

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

In the Matter of:

CLAIMANT

v.

INLAND REGIONAL CENTER

Service Agency

DDS Case No. CS0007805

OAH No. 2023070168

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on August 15, 2023.

Stephanie Zermeño, Fair Hearings Representative, represented Inland Regional Center (IRC).

Jessica Cohen, Los Angeles County Department of Children and Family Services, represented claimant, who was not present.

ISSUE

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

FACTUAL FINDINGS

Background

1. Claimant is an 18-year-old man.

PRIOR DENIAL OF SERVICES

2. Claimant has applied for, and been denied, regional center services. On February 28, 2022, IRC issued a notice of proposed action notifying claimant that he was not eligible for regional center services under any qualifying category. Claimant filed a fair hearing request and that matter was heard on December 1, 2022, by Administrative Law Judge Vomhof, in OAH Case No. 2022080344. By decision and order dated December 12, 2022, ALJ Vomhof denied claimant's appeal and affirmed IRC's determination that claimant was not eligible for regional center services. A number of records were provided in that case, which were correctly summarized and interpreted by the expert witness in that case, IRC staff psychologist Dr. Holly Miller-Sabouhi. Official notice of that decision is hereby taken, and all findings and conclusions pertaining to those records as expressed in that decision are hereby incorporated by reference and summarized below.

3. Claimant's school district psychologist conducted a Preschool Psycho-Educational Assessment on November 6, 2008, when claimant was four years old (report issued November 13, 2008). Claimant's doctor had referred him for an assessment due to speech and language concerns. Claimant's mother also had concerns with certain behaviors displayed by claimant, such as hyperactivity, difficulty staying on task, and not being aware of danger.

4. The school psychologist conducted multiple assessments. The Preschool Team Assessment Experimental III (PTA-III) evaluated claimant's cognitive ability in verbal and nonverbal areas. Overall, claimant's verbal and nonverbal skills appeared to fall below the average range. His general ability was lower than expectation for his age. In the Developmental Profile II (DP-II) assessment, claimant's academic age appeared at 30 months overall, compared to his chronological age of 46 months. When observed and assessed in a school setting, claimant had difficulty maintaining focus. Once seated, he was able to maintain his focus for two to three minutes at a time. He was able to maintain appropriate eye contact with the examiner, he did not display any aggressive behaviors, and he responded well to prompting. Overall, claimant appeared to have below age-appropriate self-help and adaptive behavior skills. On the Childhood Autism Rating Scale (CARS), claimant tested in the "non-autistic" range. In general, claimant demonstrated below-age general ability in speech, social skills, school-readiness, and adaptive skills. The school psychologist referred claimant to an Individualized Education Program (IEP) plan team for a determination regarding special education services.

5. On August 8, 2011, claimant was referred to Gabrielle du Verglas, Ph.D., by the South Central Los Angeles Regional Center for a psychological evaluation for a determination regarding possible cognitive delays and autism spectrum disorder

(autism). According to the report, claimant was six and a half years old at the time. Claimant had been removed from his mother's care and his paternal aunt had been caring for him since he was six weeks of age. His biological father has a diagnosis of bipolar disorder. The evaluation stated that "symptoms of ADHD had always been present." These symptoms were severe, requiring claimant to wear a harness when out in the community.

The Wechsler Preschool and Primary Scale of Intelligence (WPPSI-III) test measures two primary domains – verbal skills and visual motor skills. Claimant's language skills were found to be in the average range. This is not indicative of an intellectual developmental disorder.¹ Claimant's verbal IQ and performance IQ were found to be in the borderline range, also not indicative of intellectual developmental disorder. The Vineland Adaptive Behavior Scale (VABS), which assesses functioning in the domains of communication, daily living skills, socialization, and motor skills, and which is widely used to assess for the deficits in adaptive behavior which are associated with autism and intellectual developmental disorder, showed claimant to be delayed, mostly due to motor skills, daily living skills, needing assistance to complete tasks, and not having a sense of danger. The evaluator concluded that claimant did not

¹ 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 *Diagnostic and Statistical Manual for Mental Disorders*, Fifth Edition, Text Revised (DSM-5-TR) no longer uses the term "intellectual disability" and instead refers to the condition as "intellectual developmental disorder." For ease of reference and consistency, the condition will be referred to as intellectual developmental disorder.

meet the criteria for autism, and his challenges were more likely due to Attention Deficit Hyperactivity Disorder (ADHD). He was given a diagnosis of ADHD and borderline intellectual functioning.

6. On September 12, 2011, when claimant was six years old, claimant was admitted to an acute psychiatric hospital. His primary diagnosis was Axis I: disruptive behavior disorder, which is not a condition that qualifies a person for regional center services. Claimant was prescribed Risperdal and Tenex during treatment, medications commonly prescribed for individuals who suffer from ADHD.

