

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

In the Matter of:

CLAIMANT

v.

INLAND REGIONAL CENTER,

Service Agency

OAH No. 2023060091

DDS Case No. CS0006483

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter August 31, 2023, in San Bernardino, California.

Keri Neal, Fair Hearings Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

Claimant appeared on her own behalf, but was permitted to consult with a family friend she referred to as her aunt, as well as her mother, in the presentation of her case.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on August 31, 2023.

ISSUE

Is claimant eligible for regional center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) under the category of Autism Spectrum Disorder (autism)?

FACTUAL FINDINGS

Background and Jurisdictional Matters

1. Claimant is a 28-year-old woman.
2. On October 14, 2022, claimant filed an intake and assessment application for regional center services. Claimant filled out all pertinent fields correctly, which included information concerning treating physicians, financial information, educational information, applicable dates, contact information (phone numbers, e-mail addresses and home addresses), and conditions under which she believed she qualified. Claimant signed the intake and assessment on her own behalf. Claimant also submitted 25 documents in support of her intake and assessment application.
3. On December 13, 2022, IRC conducted a social assessment. According to the social assessment, claimant had no mobility nor motor skills limitations. She was able to complete basic activities of daily living such as washing dishes, taking out the trash, cleaning the restroom, cleaning windows, doing laundry, and mopping. Claimant prepares meals. Claimant has full bladder and bowel control and can care for her

toileting needs independently. Claimant is independent in her personal hygiene and dressing. She exhibited appropriate responses when asked what she would do if she faced certain danger (such as a fire). Claimant uses social media responsibly. Claimant holds a driver's license and drives independently, but gets nervous when she travels outside of her comfort zone. While claimant will not make conversation, she can remain focused for more than 30 minutes, will respond to questions, and enjoys reading, watching movies, and listening to music (R&B Hip Hop). Claimant has about 5 to 10 friends from her university. They go bowling, go out to restaurants, and attend other events. Claimant does have conversations with her friends on the phone, but claimant's mother said claimant "does not 'necessarily' maintain a conversation." Claimant prefers routines, dislikes schedule changes, becomes "distressed" if objects are moved, and likes her clothes organized, but no serious behaviors of concern were noted. Claimant is in graduate school for social work and was taking part in an internship for five months but did not complete it because she exhibited poor communication skills with her patients. Claimant participates in errands and family outings and can make her own purchases. Following the IRC social assessment, and because documents claimant provided with her intake and assessment application suggested she may have autism, IRC requested a psychological evaluation.

4. After a review of records submitted, on April 25, 2023, an IRC multidisciplinary team comprised of a psychologist, medical doctor, and a Senior Intake Counselor reviewed claimant for eligibility and determined she did not have a substantial disability as a result of autism, intellectual developmental disorder (IDD),¹

¹ The Lanterman Act was amended long ago to eliminate the term "mental retardation" and replace it with "intellectual disability," as reflected in the Diagnostic

cerebral palsy, epilepsy, or a condition that is closely related to IDD or requires treatment similar to a person with IDD. The team noted claimant did not have the “significant functional limitations” required by the Lanterman Act to be eligible for regional center services. Specifically, the IRC eligibility determination stated:

The reported Vineland scores may be an underestimation of [claimant’s] true abilities. For example, she is in graduate school, she provided more information than her parent at the social assessment and the psychological assessment, and she emailed IRC multiple times. This suggests more capable communication skills that [sic] the low Vineland scores reflect. In addition, [claimant] has a driver’s license and drives independently in the community, she makes purchases independently, and can complete her [activities of daily living] skills without assistance. Her domestic (household) skills are in the adequate/average range.

5. Claimant submitted additional records following IRC’s adverse eligibility determination.

and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5). The more current DSM-5, text revision (DSM-5 TR) no longer uses the term “intellectual disability” and instead refers to the condition as “intellectual developmental disorder (IDD).” Many of the eligibility forms used in regional center matters have not been updated to reflect this change. Accordingly, for purposes of this decision, which includes all admissible documentary evidence, “intellectual disability” and “IDD” mean the same thing.

