

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

In the Matter of:

CLAIMANT

And

INLAND REGIONAL CENTER, Service Agency.

Agency Case No. CS0006347

OAH No. 2023051029

DECISION

Administrative Law Judge Traci C. Belmore, Office of Administrative Hearings, State of California, heard this matter on July 10, 2023, by telephone and videoconference.

Claimant represented herself.

Kari Neal, Fair Hearing Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center, the service agency.

The record was closed, and the matter was submitted for decision on July 10, 2023.

ISSUE

Is claimant eligible for regional center services on the basis of autism spectrum disorder (ASD), intellectual disability (ID),¹ or a disabling condition found to be closely related to ID or to require treatment similar to that required for individuals with ID (fifth category)?

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is a 20-year-old female who lives with her father, stepmother, and sister.
2. On February 15, 2023, claimant submitted an intake application to Inland Regional Center (IRC) for an assessment of regional center eligibility based on the suspicion of claimant having ASD, ID, or under the fifth category.
3. On May 11, 2023, IRC issued a Notice of Action (NOA). The NOA set forth the determination by IRC that claimant was not eligible for regional center services because she did not have a developmental disability as defined by the Lanterman Developmental Disabilities Act (Lanterman Act).

¹ Intellectual disability is the same as intellectual developmental disorder which is the language used in the DSM-5, but the statutes and regulations still refer to this diagnosis as intellectual disability.

4. On May 24, 2023, IRC received claimant's appeal request, and this hearing followed.

Evaluations

5. On January 12, 2018, E. Bradford Talley, Ed.S., a school psychologist with Snowline Joint Unified School District (SJUSD) performed a psychoeducational evaluation of claimant and prepared a written report. In the report Dr. Talley noted that claimant had "appeared to meet all developmental milestones appropriately." Claimant was receiving special education services pursuant to an Individualized Education Plan (IEP) under the category of specific learning disability.

6. Dr. Talley administered several tests to claimant including a cognitive test, the Kaufman Brief Intelligence Test, 2nd Edition (K-BIT 2); an academic test the Woodcock-Johnson IV Test of Achievement (WJ-IV); and a sensory processing and perceptual-motor development test, the Beery Test of Visual-Motor Integration (VMI). Claimant's scores on the K-BIT 2 were 79 for verbal intelligence quotient (IQ), 99 for non-verbal IQ, and 87 for composite IQ. Her composite IQ score fell within the average range. Claimant's scores on the WJ-IV all fell within the borderline to average range. Claimant's score on the VMI fell within the borderline to below average range.

7. Dr. Talley opined that claimant qualified for special education services under the category of specific learning disability. He further stated that claimant's "area of processing deficit appears to be in visual processing." There was no mention of ASD or ID in Dr. Talley's report.

8. Three IEPs for claimant were submitted, dated January 5, 2021, December 15, 2021, and June 1, 2022. All three indicated that she qualified for special education

services under the category of specific learning disability. None of the IEPs mentioned ASD or ID.

9. On June 1, 2022, a summary of performance for claimant was prepared by a case carrier for SJUSD. It indicated that claimant was exiting special education due to graduating with a diploma.

IRC Eligibility Determination

10. Ruth Stacy, Psy.D., is on the team of professionals tasked with making eligibility determinations for IRC. Dr. Stacy is a licensed clinical psychologist. She obtained her Ph.D. in clinical psychology from Trinity College of Graduate Studies in 2008. She also holds bachelor's and master's degrees in psychology. Dr. Stacy has been employed by IRC in various positions since 1991. For the past 7 years, she has been employed as a staff psychologist specializing in assessment and diagnosis of persons for the purpose of determining eligibility for regional center services. Dr. Stacy is an expert in the assessment of individuals for eligibility on the basis of ASD, ID, or fifth category. Dr. Stacy testified at hearing regarding the basis for her opinion that claimant was not eligible for regional center services.

11. In making her determination, Dr. Stacy reviewed claimant's records, including Dr. Talley's report and claimant's IEPs. Dr. Stacy noted that learning disabilities, and solely psychiatric or physical disorders are generally excluded from eligibility for regional center services. Dr. Stacy stated the criteria for eligibility for services are that an individual must have a qualifying diagnosis, must have significant functional limitations in three of the seven areas of major life activity, and must have been diagnosed prior to 18 years of age.

12. From her review of claimant's records, Dr. Stacy determined that claimant did not have a qualifying diagnosis, nor did claimant qualify under the fifth category. Dr. Stacy acknowledged that claimant clearly had a learning disability. However, a learning disability does not qualify an individual for regional center services. Dr. Stacy stated that even if claimant suffered from debilitating anxiety, since it is a solely psychological disorder, it would not qualify claimant for regional center services.

13. None of the records submitted to the regional center indicated a diagnosis of either ASD or ID. Moreover, claimant admitted on her intake application that she had never been diagnosed by a health care professional with ASD or ID, although she did indicate that she was suspected of having both ASD and ID.

Claimant's Additional Evidence

14. Claimant completed her intake application herself. In the section of the application that asks why she was applying for regional center services, claimant stated that she suffers from anxiety attacks, that she has a learning disability, that she gets extremely nervous in interviews and her "brain shuts off." Claimant stated she is "slower than normal people" and referenced the fact that she was in special education classes in high school. Claimant stated she is terrified to drive or do anything on her own, and that she does not have any friends.

15. Claimant's stepmother testified on claimant's behalf. Her testimony is summarized as follows. Claimant suffers from crippling anxiety. She is very forgetful and not very responsible.

LEGAL CONCLUSIONS

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 that he or she has a qualifying developmental disability. The standard of proof required is preponderance of the evidence.

2. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act. The Lanterman Act is found at Welfare and Institutions Code² section 4500 et seq. The purpose of the Lanterman Act is to rectify the problem of inadequate treatment and services for the developmentally disabled and to enable developmentally disabled individuals to lead independent and productive lives in the least restrictive setting possible. (§§ 4501, 4502; *Association for Retarded³ Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.)

3. A developmental disability is a disability that originates before an individual reaches age 18; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for that individual. (§ 4512, subd. (a); Cal. Code Regs., tit. 17, § 54000, subd. (b).)

"Developmental disability" as defined in the Act includes intellectual disability, cerebral palsy, epilepsy, autism, and disabling conditions found to be closely related to

² All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

³ The term "intellectual disability" has replaced the formerly used term of "mental retardation."

intellectual disability or to require treatment similar to that required for individuals with an intellectual disability. (§ 4512, subd. (a); Cal. Code Regs., tit. 17, § 54000, subd. (a).

“Substantial disability” means major impairment of cognitive and/or social functioning, and the existence of significant functional limitations, as appropriate to a person’s age, in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency. (§ 4512, subd. (l)(1); Cal. Code Regs., tit. 17, § 54000, subd. (a).)

4. Claimant has not met her burden of establishing that she is eligible for regional center services. She has failed to establish that she has a diagnosis of ASD, ID, or that she would qualify under the fifth category.

ORDER

Claimant’s appeal is denied. Claimant is not eligible for regional center services.

DATE: July 24, 2023

TRACI C. BELMORE
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.