

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

In the Matter of:

CLAIMANT

v.

INLAND REGIONAL CENTER, Service Agency

OAH No. 2023070081

DDS No. CS0007829

DECISION

Adam L. Berg, Presiding Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on October 19, 2023.

Senet Teweldebrhan, Fair Hearings Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

There was no appearance by or on behalf of claimant.

The record was closed, and the matter submitted for decision on October 19, 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. On June 28, 2023, IRC's eligibility team, which is comprised of a psychologist, program manager, and medical doctor, made an eligibility determination based on documents provided by claimant, a then 28-year-old man, that he was not eligible for regional center services.

2. On June 28, 2023, IRC sent claimant a Notice of Action stating that no intake services would be provided and claimant was not eligible for regional center services as he did not have a "substantial disability" as a result of intellectual disability,¹ autism, cerebral palsy, epilepsy, or a disabling condition that is closely

¹ The Lanterman Act was amended in 2014 to replace the term "mental retardation" with "intellectual disability," as reflected in the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5). The California Code of Regulations has not yet been amended to reflect this change. The most recent text revision of DSM-5 (DSM-5-TR) has since replaced the term "intellectual disability" with

related to an intellectual disability or requires treatment similar to a person with an intellectual disability (fifth category).

3. On June 29, 2023, claimant submitted an appeal requesting mediation and a fair hearing.

4. After being served with notices of the mediation and hearing, claimant failed to appear at both the mediation and hearing.

Diagnostic Criteria for Intellectual Developmental Disorder

5. Neither the Lanterman Act nor the regulations define IDD. However, the established authority for this purpose is the DSM-5-TR, which is “a standard reference work containing a comprehensive classification and terminology of mental disorders.” (*Money v. Krall* (1982) 128 Cal.App.3d 378, 384, fn. 2.)

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

“intellectual developmental disorder” (IDD). Accordingly, for purposes of this decision, IDD, “intellectual disability,” and “mental retardation” have the same meaning.

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 IDD typically have intelligence quotient (IQ) scores in the 65-75 range.

Diagnostic Criteria for Fifth Category

6. Under the fifth category, the Lanterman Act provides assistance to individuals with a disabling condition closely related to intellectual disability 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.

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 INTELLECTUAL DISABILITY

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 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 INTELLECTUAL DISABILITY

In determining whether a person requires treatment similar to a person with IDD, 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; and

the type of educational supports needed to assist children with learning (generally, children with IDD 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.

School District Records and Testimony of Sandra Brooks, Ph.D.

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

8. 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 has attended countless trainings and workshops in her field. Dr. Brooks is an expert in the assessment of individuals for regional center services.

9. A psycho-educational assessment was conducted by claimant's school district in 2008, when claimant was 13 years old and in eighth grade. The report indicated a battery of tests were administered as follows: Comprehension Test of Nonverbal Intelligence (CTONI), Test of Auditory-Perceptual Skills-3 (TAPS-3), Wide Range Assessment of Memory and Learning, Second Edition (WRAML-2), Wechsler Individual Achievement Test-2 (WIAT-II), Comprehensive Inventory of Basic Skills R (CIBS-R), and the Behavior Assessment for Children, Second Edition (BASC-2). The report also included a record review, interviews, and observations.

According to the report, claimant was in a general education classroom setting receiving specialized academic instruction. The report includes observations of claimant noting him to be cooperative, alert, motivated, and engaged in the testing process. He displayed appropriate affect, shared information, and made good eye contact.

On the CTONI, claimant scored in the low average range, with a nonverbal IQ of 84. On the TAPS-3, he scored overall in the low average range, with subset scores ranging from average to significantly low. On the WRAML-2, which tests verbal and visual memory and concentration, he scored in the average range. In both academic achievement tests, the WIAT-2 and CIBS-R, claimant scored in the average range. Finally, in the BASC-2, claimant's teacher rated claimant in the "at-risk" range for the categories of aggression, withdrawal, adaptability, and functional communication.

The evaluation included previous test results that were consistent with the latest scores, including the Wechsler Intelligence Scale for Children-Fourth Edition (WISC-IV) administered in 2005 showing a full-scale IQ of 81.

In conclusion, the evaluator determined claimant had an auditory processing/perpetual disorder and authorized the continuance of special education services.

10. Individualized Education Plans (IEPs) from 2008 and 2009 indicated claimant received special education services under the categories of specific learning disability and speech/language impairment.

11. Dr. Brooks agreed with the eligibility team's assessment that claimant is not eligible for regional center services. There is nothing in the report indicating claimant meets the DSM-5-TR criteria for any condition that qualifies him for regional center services. The records indicated that overall, claimant's test scores were in the low average range, which would not qualify him as having a substantial disability as a result of IDD; or a condition similar to IDD or one that requires treatment similar to a person with IDD. Moreover, there was no indication that claimant had ever been diagnosed with autism or had any related characteristics.

LEGAL CONCLUSIONS

Applicable Law

1. The Legislature enacted a comprehensive statutory scheme known as the Lanterman 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 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.

3. 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.*)

4. 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.

5. 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.

6. 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.)

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.)

Evaluation

8. A preponderance of the evidence did not establish claimant is eligible for regional center services under any qualifying category. Claimant, who is 29 years old, received special education services under the categories of specific learning disability

and speech/language impairment. These categories do not qualify claimant for regional center services. Furthermore, nothing in the school district records is suggestive that claimant meets the DSM-5-TR criteria for IDD, or autism spectrum disorder. The records indicated that overall, claimant's test scores were in the low average range, and there is no evidence that claimant has a condition similar to IDD or one that requires treatment similar to a person with IDD.

9. On this record, there is insufficient evidence to find claimant eligible for regional center services or to require IRC to conduct further intake or assessments.

ORDER

Claimant's appeal from Inland Regional Center's determination that he 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: October 25, 2023

ADAM L. BERG

Presiding 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.