6. On May 2, 2023, IRC issued a notice of proposed action indicating claimant was not eligible for regional center services under the Lanterman Act.

7. On May 30, 2023, claimant filed a fair hearing request contesting IRC's eligibility determination. Claimant wrote:

I have a diagnosis of autism spectrum disorder and I am significantly challenged in my social and interactive [sic] skills which is causing significant impairments in several areas of day to day functioning. I need direction and support and I know Inland Regional Center can help me.

8. On June 7, 2023, claimant attended an informal meeting regarding her appeal of IRC's determination. Claimant's aunt, a regional center employee, also attended. Following a discussion, IRC adhered to its determination that claimant was not eligible for regional center services. In a letter dated June 12, 2023, IRC wrote:

You are currently 28 years old and reside in the family home with both parents and younger sister. You are currently not working or going to school. Regarding school services, records available indicate you initially qualified for special education services under the condition of speech or language impairment that was later reclassified to autism . . . In 2013, you graduated . . . high school with your diploma.

After high school you attended a [California State University] for a year and lived in the dorms with a roommate. You then transferred to [another university] . . .

[and] graduated with a bachelor's degree in health science. [You completed internships at two different care centers in Riverside]. Your internship duties included greeting patients, serving as a companion to patients, assisting patients with their meals, playing games with patients, and assisting them to return to their rooms if needed. You resided in the dorms for 4 years while attending [the second university].

After obtaining your bachelor's degree you attended [a third university] to pursue a master's degree in social work. In September 2022, it was recommended that you obtain a years' worth of job experience and then return to the program.

Claimant's aunt explained that you currently have an active case with the Department of Rehabilitation (DOR). They have assisted you with your resume. They are currently helping you to find a job and upon doing so will complete an assessment.

You have a current driver's license and your parents have provided a vehicle for you to access the community as needed. You have your own bank account and your parents deposit funds into the account for you to spend. You are able to independently make purchases in the community. You tend to all of your hygiene and self-care needs independently. You complete chores around the family

home including taking the trash out, doing the dishes, sweeping the floor, cleaning the bathroom, making your bed, and vacuuming. You assist in caring for the family dog, Blessing. You are able to cook/prepare foods including spaghetti, eggs, rice, beans, oatmeal and cereal. In your free time you enjoy talking with friends via cell phone or face time, listening to music, watching You Tube videos and going bowling with friends and family.

[redacted] . . . [redacted]

IRC's vendor, Collaborative Psychology Group (CPG), conducted a psychological assessment on February 3, 2023, and the diagnostic impression was [autism] without language impairment, without accompanying intellectual impairment.

[redacted] . . . [redacted]

IRC has agreed to conduct additional psychological testing to include test measures not previously conducted to determine regional center eligibility IRC's Eligibility Team determined that you do not currently have a "substantial disability" as a result of Intellectual Disability, Autism, 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. Therefore, IRC concluded that

you are not currently eligible for IRC services for people with developmental disabilities, as that term is defined in Welfare and Institutions Code (WIC) § 4512. . . .

9. On July 26, 2023, an IRC multidisciplinary team comprised of a psychologist, medical doctor, and a Senior Intake Counselor at IRC met a second time and reviewed claimant for eligibility and determined she did not have a substantial disability as a result of autism, IDD, cerebral palsy, epilepsy, or a condition that is closely related to IDD or requires treatment similar to a person with IDD. The team again noted that claimant did not exhibit the “significant functional limitations as required by the Lanterman Act”

10. Claimant appealed that determination and this hearing followed.

Diagnostic Criteria for Autism

11. The American Psychiatric Association’s DSM-5 TR identifies criteria for the diagnosis of autism.² 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

² The most notable revision to the DSM-5 TR diagnosis for autism was the changes to Criterion A, which now require the persistent deficits in social communication and social interaction across multiple contexts, to be manifested by all of the following: (1) deficits in social-emotional reciprocity, (2) deficits in nonverbal communicative behaviors used for social interaction, and (3) deficits in developing, maintaining, and understanding relationships, as opposed to the prior DSM-5 definition that only required “any” of those three deficits.

