

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

In the Matter of:

CLAIMANT

v.

INLAND REGIONAL CENTER,

Service Agency

OAH No. 2023120110

DDS Case No. CS0010910

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on February 7, 2024, in San Bernardino, California.

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 7, 2024.

ISSUE

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

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is an 11-year-old boy. On November 28, 2023, an IRC multidisciplinary team comprised of a psychologist, a medical doctor, and a Senior Intake Counselor reviewed claimant for eligibility and determined he did not have a substantial disability as a result of autism, intellectual developmental disorder (IDD),¹

¹ The Lanterman Act was amended long ago to eliminate the term "mental retardation" and replace it with "intellectual disability," as reflected in the *Diagnostic 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 IDD. Many of the regional center forms have not been updated to reflect this change. Accordingly, for purposes of this decision, which includes all admissible documentary evidence, "mental retardation," "intellectual disability," and "IDD" mean the same thing.

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. On that same date, IRC issued a Notice of Action stating claimant was ineligible for services.

2. On November 29, 2023, claimant's mother filed a fair hearing request asserting claimant needed services because he "has diagnosed autism[,] needs help with emotional regulation and intelligence[,] as well as ADHD help."

3. When the matter was called for hearing on February 7, 2024, claimant's mother did not appear. There was no communication from claimant's mother indicating she was seeking a continuance or otherwise providing a reason for the non-appearance. Notification of the date and time of the hearing was served on claimant's mother at the address she provided on the fair hearing request, and IRC provided her the documents IRC intended to use at the hearing. IRC again notified her of the hearing date at her address of record approximately one week prior to the hearing. Service of the notice of hearing by OAH and IRC was proper, and the matter proceeded as scheduled.

Diagnostic Criteria for Autism

4. 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.

Testimony of Sandra Brooks, Ph.D., and Summary of Pertinent Records

5. Sandra Brooks, Ph.D., 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 attended countless trainings and workshops in her field. Dr. Brooks is an expert in the diagnosis of autism, and in the assessment of individuals for regional center services. The following is a summary of Dr. Brooks's testimony and relevant records.

6. Per claimant's Individualized Education Program plan (IEP) dated November 2, 2022, completed when claimant was 10 years old and in the fourth grade, claimant qualifies for special education services under the categories of autism and other health impairment. Claimant has age-appropriate skills in most aspects of communication, language, and speech, although he struggles to use socially appropriate language at times. Claimant's reading skills were in the average and low average range, his math skills were in the average and low average range, and his written expression was in the average and low average range. Claimant has age-

appropriate gross and fine motor skills. Claimant works "diligently and focused throughout all tasks" and is "happy and verbal." Claimant sometimes gets frustrated when he does not understand something and exhibits difficulty trying to refocus.

7. No IEPs from claimant's educational history prior to the fourth grade were provided, however, medical records from February 2019 through April 2021 show claimant has always been in an age-appropriate grade level. The medical records from 2019 document that claimant was "successful at school without learning concerns," was involved in school and community activities, and had good sleep habits. The medical records from 2020 contain similar conclusions.

8. According to a March 1, 2023, psychoeducational report completed by claimant's school district, claimant's mother requested the evaluation because of a "suspected disability that impacts learning," and concerns regarding "academic progress and behavior." The evaluation noted that claimant had been evaluated by the school on October 29, 2020, and claimant showed "some social deficits," and tested within the range of autism on the Autism Diagnostic Observation Schedule, Second Edition (ADOS-2). The report also showed claimant had prior diagnoses of Attention Deficit Hyperactivity Disorder (ADHD) and Oppositional Defiant Disorder (ODD). The purpose of the evaluation was to determine claimant's eligibility for special education under the guidelines set forth in California Code of Regulations, Title 5, section 3030 (Title 5).

Some of the teacher observations in the report indicate claimant is inattentive, does not stay on task, interrupts frequently, has low test scores, does not participate in classroom discussions, and rushes through assignments leading to careless errors. However, claimant's behaviors improved significantly between the first and second trimesters of the 2022-2023 school year. Claimant's parents reported to the evaluator

that claimant is “easy going, artistic, outgoing, athletic, self-confident, cooperative, creative, and wants to please adults.” Claimant’s teacher reported claimant is artistic, capable of completing grade-level work, but sometimes disrupts the learning environment by “talking to his friends.”

The evaluator administered several assessments. On the Kaufman Assessment Battery for Children, Second Edition, which measures the processing and reasoning ability of children ages 3 to 18, claimant’s overall ability was in the average range. On the Kaufman Assessment Battery for Children, Second Edition, nonverbal, which measures the processing and reasoning ability of children ages 3 to 18 who are nonverbal, claimant’s overall ability was in the average range. On the Woodcock-Johnson Tests of Achievement, Fourth Edition, which measures academic achievement in math, reading, and language, claimant’s scores were in the average range across a majority of the categories.

Regarding behaviors, on the Behavior Assessment System for Children, Third Edition, the results of the parent and teacher ratings showed claimant had some behavioral challenges in both the home and school setting. On the Autism Spectrum Rating Scales and other measures, although there was a slight difference in the teacher report versus the parent report, claimant exhibited some behaviors that are found in persons with both autism and ADHD.

Observations by the school psychologist during the assessments indicated claimant was cooperative, friendly, followed directions, corrected himself when appropriate, and responded quickly and appropriately to directed questions. Observations by the school psychologist when claimant was in the classroom showed claimant was “actively engaged” on his computer, was receptive to teacher feedback

during instruction, and required some redirection to keep him focused. However, claimant “did not appear to require more redirection than his peers.”

