

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

In the Matter of:

CLAIMANT

and

INLAND REGIONAL CENTER

OAH No. 2023100948

DECISION

Marion J. Vomhof, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on February 12, 2024.

Senait Teweldebrhan, Hearing Representative, represented Inland Regional Center (IRC).

Claimant's mother represented claimant.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on February 12, 2024.

ISSUE

Is claimant eligible for regional center services under the Lanterman Act based on autism spectrum disorder (ASD) or intellectual disability that results in a substantial disability?

SUMMARY

Claimant failed to show by a preponderance of the evidence that she had a qualifying developmental disability. 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 10-year-old female who lives with her parents and younger sister.
2. On November 6, 2023, IRC issued a notice of proposed action, denying claimant's eligibility for regional center services because a review of claimant's records, including a September 18, 2023, psychological evaluation conducted by Aimee Donato, Psy.D., an IRC clinical psychologist, did not indicate that claimant had a substantial disability as a result of ASD, intellectual disability, cerebral palsy, epilepsy, or a condition that is closely related to an intellectual disability or requires treatment similar to a person with an intellectual disability.

3. On October 24, 2023, claimant's mother filed a fair hearing request. An informal meeting was held, after which IRC notified claimant's mother that it was standing by its decision that claimant was not eligible for regional center services. This hearing followed.

Diagnostic Criteria for Autism Spectrum Disorder

4. IRC introduced excerpts from the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision* (DSM-5-TR) which contained the diagnostic criteria that must be met in order to make a diagnosis of autism spectrum disorder. To be eligible for regional center services based on ASD, a claimant must meet those diagnostic criteria. The criteria include: persistent deficits in social communication and social interaction across multiple contexts; restricted, repetitive 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 current functioning; and disturbances that are not better explained by intellectual disability or global developmental delay. An individual must have a DSM-5-TR diagnosis of ASD to qualify for regional center services based on ASD. Additionally, even if the individual has a diagnosis of ASD, that condition must be substantially disabling in order to qualify for regional center services.

Diagnostic Criteria for Intellectual Disability

5. IRC offered excerpts from the DSM-5-TR that contained the diagnostic criteria used for intellectual disability. Three diagnostic criteria must be met: deficits in intellectual functions, deficits in adaptive functioning, and the onset of these deficits during the developmental period. Intellectual functioning is typically measured using

intelligence tests. Individuals with intellectual disability typically have intelligent quotient (IQ) scores in the 65-75 range.

Testimony of Holly Miller-Sabouhi, Psy.D., and Summary of Records

6. Holly Miller-Sabouhi, Psy.D., is a staff psychologist at IRC. Dr. Miller-Sabouhi holds a Doctor of Psychology degree, a Master of Science in psychology, and a Bachelor of Arts in psychology. She has been a licensed psychologist since 2013. As a staff psychologist at IRC, a position she has held since 2016, Dr. Miller-Sabouhi conducts psychological evaluations of children, adolescents, and adults to determine eligibility for regional center services under the Lanterman Act. Prior to serving as a staff psychologist at IRC, Dr. Miller-Sabouhi worked as a clinical psychologist and clinical supervisor in different settings, where she conducted psychological evaluations of individuals, engaged in psychotherapy and family therapy services to adults and children, and conducted both counseling and trainings in the field of mental health services, among other things. Dr. Miller-Sabouhi has published in a peer-reviewed journal and received awards during her pre-doctoral study.

7. Dr. Miller-Sabouhi reviewed claimant's records, including those provided by claimant's mother, and testified at the hearing. The following is a summary of Dr. Miller-Sabouhi's testimony and those records.

8. On April 18, 2016, when claimant was three years old, and after evaluation of her records, IRC's Eligibility Team determined that claimant was not eligible for regional center services on the basis of epilepsy, cerebral palsy, ASD, an intellectual developmental disorder (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”). The determination was made based on a review of claimant’s records.

9. Dr. Miller-Sabouhi reviewed a Psychoeducational Assessment Summary from the Ontario-Montclair School District which was prepared in connection with an assessment of claimant in January 2020. Cognitive tests using the Wechsler Intelligence Scale for Children-Fifth Edition (WISC-V) were conducted and claimant’s overall cognitive abilities were in the average range. Her auditory processing, basic phonological abilities, and listening comprehension scores were all within the average range. Her attention processing scores were average in most areas but reflected a weakness in planning. Her adaptive behavior did not appear to be an area of concern. As for speech and language, claimant effectively communicated with the evaluator and engaged in two-way conversation. Based on the overall assessment it was determined that claimant met the criteria for special education used by the State of California for a specific learning disability. However, Dr. Miller-Sabouhi stated that this is not a qualifying criterion for regional center services, and nothing in this report showed a substantial handicapping condition.