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 TR diagnosis of autism spectrum disorder to qualify for regional center services based on autism.

Substantial Disability

12. It is not sufficient to merely have a DSM-5 TR diagnosis of autism to become eligible for regional center services under the Lanterman Act. A person must also have a substantial disability. California Code of Regulations, title 17, sections 54000 and 54001, sets forth the criteria for substantial disability. A 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.

13. The Association of Regional Center Agencies (ARCA) have published clinical recommendations to be of assistance in making eligibility decisions when considering if a person is substantially disabled within the meaning of applicable law.

Regarding self-care, a person should have significant functional limitations in the ability to acquire or perform basic self-care skills such as personal hygiene, grooming, and feeding (chewing and swallowing, eating, drinking, use of utensils).

Regarding receptive and expressive language, a person must have significant limitations in both the comprehension and expression of verbal and/or nonverbal communication resulting in functional impairments. There also must be impairment in both receptive and expressive communication, not just one area. Some factors to

consider are whether the person has: significant difficulty understanding a simple conversation; needing information to be rephrased to a simpler level in order to enhance understanding; significant difficulty following directions (not due to general noncompliance); significant difficulty understanding and interpreting nonverbal communication (*i.e.* gestures, facial expressions); significant difficulty communicating information; and significant difficulty participating in basic conversations (following rules for conversation and storytelling, tangential speech, fixation on specific topics); atypical speech patterns (jargon, idiosyncratic language, echolalia, significant impairment of the ability to communicate).

Regarding learning, a person must be substantially impaired in the ability to acquire and apply knowledge or skills to new situations even with special intervention. Things to consider include a person's general intellectual ability; academic achievement levels, retention (short and/or long-term memory); and reasoning (the ability to grasp concepts, to perceive cause and effect relationships, ability to generalize information and skills from one situation to another).

Regarding mobility, a person must have significant limitations with independent ambulation. Things to consider include: the need for crutches, a walker or wheelchair; gait abnormalities; and coordination problems (unable to walk long distances due to fatigue from the significant effort involved in ambulating, difficulty negotiating stairs or uneven ground).

Regarding self-direction, a person must have significant impairment in the ability to make and apply personal and social judgements and decisions. Things to consider include: emotional development (routinely has significant difficulty coping with fears, anxieties, or frustrations, severe maladaptive behaviors, such as self-injurious behavior); interpersonal relations (has significant difficulties establishing and

maintaining relationships with family or peers, social immaturity, marked difficulty protecting self from exploitation); and personal independence (significant difficulty maintaining daily schedules, responding appropriately in an emergency, taking medications as directed).

Regarding capacity for independent living, a person must be unable to perform age-appropriate independent living skills without the assistance of another person. Things to consider include: significant difficulty performing age-appropriate household tasks, significant difficulty managing domestic activities (grocery shopping, laundry, home repair, etc.); significant need to be supervised; significant difficulty with money management (using bank accounts, making purchases, and budgeting); and significant difficulty taking the basic steps necessary to obtain appropriate health care (obtaining medication refills, obtaining medical attention when needed).

Regarding economic self-sufficiency, a person must lack the capacity to participate in vocational training or obtain and maintain employment without significant support.

