

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

In the Matter of:

CLAIMANT

and

INLAND REGIONAL CENTER, Service Agency.

Agency Case No. CS0015809

OAH No. 2024040659

DECISION

Administrative Law Judge Traci C. Belmore, Office of Administrative Hearings, State of California, heard this matter on September 25, 2024, at Inland Regional Center, 1365 Waterman Boulevard, San Bernardino, California.

Senait Teweldebrhan, Fair Hearing Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center, the service agency.

Steven Figueroa represented claimant who was not present.

The record was closed, and the matter was submitted for decision on September 25, 2024.

ISSUE

Is claimant eligible for regional center services on the basis of autism spectrum disorder (ASD), epilepsy, intellectual disability (ID),¹ or a disabling condition found to be closely related to ID or that requires treatment similar to that required for individuals with ID (fifth category)?

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is a 31-year-old male who lives with his parents. Claimant was born in Mexico and migrated to the United States in 2010.

2. On December 11, 2023, claimant submitted an intake application to Inland Regional Center (IRC) for an assessment of regional center eligibility based on the suspicion of claimant having ASD, epilepsy, ID, or under the fifth category.

3. On April 3, 2024, IRC issued a Notice of Action (NOA). The NOA set forth the determination by IRC that claimant was not eligible for regional center services because he did not have a "substantial disability" as a result of ID, ASD, cerebral palsy,

¹ Intellectual disability is the same as intellectual developmental disorder which is the language used in the DSM-5, but the statutes and regulations still refer to this diagnosis as intellectual disability.

epilepsy, or the fifth category, as defined by the Lanterman Developmental Disabilities Act (Lanterman Act).

4. On April 15, 2024, IRC received claimant's appeal request.

5. On April 24, 2024, an informal conference was held at IRC to further discuss claimant's eligibility. In a letter dated April 29, 2024, IRC affirmed the denial of eligibility for claimant, and this hearing followed.

Treatment Records

6. On November 18, 1999, when claimant was six years old, claimant was treated for a fainting episode with loss of consciousness, by Dr. Faviola Rodriguez Gonzalez. Dr. Gonzalez stated that it was claimant's first such episode and recommended that he be monitored by his family. Dr. Gonzalez did not give claimant a diagnosis.

7. On September 6, 2005, when claimant was 12 years old, Dr. Gonzalez treated claimant for a seizure with loss of consciousness and muscle spasms. Dr. Gonzalez prescribed a seizure medication and recommended that claimant follow up with brain mapping.

8. On August 1, 2019, claimant was seen at St. Mary High Desert Medical Group High Risk Clinic (St. Mary) by Sukalpa Dutta, M.D., for a referral to a neurologist. Dr. Dutta noted that claimant had been diagnosed with schizophrenia, but that claimant was stable and recommended he continue his current medications, and follow-up with his psychologist. Schizophrenia is not a condition that qualifies a person for regional center services.

9. On February 21, 2022, claimant was seen at St. Mary by Chan Aung, M.D. Dr. Aung diagnosed claimant with depression. Dr. Aung noted that claimant had a history of schizophrenia and attention deficit hyperactivity disorder (ADHD) since childhood. Dr. Aung noted that claimant was stable and recommended he continue his current medications, and follow-up with his psychologist.

10. On September 8, 2022, claimant was seen at St. Mary by Collins Boampong, N.P., for a referral to a psychiatrist. N.P. Boampong referred respondent to Foothill Behavioral Health Consultants (Foothill).

11. On March 15, 2023, claimant was seen at St. Mary by Teresa Podgorski, P.A.-C. P.A.-C. Podgorski noted that claimant stated he had last had a seizure in 2008, and that he was stable on his medications. P.A.-C. Podgorski recommended that claimant continue taking his medications and follow-up with his psychiatrist and primary care physician (PCP).

