

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

In the Matter of:

CLAIMANT

v.

INLAND REGIONAL CENTER, Service Agency

DDS Case No. CS0007329

OAH No. 2023060938

DECISION

Robert Tomlin White, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on February 14, 2024.

Dana Hardy, Fair Hearings Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

There was no appearance on claimant's behalf.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on February 14, 2024.

ISSUES

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

Is IRC required to perform an evaluation of claimant to determine eligibility or is a records review sufficient?

SUMMARY

The evidence does not establish that claimant has a qualifying developmental disability that is eligible for IRC services. IRC need not perform an evaluation of claimant to determine eligibility; the records review IRC performed was sufficient. IRC's denial of claimant's request for eligibility is affirmed. Claimant is not eligible for regional center services.

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is a 6-year-old boy who is seeking IRC eligibility based upon a claim that he suffers from autism. Claimant applied for regional center services.

2. On February 12, 2024, an IRC multidisciplinary team comprised of a psychologist, medical doctor, and an Intake Program Manager reviewed claimant's records for eligibility and determined he did not have a substantial disability as a result of autism, intellectual developmental disorder (IDD),¹ cerebral palsy, epilepsy, or a condition that is closely related to intellectual developmental disorder or requires treatment similar to a person with an intellectual developmental disorder.

3. On May 24, 2023, IRC issued its Notice of Action notifying claimant he was not eligible for regional center services and advising him that no intake services would be provided.

4. On June 20, 2023, claimant appealed IRC's denial of claimant's request for services, filed an Appeal Request, and this hearing followed. The originally scheduled hearing was continued to allow claimant time to provide additional records which IRC reviewed and considered as noted below.

5. Notice of the hearing was properly served on claimant who did not appear. IRC requested to proceed on the merits despite claimant's failure to appear at the hearing. Notice to claimant having been properly served, IRC's request was granted as no good cause to continue the hearing was presented. Jurisdictional

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 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 Development Disorder (IDD).

documents were introduced, and documents and sworn testimony were received from IRC.

Diagnostic Criteria for Autism

6. The American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision* (DSM-5 TR) 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 TR diagnosis of autism spectrum disorder to qualify for regional center services based on autism. There is no requirement of formal testing, rather the diagnostic criteria may be found "currently or by history."

Diagnostic Criteria for Intellectual Developmental Disorder

7. The DSM-5 TR contains the diagnostic criteria used for 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.

The "Fifth Category"

8. Under the fifth category, the Lanterman Act provides assistance to individuals with a 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." (Welf. & Inst. Code, § 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.

9. 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 or who requires treatment similar to a person with IDD.

FUNCTIONING SIMILAR TO A PERSON WITH IDD

10. 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.

11. Significant deficits in adaptive functioning are established based on 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

12. 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

rehabilitation 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

13. 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.

Testimony of Dr. Holly Miller-Sabouhi, Psy.D.

14. Holly Miller-Sabouhi, Psy.D., is a staff psychologist at IRC. Dr. Miller-Sabouhi received her Bachelor of Arts degree in Psychology from the University of California, Riverside. She received both her Master of Science in Psychology and her Doctor of Psychology from the University of La Verne. She has published articles and received the Student Diversity Award from the University of La Verne and the Educational Award for Clinical Psychologists from the County of Los Angeles Department of Mental Health. Her curriculum vitae sets forth her education, training, post-doctoral and clinical experience. Dr. Miller-Sabouhi is an expert in the assessment of individuals for conditions that render a person eligible for regional center services, and in making eligibility decisions under the Lanterman Act.

15. Dr. Miller-Sabouhi testified in this hearing, explaining the eligibility determination process and why the records IRC reviewed did not establish that claimant had been diagnosed with autism, an intellectual disability, or any qualifying developmental disability. Dr. Miller-Sabouhi further explained that IRC is not required to perform an evaluation of an individual; a records review is sufficient when the records do not suggest the presence of a qualifying developmental disability. In this case, all of the records submitted consistently established that claimant did not demonstrate that he had a qualifying developmental disability. There was no expert testimony that refuted Dr. Miller-Sabouhi's opinion that claimant is not eligible for regional center services.

Summary of Records Admitted at Hearing

16. The following is a summary of records admitted at hearing and Dr. Miller-Sabouhi's testimony.

NOVEMBER 17, 2020, PSYCHOLOGICAL ASSESSMENT

17. A November 17, 2020 Psychological Assessment, conducted by Dr. Theodore E. Swigart, Ph.D., at AB Psych Consulting, when claimant was two years and eleven months old, showed claimant had been referred to IRC to assess him for eligibility under autism. Claimant's family and daycare personnel had expressed concerns about claimant's biting, scratching, speech delays, not sharing toys, and history of flapping/posturing. Claimant had received IRC services for speech therapy in 2020. However, claimant had not previously undergone any psychological, neuropsychological, or psychoeducational assessments, and claimant had no reported or known psychiatric history.

