

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

**In the Matter of:**

**CLAIMANT**

**v.**

**INLAND REGIONAL CENTER**

**Service Agency**

**OAH No. 2023040184**

**Case No. CS0004054**

**DECISION**

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on May 17, 2023.

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

Claimant's mother represented claimant, who was not present.

Oral and documentary evidence was received. The record was closed, and the matter submitted for decision on May 17, 2023.

## **ISSUE**

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

## **FACTUAL FINDINGS**

### **Background**

1. Claimant is a 29-year-old woman. Claimant has never qualified for services at any regional center under the Lanterman Act.
2. Following review by a multidisciplinary team, IRC determined that the intake documents claimant provided did not show claimant met the criteria for regional center eligibility under any qualifying category. Specifically, the "Eligibility Determination/Team Review" stated:

Applicant has been diagnosed with ADHD, behavioral problems, paranoid state, [and] auditory hallucinations. Likewise, the IEP records denote that [claimant] is of average intelligence, but [was] served under [the categories] of hard of hearing, [specific learning disability and speech and language impairment]. Lanterman law states that a condition must not be solely psychiatric or physical in nature.

3. On March 16, 2023, IRC sent claimant a Notice of Proposed Action stating that, following review of all documents provided, claimant did not qualify for regional center services under the Lanterman Act because the 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 (fifth category).

4. On April 3, 2023, claimant's mother filed an appeal on claimant's behalf challenging IRC's eligibility determination. Claimant's mother wrote [all grammatical errors in original]:

[Claimant] has intellectual abilities that have been noted since birth. She has regional services as an infant and toddler. She was again tested in 2006 but regional center holds no records. They finally diagnosed her with severe ADHD, OCD, PDDNOS, and common sense disability. after Kaiser diagnosed her with autism spectrum disorder. Her IEP in grade school through high school shows specific learning disability. Additionally, last year after being in chronic psychosis, UCLA Psychiatry observed her as having autism along with psychosis and schizophrenia. They also called several times to sign her up with regional services while she was hospitalized. She is intelligent but socially lacks intellect and has many autistic traits. However, *she is* very good at mimicking and has learned some social skills in that manner. Nonetheless, she is very easily manipulated

and because of that, she was almost lured into a sex trafficking situation. She was also marinated into giving most of her monies every paycheck as well as releasing her social security number, bank account, and sensitive employment information. In order to give her the best protection, Regional services is a necessary service so she's in the safest possible protections. Thank you in advance for your considerations.

5. This hearing followed.

### **Diagnostic Criteria for Autism**

6. The *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition - Text Revision* (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 Developmental Disorder**

7. The DSM-5 contains the diagnostic criteria used for intellectual developmental disorder (IDD). IDD is a disorder with onset during the developmental period that includes both intellectual and adaptive functioning deficits in conceptual,

social, and practical domains. Three diagnostic criteria must be met to receive an IDD diagnosis. First, a person must have deficits in intellectual functions, such as reasoning, problem solving, planning, abstract thinking, judgement, academic learning, and learning from experience. These deficits must be confirmed by both clinical assessment and standardized intelligence testing. Second, a person must have deficits in adaptive functioning that result in failure to meet developmental and social cultural standards for personal independence and social responsibility, and those deficits must limit the person's functioning in activities of daily life. Finally, the deficits must manifest during the developmental period. Intellectual functioning is measured using intelligence tests. Individuals with intellectual developmental disorder typically have intelligent quotient (IQ) scores in the 65-75 range.

### **Diagnostic Criteria for Fifth Category**

8. Under the fifth category, the Lanterman Act provides assistance to individuals with disabling condition closely related to IDD or that requires similar treatment as an individual with IDD but does not include other handicapping conditions that are "solely physical in nature." (Welfare and Institutions Code section 4512, subd. (a).) A disability involving the fifth category must also have originated before an individual attained 18 years of age, must continue or be expected to continue indefinitely, and must constitute a substantial disability.

The Association of Regional Center Agencies Guidelines (ARCA Guidelines) provide criteria to assist regional centers in determining whether a person qualifies for services under the fifth category. The ARCA Guidelines provide that the person must function in a manner similar to a person with IDD disorder or who requires treatment similar to a person with IDD.