Testimony of Ruth Stacy, Psy.D., and Summary of Records

14. Ruth Stacy, Psy.D., testified on behalf of IRC. Dr. Stacy has worked at IRC since 1991. She has served as a staff psychologist since 2015, where her primary responsibilities involve assessing individuals for regional center services and reviewing intake records to determine whether an individual is eligible for regional center services. Dr. Stacy also served as a Senior Intake Counselor and Senior Consumer Services Coordinator prior to becoming a staff psychologist. In addition to her doctorate degree in psychology, she also holds a Master of Arts in Counseling Psychology, a Master of Arts in Sociology, and a Bachelor of Arts in Psychology and

Sociology. Dr. Stacy qualifies as an expert in the diagnosis of autism and in the assessment of individuals for IRC services. The following is a summary of Dr. Stacy's testimony and pertinent records not already discussed above.

15. No evidence indicated claimant suffers from a cognitive impairment or meets the DSM-5 TR criteria for IDD.

16. A preschool evaluation report was completed on August 28, 1998, when claimant was three years old. Overall, the evaluator concluded claimant's vision and hearing were normal. Claimant's cognitive development was in the 18 to 24 month range. Her language development was in the 12 to 18 month range. Claimant's socialization and fine motor skills were consistent with her cognitive development, as were her gross motor skills and self-help skills. The evaluator found claimant qualified for special education under the category of speech and language impairment. A subsequent Individualized Education Program plan (IEP) dated September 18, 1998, showed claimant was given special education services under the category of speech and language impairment.

17. A document submitted by claimant, dated March 9, 2010, documented that claimant's eligibility for special education was changed from speech and language impairment to autism in 2001. Dr. Stacy pointed out that testing in support of that change was not provided, and that the criteria for autism for special education purposes is less stringent than the criteria for autism under the Lanterman Act. Notably in the three-year re-evaluation dated March 9, 2010, claimant was observed to be a wonderful student, well prepared, exhibiting positive interactions with her peers, and able to ask for assistance when needed. None of these characteristics are features of autism. Nonetheless, a March 6, 2021, IEP showed claimant received special education services under the category of autism.

18. A document submitted by claimant from her third university where she is pursuing a graduate degree in social work indicated she received special accommodations (such as a note taker, additional time to take tests, and being able to take tests in a place with less distractions). Those records did not contain any additional testing. Dr. Stacy also noted that a person can receive accommodations from a university but not meet eligibility criteria for regional center services under the Lanterman Act. Other school records provided showed claimant's ability to learn was good, she could communicate effectively, and the schools had no behavioral concerns. Dr. Stacy noted that those descriptors are not consistent with someone who is substantially disabled as a result of autism and during the entirety of claimant's education, she was in general education classes 100 percent of the time. Claimant also graduated high school and passed the mandated California high school-exit exam. This also would not be expected of someone who is substantially disabled as a result of autism.

19. On February 3, 2023, claimant underwent a psychological evaluation completed by M. Natasha Kordus, Ph.D., licensed clinical psychologist, and Ivey Kensinger, Psy.D., psychological associate. In addition to an interview with claimant and her mother, the evaluators administered the Vineland Adaptive Behavior Scales, Third Edition (Vineland-3), and the Childhood Autism Rating Scale, High Functioning, Second Edition (CARS-2-HF). Claimant's mother was to complete the online rating forms for the Vineland-3 and CARS-2-HF, however, because the forms were completed online it is unknown exactly who filled them out. Claimant's overall adaptive score on the Vineland-3 was in the low range. On the CARS-2-HF, claimant's score correlated to the "minimal to no symptoms of autism" range. The evaluators noted this was inconsistent with the Vineland-3, which exhibited scores more typical of someone with severe autism. This could be the result of overreporting adaptive challenges on the

Vineland-3 or underreporting behaviors on the CARS-2-HF. Regarding the interview with claimant's mother, claimant's mother stated: claimant has good eye contact with friends and family but some difficulty with unfamiliar persons; claimant struggles with initiating social interaction and picking up nonverbal cues; claimant has difficulty switching topics during conversation; and claimant was told by her internship program she needed to work on her communication skills prior to returning to the position.