10. Dr. Miller-Sabouhi reviewed an Individualized Education Program (IEP) dated February 13, 2020, from the Ontario-Montclair School District where claimant attended. The IEP document indicated that claimant was eligible for special education services due to “specific learning disability” and speech or language impairment, but not under a diagnosis of autism. Nothing in the IEP established eligibility for regional center services.

11. During July and August 2020, a Neurodevelopmental Evaluation was conducted by Inland Empire Autism Assessment Center in response to a request by claimant’s mother. The purpose of the assessment was to ascertain claimant’s current

functioning and provide a diagnostic clarification in regard to ASD. Psychological testing using the Wechsler Abbreviated Scale of Intelligence, Second Edition (WASI-II), Adaptive Behavior Assessment System, Third Edition (ABAS-3), Behavior Assessment System for Children, Third Edition (BASC-3), and Autism Diagnostic Observation Schedule, Second Edition (ADOS-2) were conducted. For this assessment, claimant was seen by pediatric neuropsychology, occupational therapy, and a speech and language pathology services. In summary, evaluators reported that claimant was previously diagnosed with Attention Deficit/Hyperactivity Disorder (ADHD.) Claimant's cognitive skills were found to be within age expected ranges. She presented with some delays in social communication and interaction skills, she had good use of gestures and was expressive but she had inconsistent eye movement. Evaluators determined that claimant met the criteria for a diagnosis of ASD, requiring support for deficits in social communication, and substantial support for restricted, repetitive behaviors, but that there was no cognitive impairment or language impairment.

Dr. Miller-Sabouhi testified that the overall discussion and findings suggested many areas of strength socially, with respect to communication and interaction, as well as adaptive behavior. While there were descriptions of areas of need and difficulties, based on the overall discussion of the report it appeared that the deficits, when present, were mild in nature, and not across many areas of functioning and not substantial in nature. As a result, the findings did not meet Lanterman eligibility requirements for regional center services.

12. Pedro Villa, a board-certified behavior analyst (BCBA), works for a company that provides behavioral services to individuals with developmental disabilities. In October 2020, a social skills assessment of claimant was conducted and a report issued on October 20, 2020. The report recommended that claimant "receive

an intensive level of social skills intervention . . . to treat her low social, adaptive, and behavioral skills.” Nothing in this report established eligibility for regional center services.

13. In December 2022 and January 2023, a Psycho-Educational Assessment was requested by claimant’s IEP team at her school to assess her continued eligibility for special education services. The assessment was conducted by claimant’s school psychologist, who determined that claimant continued to meet the criteria for special education services under the category of specific learning disability. Nothing in this assessment established eligibility for regional center services.

14. On January 10, 2023, a three-year re-evaluation of claimant’s IEP concluded that claimant continued to be eligible for special education services due to “specific learning disability.” Nothing in this document established eligibility for regional center services.

15. A January 10, 2023, six-month social skills training progress report reviewed and approved by Mr. Villa recommended that claimant continue to receive an intensive level of social skills intervention to treat her low social, adaptive, and behavioral skills. Nothing in this report established eligibility for regional center services.

16. On July 27, 2023, at the request of claimant’s mother, a telephone social assessment was conducted with Oliva Navarro, an IRC Senior Intake Counselor. Claimant was referred to clinical psychologist Aimee Donato, Psy.D., for further evaluation and assessment of ASD. Nothing in the social assessment by Ms. Navarro established eligibility for regional center services.

17. On September 18, 2023, an in-person psychological evaluation was performed by Dr. Donato to assess claimant's level of cognitive and adaptive functioning and to assist IRC in determining claimant's eligibility for regional center services under the Lanterman Act. Dr. Donato's evaluation included a review of claimant's records, clinical observations, parent interview, and administration of various tests. Dr. Donato determined that claimant met the criteria for ASD, specific learning disorder (SLD), and ADHD, but she deferred to IRC's interdisciplinary intake team to determine eligibility under the Lanterman Act for regional center services. Nothing in Dr. Donato's report established eligibility for regional center services.

18. Dr. Miller-Sabouhi testified that an adaptive behavior assessment looks at an individual's overall adaptive functioning to assess what that individual does on a daily basis to assess their independent behavior in multiple life domains. An individual could have adaptive behavior deficits attributable to different conditions, including autism or developmental disorders or psychiatric conditions.