12. On April 26, 2023, P.A.-C. Podgorski saw claimant for a follow-up appointment. P.A.-C. Podgorski noted that claimant had been diagnosed with seizure disorder, schizophrenia, and ADHD. She recommended that claimant continue taking his medications and follow-up with his psychiatrist and PCP.

13. Between October 24, 2022, and November 29, 2023, claimant participated in psychotherapy at Foothill with Jeremiah Kroeker, N.P. N.P. Kroeker's notes documenting the visits stated that claimant was diagnosed with schizophrenia and anxiety disorder. N.P. Kroeker advised claimant to take all medication as prescribed and developed a safety plan with claimant if he had thoughts of harming himself or others. Anxiety disorder is not a condition that qualifies a person for regional center services.

Evaluations and Assessments

14. Victor Cordova, Psy.D., assessed claimant to rule out a diagnosis of ASD and/or another “unspecified developmental or emotional/behavioral disorder.” The assessment occurred on two different dates, December 14, 2022, and April 24, 2023. Dr. Cordova authored a written report of the assessment on April 25, 2023.

15. Dr. Cordova attempted to administer several tests to claimant including the Adaptive Behavior Assessment System, Third Edition (ABAS-3), Autism Diagnostic Observation Schedule, Second Edition (ADOS-2), Comprehensive Test of Non-Verbal Intelligence, Second Edition (CTONI-2), Minnesota Multiphasic Personality Inventory, Second Edition (MMPI-2), Wechsler Adult Scale of Intelligence, Fourth Edition (WAIS-IV), and the Wechsler Memory Scale, Fourth Edition (WMS-IV). The only tests actually completed were the ABAS-3, which is a parent-report, and the WAIS-IV. Claimant completed portions of the other tests but walked out of testing on both dates and refused to complete them.

16. On December 14, 2022, claimant “quit testing and walked out of the room after a few minutes.” Claimant’s mother stayed to finish the ABAS-3 and requested that Dr. Cordova schedule another date for claimant to complete the testing.

17. On April 24, 2023, claimant worked for “30-45 minutes before complaining about the test length.” Claimant stated that he needed to leave so that he could go “make money” and asked if the testing could be rescheduled for a third time or completed via telehealth. When told that the testing had to be completed in person and that there would be no third date, claimant decided he had done enough and walked out of the testing room.

18. Dr. Cordova stated that the scores of the test that claimant completed “point to concern regarding cognitive and adaptive capability.” Dr. Cordova also stated that “poor motivation and minimal effort are likely to have impacted performance.” Dr. Cordova diagnosed claimant with unspecified depressive disorder and recommended that claimant participate in individual therapy. Unspecified depressive disorder is not a condition that qualifies a person for regional center services.

19. On January 12, 2024, in the Superior Court of California, County of Riverside, a psychological evaluation of claimant to determine eligibility for regional center services was ordered.

20. On March 20, 2024, Angelika Robinson, Psy.D., performed a psychological evaluation of claimant and prepared a written report. In the report, Dr. Robinson noted that claimant was considered to be an “unreliable historian” for the purpose of the report.

21. Dr. Robinson administered the ADOS-2 to claimant. The Vineland Adaptive Behavior Scales, Third Edition (Vineland 3) was completed by claimant’s mother. Dr. Robinson also reviewed claimant’s inmate mental health records, Dr. Cordova’s psychological assessment, and records from Foothill Behavioral Health Consultants, where claimant had been receiving treatment for mental health issues.

22. Dr. Robinson observed that claimant had no “odd speech patterns,” did not indicate that he “prefers solitude,” did not display any “restricted or repetitive behavior,” and denied any sensitivities to noises or sounds during the evaluation. Dr. Robinson stated that claimant’s results from the ADOS-2 place him in the category of non-spectrum. Dr. Robinson stated that the documents she reviewed and the Vineland 3 all indicated that claimant “needs significant assistance in virtual [*sic*] all areas of

daily functioning.” Dr. Robinson diagnosed claimant with depressive disorder and schizophrenia, neither of which qualify a person for regional center services. In Dr. Robinson’s opinion, claimant did not qualify for regional center services.