Pertinent observations noted in the report show claimant was quiet and subdued but did attempt to make regular eye contact. Claimant would often repeat the questions and think before providing her answers. Claimant answered most questions but at times would defer to her mother. Claimant was cautious in her presentation and tapped the sides of her legs. Claimant struggled with spontaneous conversation and was unable to maintain the interaction unless asked a question.

Ultimately, the evaluators gave claimant a diagnosis of autism. They wrote "this diagnosis" indicates claimant has "significant" challenges in the areas of social communication and interaction, restricted/repetitive patterns of behavior, deficits in social-emotional reciprocity, understanding social relationships, etc. Although these stated "challenges" are taken straight from the DSM-5 TR as characteristics of autism, the evaluation itself does not support this conclusion with respect to "significant" challenges. Although the report contains information regarding some deficits, nothing in the report showed claimant has "significant functional limitations" in three or more areas of a major life activity under the California Code of Regulations, required to meet eligibility for regional center services. Notably, when they rendered the diagnosis of autism, the evaluators also wrote "without accompanying language impairment" and "without accompanying intellectual impairment."

When asked how the evaluators reached a diagnosis of autism when the information contained in the evaluation did not appear to support the diagnosis, Dr. Stacy answered, "Good question." Dr. Stacy explained that rendering a diagnosis is a matter of clinical judgement and that they likely gave the diagnosis because of the lower adaptive skills.

20. A series of e-mail communications between claimant and various individuals at regional center were submitted. The e-mails showed claimant communicated effectively in writing regarding her wants and needs.

21. On March 30, 2023, and April 11, 2023, claimant underwent an autism assessment recommended by her internship supervisors due to "social communication difficulties" observed during her work hours. The purpose was to explore ways that the university could support claimant in her studies.

Multiple measures were administered with mixed results. The Autism Diagnostic Observation Scale, Fourth Edition (ADOS), showed claimant fell within the range for autism. The Autism Diagnostic Interview (ADIR) showed claimant exhibited some of the characteristics of autism. On the CARS-2, not the high functioning version, claimant showed "mild to moderate" autism which conflicted with previous results that showed "minimal to no" symptoms of autism. On the Social Responsiveness Scale, Second Edition (SRS), which measures the severity of deficits in reciprocal social behaviors through the domains of social cognition, social awareness, communication skills, motivation, and repetitive behaviors, claimant's overall scores were within normal limits.

Ultimately, the evaluators diagnosed claimant with autism, unspecified communication disorder, and unspecified anxiety disorder. Unspecified

communication disorder and unspecified anxiety disorder do not qualify a person for regional center services. Although autism is qualifying, Dr. Stacy noted that the assessment did not indicate claimant is substantially disabled in three or more areas of a major life activity, as required by law, and the observations documented are inconsistent with the same.

22. Because claimant's aunt is an IRC employee, IRC requested an independent evaluation of claimant be conducted by a third party psychologist not employed by IRC before making a final determination. On July 22, 2023, C. Sherin Singleton, Psy.D., conducted a psychological assessment of claimant that included a review of prior assessments and documents provided in connection with this case, as well as a new administration of the Independent Living Scales (ILS).

Dr. Singleton did not administer any new assessments aimed at determining whether claimant had autism, but accepted the diagnosis "by history." On the ILS, which is an assessment regarding an adult's ability to manage instrumental activities of daily living, claimant's results were outstanding. The subcategories are memory and orientation, managing money, managing and home transportation, health and safety, and social adjustment. She tested as "independent" in virtually all areas, and her overall classification was "independent."

Dr. Singleton's report states:

[Claimant] said that she has not held a paying job. In high school, she was a teacher's assistant in a physics class. She said, "I was not the best at physics." After high school, she went straight to college. She said that she has had a volunteer position doing customer service at her dorm

She answered the dorm telephone, checked security cameras, worked the cash register, checked the log books and surroundings. She said that she struggled because she “needed instructions and help to guide me to make sure [she’s] doing it right.”