7. On November 14, 2013, when claimant was eight years old, Rebecca R. Holtzman, Psy.D., conducted a psychological assessment to determine claimant's current level of functioning in order to assist in the eligibility process for regional center services. The assessment indicated claimant received mental health and psychiatric services, and special education services from his school district under the eligibility criteria of "other health impairments." Dr. Holtzman conducted the Vineland Adaptive Behavior Scale-II (VABS-II), which indicated claimant's overall adaptive functioning fell within the moderately low range, his communication skills fell within the adequate range, and socialization skills and daily living skills fell within the moderately low range. On the Wechsler Intelligence Scale for Children-4th Edition (WISC-IV), an intelligence test for children ages 6 to 16 years, claimant obtained a Verbal Comprehension Score of 89 and Working Memory Score of 89, showing those areas were strengths. Claimant's Perceptual Reasoning Score of 57 and Processing Speed Score of 68 reflected weakness. The results of the WISC-IV were scattered in such a manner that Dr. Holtzman believe the results should be interpreted with caution. Finally, on the Childhood Autism Rating Scale-Second Edition (CARS-2), claimant fell within the range designated as "minimal-to-no symptoms" of autism. Dr.

Holtzman concluded claimant did not meet the criteria for intellectual disability or autism, but that he did meet the criteria for ADHD or a learning disability.

8. The December 2022 decision also contained a paragraph explaining other denials by a regional center for services, as follows:

On September 13, 2011, in response to claimant's intake application, South Central Los Angeles Regional Center's (SCLARC's) Interdisciplinary Team determined that claimant was not eligible for regional center services "due to an ineligible condition (not a developmentally disabled condition)." Claimant submitted a second intake application, and on March 25, 2014, SCLARC's Interdisciplinary Team again determined that claimant was not eligible for regional center services.

JURISDICTIONAL MATTERS RELATING TO CURRENT FAIR HEARING REQUEST

9. After the above-referenced decision, claimant again requested services under the Lanterman Act from IRC. Claimant provided a Triennial Psychoeducational Report from claimant's school district dated August 8, 2022, and an IEP dated September 28, 2022, neither of which had been provided in the earlier hearing.

10. On June 12, 2023, a multidisciplinary team again denied claimant's request for regional center services.

11. On June 28, 2023, claimant's authorized representative filed a fair hearing request on claimant's behalf. In it, she wrote: "This is the 3rd submission of the regional center referral application and the 3rd denial letter. I would like to meet with

the appeal team to get a fair understanding of [claimant's] limited ability to navigate and function."

12. This hearing followed.

Diagnostic Criteria for Autism

13. The 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.

Diagnostic Criteria for Intellectual Developmental Disorder

14. The DSM-5-TR contains the diagnostic criteria used for intellectual developmental disorder (IDD). IDD is a disorder with onset during the developmental period that includes both intellectual and adaptive functioning deficits in conceptual, social, and practical domains. Three diagnostic criteria must be met to receive an IDD diagnosis. First, a person must have deficits in intellectual functions, such as reasoning, problem solving, planning, abstract thinking, judgement, academic learning, and learning from experience. These deficits must be confirmed by both clinical assessment and standardized intelligence testing. Second, a person must have deficits in adaptive functioning that result in failure to meet developmental and social cultural standards for personal independence and social responsibility, and those deficits must

limit the person's functioning in activities of daily life. Finally, the deficits must manifest during the developmental period. Intellectual functioning is measured using intelligence tests. Individuals with intellectual developmental disorder typically have intelligent quotient (IQ) scores in the 65-75 range.

Diagnostic Criteria for Fifth Category

15. 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." (Welfare and Institutions Code section 4512, subd. (a).) A disability involving the fifth category must also have originated before an individual attained 18 years of age, must continue or be expected to continue indefinitely, and must constitute a substantial disability.

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

FUNCTIONING SIMILAR TO A PERSON WITH IDD

A person functions in a manner similar to a person with IDD if the person has significant sub-average general intellectual functioning that is accompanied by significant functional limitations in adaptive functioning. Intellectual functioning is determined by standardized tests. A person has significant sub-average intellectual functioning if the person has an IQ of 70 or below. Factors a regional center should consider include: the ability of an individual to solve problems with insight, to adapt to

new situations, and to think abstractly and profit from experience. (ARCA Guidelines, citing Cal. Code Regs., tit. 22, § 54002.) If a person's IQ is above 70, it becomes increasingly essential that the person demonstrate significant and substantial adaptive deficits, and that the substantial deficits are related to the cognitive limitations, as opposed to a medical problem. It is also important that, whatever deficits in intelligence are exhibited, the deficits show stability over time.