## **FUNCTIONING SIMILAR TO A PERSON WITH IDD**

A person functions in a manner similar to a person with IDD if the person has significant sub-average general intellectual functioning that is accompanied by significant functional limitations in adaptive functioning. Intellectual functioning is determined by standardized tests. A person has significant sub-average intellectual functioning if the person has an IQ of 70 or below. Factors a regional center should consider include: the ability of an individual to solve problems with insight, to adapt to new situations, and to think abstractly and profit from experience. (ARCA Guidelines, citing Cal. Code Regs., tit. 22, § 54002.) If a person's IQ is above 70, it becomes increasingly essential that the person demonstrate significant and substantial adaptive deficits and that the substantial deficits are related to the cognitive limitations, as opposed to a medical problem. It is also important that, whatever deficits in intelligence are exhibited, the deficits show stability over time.

Significant deficits in adaptive functioning are established based on the clinical judgements supplemented by formal adaptive behavioral assessments administered by qualified personnel. Adaptive skill deficits are deficits related to intellectual limitations that are expressed by an inability to perform essential tasks within adaptive domains or by an inability to perform those tasks with adequate judgement. Adaptive skill deficits are not performance deficits due to factors such as physical limitations, psychiatric conditions, socio-cultural deprivation, poor motivation, substance abuse, or limited experience.

## **TREATMENT SIMILAR TO A PERSON WITH IDD**

In determining whether a person requires treatment similar to a person with an intellectual disability, a regional center should consider the nature of training and

intervention that is most appropriate for the individual who has global cognitive deficits. This includes consideration of the following: individuals demonstrating performance based deficits often need treatment to increase motivation rather than training to develop skills; individuals with skill deficits secondary to socio-cultural deprivation but not secondary to intellectual limitations need short-term, remedial training, which is not similar to that required by persons with IDD; persons requiring habilitation may be eligible, but persons primarily requiring rehabilitation are not typically eligible as the term rehabilitation implies recovery; individuals who require long-term training with steps broken down into small, discrete units taught through repetition may be eligible; the type of educational supports needed to assist children with learning (generally, children with an intellectual disability need more supports, with modifications across many skill areas).

### **SUBSTANTIAL DISABILITY**

The ARCA Guidelines refer to California Code of Regulations, title 17, sections 54000 and 54001 regarding whether a person has a substantial disability. This means the person must have a significant functional limitation in three or more major life areas, as appropriate for the person's age, in the areas of: communication (must have significant deficits in both expressive and receptive language), learning, self-care, mobility, self-direction, capacity for independent living, and economic self-sufficiency.

### **Documentary Evidence and Testimony of Sandra Brooks, Ph.D.**

9. The following factual findings are based on the testimony of Sandra Brooks, Ph.D., and documentary evidence.

10. Dr. Brooks is a licensed clinical psychologist. She obtained her Ph.D. in clinical psychology in 2006 from Loma Linda University. She also has a Bachelor of Arts

in English and Psychology and a Master of Science in Experimental Psychology. Dr. Brooks has been a staff psychologist at IRC since 2010, where she specializes in the assessment and diagnosis of persons for the purpose of determining eligibility for regional center services. Prior to that, she served as a psychological assistant at IRC from 2007 to 2009. Prior to that, she served in multiple positions across the country. She has been involved with many professional presentations in the field of psychology, and attended countless trainings and workshops in her field. Dr. Brooks is an expert in the assessment of individuals for regional center services.

11. No evidence regarding the conditions of epilepsy or cerebral palsy was presented.

12. No records were provided for a majority of claimant's developmental years. Rather, records that were provided started in 2007, when claimant was already 13 years old.

13. An Individualized Education Plan (IEP) dated March 29, 2007, when claimant was 13 years old, showed claimant received special education services under the categories of specific learning disability and speech and language impairment. Neither category is a category that qualifies an individual for regional center services. Nothing in the IEP indicated claimant had any condition that would qualify her for regional center services under the Lanterman Act.