[Claimant] had unpaid practicum training experience in her undergraduate program. She said that she spent some time at [two care centers], working with senior citizens. She said it was “ok” and a learning experience. She said she struggled because she “didn’t always do it right.” She said that she required guidance and instruction “on how to talk to someone or who to talk to and make sure I’m doing my job right.” She gave an example of her supervisor at [a care center who] asked her to go into each patient’s room and ask . . . questions. She said, “I tried to do it and just went away and couldn’t handle it.”

[Claimant] was participating in her unpaid internship in her social work program. She took a leave of absence at the behest of the dean and the program director, so that she could work on her communication and social skills.

[Claimant] has recently started applying for jobs. She has applied to jobs such as behavior technician, and positions and jobs at Rite Aid, Target, Best Buy. [Claimant] has applied to IT and cashier jobs. She said she stopped counting how many positions she has applied for, although

she did not specify whether or not she has been receiving offers for interviews.

Dr. Singleton concluded claimant has "significant anxiety" related to her perceived awkwardness and fear of interactions where an evaluative component exists. Claimant's anxiety is related to her being worried about giving "wrong" answers or "doing things wrong." This anxiety causes her distress, especially in relation to her graduate work. Further, although the anxiety causes "severe discomfort" for claimant, "it is not debilitating" and claimant has the ability to manage it if she were to participate in an activity aimed at reducing anxiety. Claimant likely would experience a decrease in anxiety "if she were engaged in tasks that did not require the innate ability to navigate skills required of a psychotherapist, which she lacks"

Ultimately, Dr. Singleton concluded that the historical documents indicated a diagnosis of autism, but also gave claimant a diagnosis of unspecified anxiety disorder. Dr. Singleton concluded claimant did not meet eligibility requirements for regional center services under the Lanterman Act because she does not have significant functional limitations in three or more areas of a major life activity, as required.

23. Dr. Stacy noted claimant's educational accomplishments were exceptional and a person with a substantial disability relating to autism would not be able to complete a bachelor's degree, let alone a graduate degree program. She further noted that many individuals with anxiety disorder, or individuals with no anxiety, could experience challenges like preferring smaller class sizes, not liking crowds, not liking attention drawn to them, and difficulty in job interviews. In other words, the few challenges claimant experiences in social situations are not necessarily related to autism.

24. Based on the records as a whole, Dr. Stacy concluded claimant is not eligible for regional center services.

Testimony on Behalf of Claimant

CLAIMANT'S TESTIMONY

25. Claimant's testimony is summarized as follows: Claimant obtained a bachelor's degree in health science with an emphasis in health administration and completed an internship at two different care centers. Her duties required her to greet patients, serve as their companion, assist them, help them with meals, and play games with them. Claimant completed all the coursework required of her graduate degree (master of social work) but has not been able to complete her internship because of communication issues with her patients. Overall, during her education, she preferred smaller classes and smaller campuses, as larger ones can be overwhelming. Some of the accommodations she received during her college education included having a notetaker, additional time to take exams, tutoring, and access to a writing center. Claimant believes she has "a very hard time with social interaction and communication." She has had "speech problems" since she was three years old. Claimant "cannot react to social cues" and finds it "difficult to make friends." Claimant gets stressed in social situations. Claimant will complete any assignment given to her but "does not know how to initiate a task." Claimant "does not have any good adaptive skills" and believes everything is attributable to her "autism." She believes "autism affects how" she manages "reactions" to things and has impacted her job interviews. Claimant "does not have the conversation skills needed for a job interview." Claimant believes she needs access to regional center services because autism is a "lifelong disorder" and she will need support the rest of her life.