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

TREATMENT SIMILAR TO A PERSON WITH IDD

In determining whether a person requires treatment similar to a person with an intellectual disability, a regional center should consider the nature of training and intervention that is most appropriate for the individual who has global cognitive deficits. This includes consideration of the following: individuals demonstrating performance based deficits often need treatment to increase motivation rather than training to develop skills; individuals with skill deficits secondary to socio-cultural deprivation but not secondary to intellectual limitations need short-term, remedial training, which is not similar to that required by persons with IDD; persons requiring 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

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.

New Documentary Evidence and Testimony of Sandra Brooks, Ph.D.

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

17. 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.

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

19. Multiple IEPs were provided between 2013 and 2022. In all IEPs, claimant qualifies for special education under the category of "other health impairment" and frequently, references are made to claimant's ADHD. None of them indicate claimant meets criteria for autism or intellectual developmental disorder.²

20. Regarding the new Triennial Psycho-Educational Report, there is nothing in the report indicating claimant meets the DSM-5-TR criteria for autism, intellectual developmental disorder, or any other condition that qualifies him for regional center services. That report, completed on August 8, 2022, when claimant was 17 years old, included a battery of tests, as follows: Cognitive Assessment System, Brief, Second Edition (CAS-2); Wide Range Achievement Test, Fifth Edition (WRAT-5); Behavior Assessment for Children, Third Edition (BASC-3); and the Vineland-3. The report also included a record review, interviews, and observations.

According to the report, claimant was initially eligible for special education under the category of developmental delay in 2008, but that was changed to "other health impairment" when claimant started kindergarten in 2010.

The report includes observations of claimant noting him to be cooperative, displaying appropriate affect, spontaneously sharing information, appearing comfortable with the evaluator's presence, and making frequent eye contact. None of

² Originally, it appears in 2008 claimant was found to possibly be eligible for special education services under developmental delay, but all of the IEPs subsequent to 2010 were updated to "other health impairment."

these observations are consistent with a person who has autism. The hallmarks of autism are significant deficits in social communication and restricted or repetitive movements, and nothing in the report makes any reference to those features. Notably, claimant asked clarifying questions when he needed to do so, which also shows he likely is not autistic because a person who has autism would not normally do so.

On the CAS-2, claimant showed low planning skills and the ability to solve visual problems in the low range, but his attention skills suggest he is able to pay attention to detail and focus, although he is distracted and therefore struggles. On the BASC-3, claimant rated himself within the average range in all areas, except for hyperactivity where he identified himself in the at-risk range. The teacher and parent rating rated claimant in the at-risk range for hyperactivity, conduct, and communication. The evaluator attributed any perceived conduct problems to claimant's ADHD. On the Vineland-3, the teacher rating showed claimant's adaptive skills were in the average range, while the parent rating displayed deficits in communication, daily living skills, and socialization. The evaluator noted because of the discrepancy, the results should be viewed with caution. In conclusion, the evaluator noted that claimant continues to be eligible for special education services under the category of "other health impairment" due to ADHD.

21. Dr. Brooks agreed with the assessment of the documentary evidence in the prior OAH decision from December 2022, mainly, that claimant is not eligible for regional center services because although he clearly suffers from ADHD, the records do not indicate he has a substantial disability as a result of autism; intellectual developmental disorder; or a condition similar to intellectual developmental disorder or one that requires treatment similar to a person with intellectual developmental disorder. As such, no additional assessments were necessary.

Claimant's Authorized Representative's Testimony

22. Jessica Cohen is a social worker assigned to claimant's case. Her testimony is summarized as follows: the prior eligibility decision was based primarily on old records, so she wanted to make sure that more recent records could be reviewed. She understands he was found not eligible for regional centers in the past and that he has ADHD, but claimant has difficulty navigating the world. She would like claimant to be found eligible under the fifth category or a new psychological assessment to be conducted.

23. Following Ms. Cohen's testimony, the ALJ inquired further regarding claimant's behaviors and other information she might have that would assist in determining whether claimant might be eligible for regional center services. Ms. Cohen said claimant needs things demonstrated to him many times and often does not grasp what caregivers say. Claimant's "functionality is not there." The way claimant eats cereal, the way claimant holds the bowl, the way claimant eats – he does everything "so fast." Claimant constantly needs to be told to slow down. Claimant needs a lot of redirection and guidance. "Things just do not click for him."

LEGAL CONCLUSIONS

Applicable Law

1. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act (Welf. & Inst. Code, § 4500 et seq.) to provide a pattern of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of

handicap, and at each stage of life. The purpose of the statutory scheme is twofold: To prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.) Welfare and Institutions Code section 4501 outlines the state's responsibility for persons with developmental disabilities and the state's duty to establish services for those individuals.

2. The department is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.)

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

The State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge. Affecting hundreds of thousands of children and adults directly, and having an important impact on the lives of their families, neighbors and whole communities, developmental disabilities present social, medical, economic, and legal problems of extreme importance . . .