14. An IEP dated January 14, 2008, when claimant was 14 years old, showed claimant received special education services under the categories of specific learning disability, speech and language impairment, and "hard of hearing." In the explanation portion of the IEP, it was noted that claimant had average cognition skills, and that she learned more effectively when things were presented in a visual format over an

auditory format. Other portions of the IEP documented claimant was cooperative, but significantly impacted by her hearing loss (as opposed to a developmental disability). Further, her ability to learn also appeared to be impacted by not only her hearing loss but her speech and language challenges, which likely resulted from the hearing loss. In academic testing, when compared to her same-aged peers, claimant's scores were below average in reading comprehension, but above average or average in all other categories. Nothing in the IEP indicated claimant had a developmental disability that would qualify her for regional center services under the Lanterman Act.

15. Medical records from Kaiser Permanente dated March 14, 2022, show claimant suffered from a significant paranoid psychological episode. She was placed on a psychiatric hold pursuant to Welfare and Institutions Code section 5150 (hereinafter, 5150 hold) due to being a danger to herself or others. Claimant was diagnosed with, among other things, Attention Deficit Hyperactivity Disorder (ADHD), hallucinations, and being in a "paranoid state." These are all psychiatric or other mental conditions that do not constitute developmental disabilities.

16. Following her 5150 hold, claimant was evaluated by psychologists at BHC Alhambra Hospital from March 15, 2022, to March 18, 2022. The record indicates claimant struggles with auditory hallucinations and mood disturbances. Claimant reported she smokes marijuana to help herself sleep. Claimant was noted to be "independent with all activities of daily living." On discharge, claimant was diagnosed with schizophrenia, marijuana abuse, and depression with psychosis. As Dr. Brooks explained as well, a person who has schizophrenia may have their first manifestations of that mental illness as an adult. That psychiatric condition, along with claimant's other diagnoses, also could interfere with claimant's ability in other areas (such as social skills, making decisions, etc.). Nonetheless, none of the conditions discussed in

claimant's discharge notes are conditions that qualify a person for regional center services.

17. Records from the Resnick Neuropsychiatric Hospital – University of California, Los Angeles (UCLA), in March 2022 following claimant's above-referenced admission to BHC Alhambra Hospital, show claimant's mother brought her to the hospital due to "worsening psychosis" and "delusional thinking." Claimant was 28 years old at the time. Claimant's mother reported claimant's psychotic behavior (delusions, auditory hallucinations, and believing claimant's dad was Tupac and Will and Jada Smith were her parents) had begun about one-and-a-half years prior to this visit (as opposed to during her developmental period). Portions of the report indicate that, at times, claimant reported hearing voices. None of these symptoms are indicative of any DSM-5 condition that qualifies a person for regional center services. The only mention of autism was by claimant, who told doctors she had a diagnosis of autism, pervasive developmental disorder – not otherwise specified (PDD-NOS), and ADHD. No autism specific testing was completed and nothing in the UCLA records show claimant suffers from IDD. In the diagnosis portion of the report doctors referred to the self-reported diagnoses of autism and ADHD "by history." Claimant's diagnosis on discharge was psychosis, not otherwise specified. The report also noted that claimant's biological father had schizophrenia. Claimant was prescribed multiple psychiatric medications to help manage the symptoms of her psychosis.

18. Based on the records provided, Dr. Brooks (and the eligibility team) concluded the records did not support finding that claimant is eligible for regional center services and also did not show she had a developmental disability. As such, no additional assessments were necessary.

## **Claimant's Mother's Testimony**

19. Claimant's mother's testimony is summarized as follows: Claimant is intelligent and has a good vocabulary. She believes claimant was tested at Harbor Regional Center in 2005 or 2006. She believes Kaiser Permanente "determined" claimant had autism. Claimant never qualified for services at Harbor Regional Center, however because "her scores were high." Claimant's mother said claimant's IQ is "low" and she "was supposed" to be tested again. Claimant has "always" had "developmental" issues. Claimant "went into psychosis" because her mind cannot "keep up with what [is] going on in the world." "A lot of her developmental issues came to fruition" when claimant was older. Claimant was treated at UCLA for over a month. Claimant's mother is concerned because claimant "does not grasp" understanding things and some things "do not click with her." Claimant was almost lured into a sex trafficking ring. Claimant receives protective supervision from In Home Supportive Services. If there are any services to help claimant, claimant's mother would like to explore those services. Claimant's mother wants regional center to conduct a psychological assessment.