CLAIMANT'S MOTHER'S TESTIMONY

26. Claimant's mother's testimony is summarized as follows: Claimant received assistance (like special education) throughout her developmental years. The records provided really do not "show everything." Claimant did live in the dorms during her education and she has done well academically but she has problems with communication. Claimant cannot relate to people like everyone else. Claimant also needs a lot of training and orientation before anything (even classes) is changed. Claimant does not like changing routines. Claimant will interact with people but she will not initiate the interaction. "If you meet [claimant] she seems 100 percent OK." The whole purpose of allowing claimant to live in the dorms was to improve her social skills. She would come home on weekends and the family would support her while she lived there. It took claimant seven years to complete her classes. Sometimes, claimant was switching classes on her own and claimant's mother did not even know she did that. Claimant has tried to get a job but she "never gets picked." The family even went to the Department of Rehabilitation. Claimant's mother feels like there is "no help" for claimant. She really has a problem. Claimant's mother feels they have done everything they can do as a family and now it is being held against her.

CLAIMANT'S AUNT'S TESTIMONY

27. Claimant's aunt's testimony is summarized as follows: Claimant needs help with communication and learning. Claimant is not the person portrayed in the reports. Claimant is very withdrawn and has poor social skills. Claimant's parents always tried to give her a chance to be successful by exposing her to things and always took care of her. It is a parent's job to do the best job they can raising their children. Claimant's aunt acknowledged claimant's parents did a "good job" raising her and she feels that is now being used against claimant to disqualify her for services.

Observations of the Administrative Law Judge

28. Claimant appeared on time and was very well-groomed, polite, and friendly. She politely responded to all the ALJ's questions, made good eye contact, and exhibited appropriate social reciprocity when needed. She picked up on social cues and responded appropriately (laughed when others laughed, smiled when others smiled, etc.) She appeared organized and had many documents with her. While her aunt was reviewing the evidence packet, claimant looked at evidence, as well. During the hearing, claimant's aunt, mother, and claimant were writing notes back and forth to each other to communicate (presumably) about matters at hearing. It is noted that the hearing lasted approximately four hours, with only two short bathroom breaks. Claimant did not exhibit any of the behaviors listed in the DSM-5 TR associated with autism (persistent deficits in social communication and social interaction across multiple contexts; restricted repetitive and stereotyped patterns of behavior, interests, or activities). Claimant sat quietly, did not fidget, did not stare in different directions, did not engage in any restricted or repetitive behaviors, did not interrupt, and remained focused.

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. 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.

3. The Department of Developmental Services (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.)

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 retardation³, 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.

(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

³ 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. Further, the DSM-5 TR no longer uses the term "intellectual disability" and instead refers to the condition as "intellectual developmental disorder," however, the California Code of Regulations has not been updated to reflect this change.

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 psychosocial 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. 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

8. A preponderance of the evidence did not establish that claimant is eligible for regional center services under any qualifying category. No evidence was presented, nor was it claimed, that claimant was eligible under the categories of epilepsy; cerebral palsy; intellectual disability; or the fifth category.

9. Regarding autism, the results were mixed. On certain tests, like the CARS-2-HF, claimant tested in the “minimal to no” symptoms of autism. On others, like the ADOS, she tested within the range for autism. Claimant was initially served in special education under the category of speech and language impairment, but that classification was later changed to autism. The criteria to receive special education services for autism (California Code of Regulations, title 5) is much less stringent than the DSM-5 TR criteria (California Code of Regulations, title 17), however, so the special education category is not dispositive regarding whether a person qualifies for regional center services. Also, claimant was never in special education classes; during the

entirety of her elementary, secondary, and college education, she has been in general education classes.

10. Claimant does exhibit some behavioral characteristics that a person with autism might exhibit, as evidenced throughout the records. However, those characteristics (relating better to family and friends than strangers, liking things organized, not enjoying change, etc.) are also features of other disorders like unspecified anxiety disorder, for which claimant has also received a diagnosis. In fact, the wealth of the evidence in the record regarding claimant's behaviors (conversational skills, intelligence, academic achievements, independence, daily living skills, etc.) are not consistent with autism. A preponderance of the evidence therefore did not establish that claimant has autism.