18. Dr. Swigart's report noted that claimant underwent a Developmental Assessment of Young Children Second Edition (DAYC-2) on October 14, 2020. Claimant's scores on the DAYC-2 were in the "low average," range but above the "extremely low average" range, and within the range of a "standard score."

19. Dr. Swigart took a relevant history, administered tests, and observed claimant. He administered the Adaptive Behavior System Third Edition (ABAS-3), Parent/Caregiver form; Autism Diagnostic Observation Schedule, Second Edition (ADOS-2), Module 1; Childhood Autism Rating Scale, (CARS2-ST) Standard Version; and Wechsler Preschool and Primary Scale of Intelligence, Fourth Edition (WPPSI-4). Claimant's ADOS-2, evaluation indicated that claimant engaged in positive and prosocial activity. Claimant was able to communicate with his father (a parent was required to be present for the evaluations due to claimant's age). Claimant coordinated his eye gaze, facial expressions, and stayed engaged with the presented activities and examiners. Claimant displayed one example of "pre-occupation" with his strong interest in toy cars. However, claimant's attention was regained easily with one attempt at calling claimant by name. Upon being called by name, claimant would make eye contact with his examiner, as well as his father. Claimant exhibited shared enjoyment with his examiner and father, reciprocated smiles, engaged in behavior to sustain fun, effectively integrated his gaze and facial expression, appropriately used verbal and non-verbal gestures, and joined in a scripted "birthday party" activity. Claimant mostly used single words to communicate and while his language was limited, it was appropriate. Claimant also demonstrated adequate pointing skills and used gestures to effectively communicate. Claimant's overall score on the ADOS-2 showed minimal to no evidence of autism.

20. Dr. Miller-Sabouhi testified that claimant's ADOS-2 evaluation was mostly typical behavior for a child of that age. Claimant used toys appropriately, with the exception of his displeasure for relinquishing toy cars. Claimant did not display any significant speech or sensory issues, nor issues with or hand/body movements. Dr. Miller-Sabouhi further testified that she and other trained examiners would "be looking for" such issues in those particular categories, to assess an individual for a potential diagnosis of autism, or IDD.

21. Dr. Miller-Sabouhi testified about claimant's CARS 2-ST evaluation within Dr. Swigart's psychological assessment. Dr. Miller-Sabouhi explained that the CARS 2-ST evaluation incorporates observations of claimant by examiners, as well as interviews with claimant's parent(s), concerning the specific CARS 2-ST "Category Ratings." Dr. Miller-Sabouhi testified that claimant produced scores of "1" for most category ratings. A score of "1" is indicative of "no concern" for autism. Accordingly, Dr. Miller-Sabouhi testified that claimant's CARS 2-ST score indicated minimal to no evidence of autism.

22. Although claimant only partially completed the WPPSI-4 evaluation, within the three subtests of the WPPSI-4 evaluation that claimant did complete, Receptive Vocabulary, Information, and Objective Assembly, claimant indicated cognitive functioning above the Delayed range.

23. Dr. Miller-Sabouhi testified that the ABAS-3, Parent/Caregiver Form evaluation includes a questionnaire provided to claimant's parents in order to complete the evaluation. The results of this evaluation provided claimant with a Global Adaptive [Composite] score of 89. According to Dr. Miller-Sabouhi, this score was "below average" but "within normal range," and not indicative of autism. Dr. Miller-Sabouhi explained that claimant also exhibited a "weakness" in the "Adaptive Functioning" category, and claimant's scores for Community Use and Health and

Safety were “low” (below average), but not “concerning,” nor indicative of autism. In Dr. Miller-Sabouhi’s opinion, claimant’s scores “argue against” a finding of autism, or any substantial disability. Instead, Dr. Miller-Sabouhi believes that claimant’s evaluation establishes that he has no significant psychological or functioning problems.

24. Dr. Swigart concluded claimant does not meet diagnostic criteria for autism or intellectual disability. He encouraged claimant to work with his school for the appropriate placement and services and to continue speech services through medical insurance. Dr. Miller-Sabouhi testified that the “overall impressions” of the November 17, 2020 psychological assessment showed that claimant did not exhibit any symptoms of a DSM-5-TR diagnosis of autism or intellectual disability. Accordingly, Dr. Miller-Sabouhi believed that based on the report, claimant was not eligible for regional center services.