## **LEGAL CONCLUSIONS**

### **Applicable Law**

1. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services 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.) 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.

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. The Lanterman Act is set forth at Welfare and Institutions Code section 4500 et seq. Welfare and Institutions Code section 4501 provides:

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 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 retardation<sup>1</sup>, cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related

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<sup>1</sup> 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. Furthermore, the DSM-5-TR has amended the phrase “intellectual disability” and replaced it with “intellectual developmental disorder.”

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. The Lanterman Act and implementing regulations clearly defer to the expertise of the Department of Developmental Services and regional center professionals and their determination as to whether an individual is developmentally disabled. General, as well as specific guidelines are provided in the Lanterman Act and regulations to assist regional center professionals in making this difficult, complex

determination. (*Ronald F. v. State Department of Developmental Services* (2017) 8 Cal. App. 5th 84, 94–95, citations omitted.)

8. 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**

9. A preponderance of the evidence did not establish claimant is eligible for regional center services under any qualifying category.

10. No records were provided for a majority of claimant's developmental years. Rather, records that were provided started in 2007, when claimant was already 13 years old. Although the records provided did show claimant received special education services prior to the age of 18, she received those services under the categories of speech and language impairment and specific learning disability, neither of which qualify a person for regional center services. The IEP records also showed claimant's hearing loss impacted her ability to learn. Still, even with the non-qualifying conditions, claimant's academic achievement was generally average or above average when compared to her same-aged peers. Even claimant's mother indicated that claimant is intelligent and has a good vocabulary.

11. Other records provided (the Kaiser records and BHC Alhambra Hospital records) demonstrate that claimant suffers from a myriad of non-developmental psychiatric disorders and conditions that affect her life. For example, her records from Kaiser show as recently as March 14, 2022, claimant suffered from a significant paranoid psychological episode, and she was diagnosed with, among other things,

ADHD, hallucinations, and being in a “paranoid state.” She was placed on a hold as being a “danger to herself or others” pursuant to Welfare and Institutions Code section 5150. None of these conditions qualify a person for regional center services. Following claimant’s 5150 hold, she was diagnosed with psychosis and schizophrenia.

12. The UCLA records show claimant suffered from “worsening psychosis” and “delusional thinking.” Portions of the report indicate that, at times, claimant reported hearing voices. None of these symptoms are indicative of any DSM-5 condition that qualifies a person for regional center services. The only mention of autism was by claimant, who told doctors she had autism, PDD-NOS, and ADHD. No testing was provided showing claimant was ever diagnosed with any condition, however, that would qualify her for regional center services. Although autism is noted in the diagnosis portion of the UCLA records, it is only “by history” based on claimant’s self-reporting.

13. Claimant’s personal challenges appear directly linked to her multiple psychiatric diagnoses, rather than a qualifying developmental disability. The records are devoid of any comprehensive psychological testing that show a DSM-5 diagnosis of autism or IDD. The records were also devoid of any adaptive testing that would show whether claimant is substantially disabled within the meaning of applicable law. Similarly, the records do not support a finding that claimant suffers from a condition similar to IDD or that requires treatment similar to IDD. Nothing in the records show claimant is cognitively impaired or adaptively impaired such that her conditions render her functioning similar to a person with IDD. Further, claimant’s conditions (ADHD, psychosis, schizophrenia, etc.) are not developmental disabilities that require treatment similar to a person with IDD, and are instead solely psychiatric disorders. Furthermore, California Code of Regulations, title 17, section 54000, subdivision (c)(1)

provides that solely psychiatric disorders are specifically excluded from eligibility for regional center services. Although claimant might benefit from services that would help a person with IDD, whether someone would benefit from services is not the test.

14. On this record, there is insufficient evidence to find claimant eligible for regional center services or to require a new assessment be provided. Claimant did not meet her burden.

### **ORDER**

Claimant's appeal from Inland Regional Center's determination that she is not eligible for regional center services is denied. Inland Regional Center's determination that claimant is not eligible for regional center services is affirmed.

DATE: May 25, 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 pursuant to 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.