11. However, even assuming claimant did have autism, she does not have the deficits necessary in her adaptive skills to be considered substantially disabled. To be eligible for regional center services, a person must not only have a qualifying diagnosis (like autism), he or she must also suffer from *significant* functional limitations in three or more areas of a major life activity. The evidence in this case does not show claimant suffers from *significant* functional limitations.

12. Claimant does appear to be shy and quiet when interacting with others (as evidenced at the hearing when responding to questions), but she does, in fact, communicate effectively and answer appropriately. Claimant completed a bachelor's degree, which included two internships where she provided daily care for individuals. Completing an undergraduate academic program shows claimant is able to manage her time, study, learn and retain new information, and meet goals. Claimant also completed most coursework in her graduate program in social work; all that is left is the internship. The only issue appears to be claimant's inability to effectively

communicate with her patients. Separate and apart from her academics, claimant drives independently, banks independently, has had groups of friends with whom she socialized, lived in the dorms during some of her undergraduate education, and even filed this fair hearing request and communicated with IRC on her own. As Dr. Stacy explained, a person with autism, and certainly one who is substantially disabled, would not be able to accomplish all that claimant has accomplished, and function as independently as claimant can.

13. Being capable of doing something is very different than being developmentally disabled and unable to function as a person normally would. The records show claimant is a very capable young lady; she should be very proud of all she has accomplished. Her academic background and level of cognitive and adaptive functioning exhibited in the records, and displayed at hearing, show she is more than capable of seeking out and obtaining employment and living independently. In other words, while claimant may have certain challenges, mainly, in her social interactions as evidenced by her difficulty during her graduate internship, the expert testimony and records provided did not show claimant has a *significant* functional limitation in three or more areas of a major life activity.

14. Further, though claimant may desire more time to do things and want additional time to ensure she fully understands what is expected of her, that alone is not a significant functional limitation. Nor is being filled with anxiety, as Dr. Singleton noted, about what others may perceive about her or what others may think if she gives the wrong answer to something. Indeed, virtually every description claimant gave of herself during testimony reflected anxiety about interacting in a social environment or job interview as opposed to being physically or developmentally incapable of doing so. Claimant's social interaction challenges appear to be more of a confidence

problem, as opposed to a developmental problem that *prevents* her from properly interacting with others. In fact, claimant's ILS scores achieved during Dr. Singleton's July 2023 assessment show she is independent, and this is consistent with the social assessment completed by IRC in December of 2022.

15. The testimony provided by and on behalf of claimant was heartfelt and sincere. Claimant herself was quite impressive in both her presentation and testimony. Claimant's family clearly wants the best for her and claimant feels she needs the extra support she has enjoyed throughout her academic life. Claimant's aunt and mother feel that their assistance has somehow hampered claimant's ability to receive services, but that is not the case. A person who has autism to such a degree that she has *significant* functional limitations would have exhibited those limitations during her developmental years. Further, those *significant* functional limitations would greatly impact that person's ability to progress in life; regardless of what the parent may do. The fact that claimant has achieved all that she has would not have occurred if she had *significant* functional limitations as a result of autism, as Dr. Stacy opined. The evidence simply did not establish that claimant has the deficits necessary under applicable law to meet eligibility requirements under the Lanterman Act.

16. Accordingly, a preponderance of the evidence did not establish claimant is eligible for regional center services under any qualifying category, and claimant's appeal must be denied.

ORDER

Claimant's appeal is denied. Claimant is not eligible for regional center services due to a substantial disability that resulted from autism, IDD, cerebral palsy, epilepsy, a

condition that is closely related to IDD, or a condition that requires treatment similar to a person with IDD.

DATE: September 13, 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.