DECEMBER 4, 2020, PRESCHOOL TRANSDISCIPLINARY EVALUATION REPORT

25. On or about December 4, 2020, a Preschool Transdisciplinary Evaluation Report (Psycho-educational Evaluation) was conducted upon claimant to determine if claimant required any special education services. The school psychologist performed several assessments, including a Developmental Profile-3 (DP3); Vineland-3 Adaptive Behavior Scales (Vineland-3); and the Autism Spectrum Rating Scales (ASRS).

26. The DP3, Vineland-3, ASRS, as well as other tools utilized to conduct the Psycho-educational Evaluation, relied upon claimant’s parents to assess claimant’s behavioral and cognitive skills and report them on a standardized form.

27. Claimant’s scores on the DP3 were within normal limits, with some assessed areas scored as above average, and some areas scored as below average, but

overall Dr. Miller-Sabouhi did not find anything significant regarding claimant's DP3 scores.

28. Claimant's Vineland-3 scores were average, to low average scores. Claimant's Adaptive Behavior Composite overall score was "85," which is in the "low average" range. Claimant's lowest Vineland-3 score was the low average score of 83 in Communication. All of claimant's other Vineland-3 scores were average, or well within the low average range. According to Dr. Miller-Sabouhi, claimant's Vineland-3 scores are not indicative of any significant concern.

29. A majority of claimant's ASRS scales/scores were in the "average" range, with "average" signifying that an individual does not have autism. Claimant's ASRS exhibited two scales/scores of Slightly Elevated Concern and low to mild concern in the areas of adult socialization and behavioral rigidity. Within all the other areas of claimant's ASRS everything else was average. Overall, claimant's scores were not indicative of autism.

30. Within the Speech and Language Development portion of the Psycho-educational Evaluation, although claimant shows some difficulty with expressive language, his articulation is adequate. Claimant mainly communicates using single words and is not yet conversing. However, no errors were noted in claimant's speech, his rate of speech was assessed as average, and his voice was appropriate for his age and gender.

31. Dr. Miller-Sabouhi concluded that the Psycho-educational Evaluation showed claimant met the standards for "speech and language impairment for special education, but not autism."

32. Claimant subsequently received a December 17, 2021, Individualized Education Plan (IEP) documenting he was receiving language and speech services.

FEBRUARY 13, 2023, ADHD ASSESSMENT

33. On February 13, 2023, claimant was referred by his school to Dr. Emily Lynn Nevin, M.D. for an ADHD assessment. Dr. Nevin found claimant presenting with learning and behavioral concerns, which Dr. Nevin diagnosed as ADHD-Combined type (ADHD). Dr. Nevin did not diagnose claimant with autism, IDD, or make any other diagnoses of claimant except for ADHD. An ADHD diagnosis is not a qualifying developmental disability or condition that is eligible for regional center services.

KAISER PERMANENTE PSYCHOLOGICAL ASSESSMENT

34. A psychological assessment was conducted at Kaiser Permanente on January 17, 2024, by Dr. Kanchana S. Boseroy, M.D., FAAP, when claimant was six years and one month old. Dr. Boseroy is Certified in Developmental Behavioral Pediatrics, as well as Certified in Neurodevelopmental Disabilities in Children. Dr. Boseroy assessed claimant for ADHD and autism. Dr. Boseroy's assessment also focused on academic achievement, cognitive assessment, and autism assessment. Dr. Boseroy utilized the Wide Range Achievement Test (WRAT) to measure claimant's basic academic skills in Word Reading, Spelling, and Math Computation. Claimant's WRAT results showed weaknesses in all areas, with the following scores reported: a Word Reading score of "72"; a Spelling score of "73"; and a Math Computation score of "63." Dr. Miller-Sabouhi testified that these scores raised "concerns" for claimant's academic achievement.

35. Dr. Boseroy conducted a "cognitive assessment" of claimant via "The Developmental Test of Visual Motor Integration, 5th Edition" (Beery VMI). Claimant's