In conclusion, the school psychologist determined claimant met the Title 5 criteria for special education because claimant exhibited “challenges and behaviors” consistent with ADHD and autism that impacted his ability to access the general education curriculum without accommodations.

9. IRC offered claimant’s family a social assessment on August 1, 2023, but they declined an in-person assessment due to “lack of childcare.” As such, the social assessment, which consisted only of reported observations by claimant’s mother, was of little evidentiary value.

10. On October 17, 2023, Anthony Benigno, Psy.D., evaluated claimant to determine if he met the diagnostic criteria for autism and was eligible for regional center services pursuant to the Lanterman Act. Claimant was 10 years old at the time. Dr. Benigno reviewed prior records pertaining to claimant’s cognitive and adaptive functioning and conducted a comprehensive assessment of claimant.

On the Autism Diagnostic Interview-Revised (ADIR), a comprehensive clinical assessment tool commonly used to diagnose autism and other pervasive developmental disorders, claimant exhibited some behaviors consistent with autism.

On the ADOS-2, a structured interview used to help inform an evaluator’s diagnosis of autism, claimant did not engage in any repetitive or restricted movements, did not engage in stereotyped play, did not display any unusual sensory perceptions, demonstrated appropriate gaze, utilized appropriate facial expressions, participated in interactive play, displayed a variety of behaviors demonstrating insight into social situations, initiated play, and made extensive use of verbal and nonverbal

behaviors during social exchange. Overall, claimant scored in the non-spectrum range, and Dr. Benigno concluded “[claimant’s] profile indicated a low probability of [autism] with minimal deficits in social affective functioning and stereotyped and repetitive behaviors.”

11. Dr. Brooks reviewed all pertinent records summarized above and concluded claimant does not qualify for regional center services based on a diagnosis of autism, or any other qualifying developmental disorder. Specifically, even though claimant was diagnosed with autism by Dr. French and met special education criteria for autism with the school district, those results were not consistent with what IRC’s psychologist found. The reason Dr. Benigno’s evaluation was given more weight was because his assessments were more appropriate to ascertain if someone has autism (by virtue of having administered the ADOS-2), as opposed to the screening tool (ADIR) utilized in a prior assessment. Specifically, the ADIR is a screening tool that evaluates behaviors that are merely autistic-like, whereas the ADOS-2 is structured and objective and designed specifically to assess a person for autism.

12. Further, according to the cognitive testing overall, claimant generally falls in the average range and does not meet the criteria for IDD or fifth category.

Regarding the March 1, 2023, psychoeducational report completed by claimant’s school district, Dr. Brooks noted that claimant’s behaviors were not indicative of someone with autism. Moreover, although claimant was found eligible for special education based on autism, the criteria for special education eligibility under Title 5 is different than that required for regional centers under the Lanterman Act. For Title 5, only “autistic like” behaviors are required; whereas under the Lanterman Act, a person needs to meet the DSM-5 TR criteria for autism and be substantially disabled in three or more areas of a major life activity as a result of the qualifying developmental

disability, as indicated in the California Code of Regulations. As such, a person may meet the criteria for autism for special education purposes, but not qualify for regional center services.

LEGAL CONCLUSIONS

Applicable Law

1. The Legislature enacted the Lanterman Act (Welf. & Inst. Code, § 4500 et seq.) to provide an array of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. The purpose of the Lanterman Act is twofold: To prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.)

2. Welfare and Institutions Code section 4501 outlines the state's responsibility for persons with developmental disabilities and the state's duty to establish services for those individuals.

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

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

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

(a) "Developmental Disability" means a disability that is attributable to mental retardation², 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 Although the Lanterman Act has been amended to eliminate the term "mental retardation" and replace it with "intellectual disability," the California Code of Regulations has not been amended to reflect the currently used terms. Further, the DSM-5-TR no longer uses the term "intellectual disability" and instead refers to the condition as "intellectual developmental disorder," however, the California Code of Regulations has not been updated to reflect this change.

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

Conclusion

8. No evidence was presented, nor was it claimed, that claimant was eligible under the categories of epilepsy; cerebral palsy; IDD; or the fifth category. Regarding autism, Dr. Benigno conducted a comprehensive psychological assessment that

included the ADOS-2, which found claimant in the non-spectrum range. Further, based on the observations of claimant's teacher, and the various psychologists who administered the different psychological assessments, claimant did not show the behaviors typical of someone with autism. Claimant's adaptive skills also do not suggest he is substantially disabled in three or more areas of a major life activity, and cognitively, claimant is in the average range. Dr. Brooks is an expert on rendering opinions regarding an individual's eligibility for regional center services, and she reviewed all documents in this case and concluded the evidence did not show claimant meets the DSM-5-TR criteria for autism and the IRC multidisciplinary team's determination that claimant is not eligible for regional center services was correct.

9. Accordingly, claimant did not establish by a preponderance of the evidence that he is eligible for regional center services under any qualifying category, and claimant's appeal is denied.

ORDER

Claimant's appeal is denied. Claimant is not eligible for regional center services due to a substantial disability that resulted from autism, intellectual developmental disorder, cerebral palsy, epilepsy, a condition that is closely related to an intellectual disability, or a condition that requires treatment similar to a person with an intellectual disability.

DATE: February 20, 2024

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.