligible for regional center services.

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: July 5, 2023

MARION J. VOMHOF
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.