Most areas of clinical testing did not show that claimant had a significant deficit. Many of claimant's scores were in the average range, which indicates no deficit at all. Others were in the moderately low range, which indicates some areas of weakness but not substantial. This argues against a substantial disability because there would need to be a significant deficit in three or more of those areas to meet the Lanterman Act requirements, and that is not supported by a review of these records. The results of the various testing for adaptive behavior seemed to be consistent over the various reports. There has been some progress over time in different areas but looking at all of these records, none of them collectively or individually show evidence of claimant having three or more significant functional limitations at one time, and therefore she does not meet the criteria of the Lanterman Act required for regional center services.

TESTIMONY OF PEDRO VILLA, B.C.B.A.

19. Mr. Villa's testimony is summarized as follows: He began working with claimant in 2020 when she was seven years old. She was referred to him after she received a diagnosis of autism from Inland Empire Autism Assessment Center of Excellence. She has experienced growth since he first began seeing her, but her progress has been slow. Mr. Villa prefers to start working with children at 18 months rather than seven years old. Claimant attends two martial arts classes each week - judo and taekwondo. He sees her weekly at judo which gives him a good indication of her progress. She is given different challenges each week, such as working on an advanced technique or helping others. She is panicking less but she still struggles with change. Her judo class is an integrated program consisting of students with all types of disabilities, including autism, ADHD, and oppositional defiance disorders. She does not require someone to be with her at all times, but she requires someone to monitor her from afar and keep her on track, particularly when she is trying something new.

On cross-examination, Mr. Villa acknowledged that he does not diagnose "anything that is in the DSM" and he does not do intake or conduct psychological assessments for qualification for regional center services.

TESTIMONY OF NICOLE VAN OVER

20. Nicole Van Over has a master's degree in education and applied behavior analysis (ABA). She is currently studying to take her BCBA licensing exam. She sees claimant once each week at home and once at judo class. Claimant has deficits in self-care. For example, she brushes her teeth and hair, and she gets dressed, with prompting. She does not want to change her soiled clothes, and she has to be reminded to use deodorant and to eat healthy. She struggles with eye contact. Her

attention span is short so she may get up or walk away if she is not interested in a conversation. She takes everything literally. She does not understand joking, bullying and sarcasm. She has deficits in her safety skills and does not understand stranger danger. She has eloped in the past when she was feeling anxious, although she was found a few minutes later. On cross-examination, Ms. Von Over acknowledged that she is not licensed to diagnose mental disorders.

TESTIMONY OF JOSCELYNE ZUNIGA

21. Joscelyne Zuniga is a behavioral therapist and a graduate student, working on her master's degree in ABA. She has known claimant for three years. She currently sees claimant four times each week, anywhere from 12 to 15 hours per week; she previously saw her 25 to 30 hours per week. Ms. Zuniga has seen improvement in claimant's skills. Ms. Zuniga's concern is that claimant requires constant coaching. She works with claimant to help her understand the importance of self-care, such as concern for her appearance and why this is important, wearing appropriate clothing, personal hygiene, and remembering to flush the toilet. Claimant has deficits in expressive behavior. Ms. Zuniga works with claimant to help her understand the difference between situations that are a "big deal" or "little deal," to understand other perspectives and her own emotions, and how to express herself in appropriate ways.

LEGAL CONCLUSIONS

Applicable Law

1. The Legislature enacted 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 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 Disabilities (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. 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 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.)

Evaluation

8. A preponderance of the evidence did not establish that claimant is eligible for regional center services under the categories of ASD or intellectual disability. Based on a review of the records provided, Dr. Miller-Sabouhi's expert opinion was that claimant's ASD diagnosis is not substantially disabling within the meaning of the applicable law.

A psychoeducational assessment conducted by claimant's school district in January 2020, determined that claimant met the criteria for special education based on a specific learning disability, but this not a qualifying criterion for regional center services and there was no showing of a substantial handicapping condition. A neurodevelopmental evaluation conducted in August 2020 provided an ASD diagnosis. However, Dr. Miller-Sabouhi testified that based on the assessment and overall discussions it appeared that the deficits were mild rather than substantial in nature and were not across many areas of functioning. Dr. Miller-Sabouhi's expert evaluation and testimony were credible and persuasive. Claimant did not meet her burden to show that she meets the eligibility requirements required by Lanterman Act for regional center services. Accordingly, on this record and in light of applicable law, claimant's request for regional center services must be denied.

ORDER

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

DATE: February 26, 2024

MARION J. VOMHOF

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.