cognitive scores for Beery VMI were reported as "Average." Additionally, Dr. Boseroy's assessment included an ADOS evaluation of claimant for autism. Dr. Boseroy's ADOS evaluation yielded the same results as the ADOS evaluation claimant underwent on November 17, 2020, with the exception that Dr. Boseroy employed the age-appropriate ADOS, Module 3, evaluation. Dr. Boseroy's impressions of the ADOS evaluation are: claimant generally uses good non-verbal communication, facial expression, and eye contact. Claimant volunteered information about himself, his play is typical but disorganized and sometimes aggressive. Dr. Boseroy reported claimant displayed issues with reciprocity in play, and transition away from play to another task. Claimant had difficulty answering questions about his emotions, which Dr. Boseroy believed to be due to language delay. Dr. Miller-Sabouhi testified that she believed that the language delay issue reported by Dr. Boseroy is consistent with similar language disorder findings in the December 4, 2020, Psycho-educational Evaluation, as well as claimant's December 17, 2021 IEP. Dr. Miller-Sabouhi further highlighted that Dr. Boseroy found that despite claimant's language delay, claimant was able to compensate well, and claimant was able communicate strongly non-verbally. Dr. Miller-Sabouhi testified that she found nothing unusual about claimant's behavior evaluation. Dr. Boseroy's assessment specifically found claimant's total ADOS score "does not meet diagnosis criteria for autism" and Dr. Miller-Sabouhi concurred.

36. Dr. Boseroy also conducted a Kaufman Brief Intelligence Test Edition 2 (KBIT). Claimant's scores in the KBIT were within the average or low average range, which Dr. Miller-Sabouhi explained were consistent with prior testing of claimant.

37. Dr. Boseroy diagnosed claimant with ADHD Combined and Language Disorder. Dr. Boseroy further ruled out autism, as a symptom or diagnosis for claimant, by ADOS and clinical opinion. Dr. Miller-Sabouhi's testimony further highlighted that

claimant's ADHD Combined Type and Language Disorder diagnoses are not qualifying developmental disabilities for regional center services.

IRC ELIGIBILITY DETERMINATIONS

38. Three IRC eligibility determinations conducted by multidisciplinary teams dated December 17, 2020, May 11, 2023, and February 12, 2024, all found that claimant is not eligible for regional center services under any qualifying diagnosis. Dr. Miller-Sabouhi concurred in those conclusions.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. In a proceeding to determine eligibility, the burden of proof is on the claimant to establish he or she meets the proper eligibility criteria for regional center services. The standard of proof is a preponderance of the evidence. (Evid. Code, § 115.)

Statutory and Regulatory Authority

2. 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.)

3. 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.

4. 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.)

5. Welfare and Institutions Code section 4512, subdivision (a)(1), 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." This term shall include intellectual disability, cerebral palsy, epilepsy, autism, and 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.*)

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.

(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.

8. A regional center is required to perform initial intake and assessment services for "any person believed to have a developmental disability." (Welf. & Inst. Code, § 4642.) "Assessment may include collection and review of available historical diagnostic data, provision or procurement of necessary tests and evaluations, and summarization of developmental levels and service needs" (Welf. & Inst. Code, § 4643, subd. (a).) In determining whether an individual meets the definition of developmental disability, the regional center may consider evaluations and tests, including, but not limited to, intelligence tests, adaptive functioning tests, neurological and neuropsychological tests, diagnostic tests administered by a physician, and

psychiatric tests, “the regional center may consider evaluations and tests . . . that have been performed by, and are available from, other sources.” (Welf. & Inst. Code, § 4643, subd. (b).)

Applicable Case Law

9. 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 guidelines, 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.)

Evaluation

10. Claimant did not establish by a preponderance of the evidence that he is eligible for regional center services under any qualifying category. The only expert who testified was Dr. Miller-Sabouhi, and her expert opinion that claimant does not qualify for regional center services was uncontested. Based upon its review of the records, IRC determined claimant did not meet the diagnostic criteria for autism or intellectual disability or qualification under the fifth category. None of claimant’s records demonstrated he had an eligible diagnosis. His most recent January 17, 2024, psychological assessment expressly ruled out any diagnosis for autism or intellectual disability, and instead, diagnosed claimant with ADHD Combined Type and language disorder, which are not qualifying diagnoses for regional center services.

11. Moreover, IRC’s role is to assess individuals for eligibility for services based on a qualifying developmental disability. IRC performs this role by reviewing

records, and when necessary, performing evaluations. In cases like this one, where the records do not indicate the individual has a qualifying developmental disability, a records review is sufficient, and an evaluation need not be performed.

12. Accordingly, claimant is not eligible for regional center services and his appeal is denied.

ORDER

Claimant's appeal is denied. IRC's determination that he is not eligible for regional center services is affirmed.

Claimant's appeal that he should be evaluated is denied. IRC's eligibility decision based only upon a records review is affirmed.

DATE: February 26, 2024

ROBERT TOMLIN WHITE
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. Each party is bound by this decision. Either party may request a reconsideration under Welfare and Institutions Code section 4713, subdivision (b), within 15 days of receiving the decision, or appeal the decision to a court of competent jurisdiction within 180 days of receiving the final decision.