An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities,

regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community. To the maximum extent feasible, services and supports should be available throughout the state to prevent the dislocation of persons with developmental disabilities from their home communities.

4. Welfare and Institutions Code section 4512, subdivision (a), defines developmental disability as a disability that "originates before an individual attains 18 years of age; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for that individual." A developmental disability includes "disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability." (*Ibid.*) Handicapping conditions that are "solely physical in nature" do not qualify as developmental disabilities under the Lanterman Act. (*Ibid.*)

5. California Code of Regulations, title 17, section 54000, provides:

(a) "Developmental Disability" means a disability that is attributable to mental retardation³, cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related

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. Furthermore, the DSM-5-TR has amended the phrase "intellectual disability" and replaced it with "intellectual developmental disorder."

to mental retardation or to require treatment similar to that required for individuals with mental retardation.

(b) The Developmental Disability shall:

(1) Originate before age eighteen;

(2) Be likely to continue indefinitely;

(3) Constitute a substantial disability for the individual as defined in the article.

(c) Developmental Disability shall not include handicapping conditions that are:

(1) Solely psychiatric disorders where there is impaired intellectual or social functioning which originated as a result of the psychiatric disorder or treatment given for such a disorder. Such psychiatric disorders include psycho-social deprivation and/or psychosis, severe neurosis or personality disorders even where social and intellectual functioning have become seriously impaired as an integral manifestation of the disorder.

(2) Solely learning disabilities. A learning disability is a condition which manifests as a significant discrepancy between estimated cognitive potential and actual level of educational performance and which is not a result of generalized mental retardation, educational or psycho-social deprivation, psychiatric disorder, or sensory loss.

(3) Solely physical in nature. These conditions include congenital anomalies or conditions acquired through disease, accident, or faulty development which are not associated with a neurological impairment that results in a need for treatment similar to that required for mental retardation.

6. California Code of Regulations, title 17, section 54001, provides:

(a) "Substantial disability" means:

(1) A condition which results in major impairment of cognitive and/or social functioning, representing sufficient impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential; and

(2) The existence of significant functional limitations, as determined by the regional center, in three or more of the following areas of major life activity, as appropriate to the person's age:

(A) Receptive and expressive language;

(B) Learning;

(C) Self-care;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living;

(G) Economic self-sufficiency.

(b) The assessment of substantial disability shall be made by a group of Regional Center professionals of differing disciplines and shall include consideration of similar qualification appraisals performed by other interdisciplinary bodies of the Department serving the potential client. The group shall include as a minimum a program coordinator, a physician, and a psychologist.

(c) The Regional Center professional group shall consult the potential client, parents, guardians/conservators, educators, advocates, and other client representatives to the extent that they are willing and available to participate in its deliberations and to the extent that the appropriate consent is obtained.

(d) Any reassessment of substantial disability for purposes of continuing eligibility shall utilize the same criteria under which the individual was originally made eligible.

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

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

8. In a proceeding to determine whether an individual is eligible for regional center services, the burden of proof is on the claimant to establish by a preponderance of the evidence that he or she meets the proper criteria. (Evid. Code, §§ 115; 500.)

Conclusion

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

10. Claimant is 18 years old. Claimant's IEPs show he receives special education services for ADHD (other health impairment). Although claimant seems to have some personal adaptive challenges, as described by Ms. Cohen and detailed in some of the reports submitted, they are easily attributed to his ADHD diagnosis. Most important, the records are devoid of evidence showing claimant regularly exhibits persistent deficits in social communication and social interaction across multiple contexts; or restricted repetitive and stereotyped patterns of behavior, interests, or activities. As Dr. Brooks noted, the most recent August 2022 Triennial Psycho-Educational Report documented a host of behaviors completely inconsistent with autism. In the situations where claimant does struggle in the areas of communication or interaction, it is typically attributed to his hyperactivity or impulsivity related to his ADHD. No records were provided showed claimant has ever been diagnosed during his developmental years with cerebral palsy, epilepsy, autism, or intellectual developmental disorder, and one of those diagnoses is required to be eligible for regional center services.

11. There is a similar problem with respect to the fifth category. ADHD is characterized as being capable of functioning normally being *impeded due to hyperactivity or impulsivity*, whereas intellectual developmental disorder is characterized by being *cognitively unable* to function in a normal manner. Nothing in the records show claimant is cognitively impaired or adaptively impaired such that he functions similar to a person with intellectual developmental disorder or requires treatment for the same.

12. On this record, there is insufficient evidence to find claimant eligible for regional center services or to require a new assessment be provided.

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: August 25, 2023

KIMBERLY J. BELVEDERE

Administrative Law Judge

Office of Administrative Hearings

NOTICE

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