23. Records from claimant’s school in Mexico from the years 2001 to 2009 were provided, along with comments by claimant’s teachers. Most of the comments centered on claimant’s need to focus, pay attention, and finish his activities. Several teachers commented that claimant needs help at home. The comments from 2007 indicated that respondent was not paying attention and/or putting forth any effort. Several letters were submitted from educators from claimant’s time in school in Mexico. The letters confirmed the comments that were submitted on claimant’s school records.

24. It was not clear whether claimant was offered special educational opportunities during those years. It was also not established that the school system in Mexico had Individual Education Plans (IEP), special education classes, or psycho-educational assessments, which would be available had he attended school in the United States.

25. In a letter dated May 14, 2024, Dr. Jose Miguel Alvarado Infante wrote that in early childhood claimant had difficulty paying attention, problems socializing with other children, and needed psychological help. Dr. Infante stated that the behaviors continued during middle school. Dr. Infante stated that claimant had “demonstrated clear facts of a disorder for a deficit in attention with hyperactivity.”

IRC Eligibility Determination

26. Sandra Brooks, Ph.D., is on the team of professionals tasked with making eligibility determinations for IRC. Dr. Brooks is a licensed clinical psychologist. She

obtained her Ph.D. in clinical psychology from Loma Linda University in 2006. She also holds bachelor's and master's degrees in psychology. Dr. Brooks has been employed by IRC in various positions since 2007. For the past 15 years, she has been employed as a staff psychologist specializing in assessment and diagnosis of persons for the purpose of determining eligibility for regional center services. Dr. Brooks is an expert in the assessment of individuals for eligibility on the basis of ASD, ID, or fifth category. Dr. Brooks testified at hearing regarding the basis for her opinion that claimant was not eligible for regional center services.

27. In making her determination, Dr. Brooks reviewed claimant's records, including the reports of Drs. Cordova and Robinson, claimant's school records, medical records, and a brain map performed on claimant. Dr. Brooks stated the criteria for eligibility for services are that an individual must have a qualifying diagnosis, must have significant functional limitations in three of the seven areas of major life activity, and must have been diagnosed prior to 18 years of age.

28. From her review of claimant's records, Dr. Brooks determined that claimant did not have a qualifying diagnosis, nor did claimant qualify under the fifth category. Dr. Brooks acknowledged that claimant had schizophrenia, a seizure disorder, and that there were some cognitive deficits. However, a mental illness does not qualify an individual for regional center services. Dr. Brooks stated that a psychotic disorder, such as schizophrenia, can often lead to cognitive deficits. Dr. Brooks stated that there was no documentation that claimant had ever been diagnosed with ASD, or that there were cognitive deficits prior to claimant turning 18 years of age.

29. None of the records submitted to the regional center indicated a diagnosis of either ASD or ID. However, claimant stated on his intake application that

he had been diagnosed with ID at age 28, and ID at age 12 by Dr. Cordova, in direct contradiction to the written report submitted by Dr. Cordova.

30. Ada K. Garcia, M.D., is part of the eligibility team at IRC for epilepsy and cerebral palsy. Dr. Garcia is a licensed physician. Dr. Garcia testified at hearing regarding the basis for her opinion that claimant was not eligible for regional center services based on epilepsy or cerebral palsy.

31. In order to make her determination, Dr. Garcia reviewed claimant's medical history. Dr. Garcia acknowledged that claimant had been diagnosed with a seizure disorder but maintained that he had not been diagnosed with epilepsy or cerebral palsy. Dr. Garcia stated that epilepsy is a specific type of seizure disorder, that requires a specific diagnosis. Furthermore, Dr. Garcia stated even if claimant were diagnosed with epilepsy, he does not meet the criteria for a substantial disability in three or more areas of daily functioning as he has not had a seizure since 2009.

Claimant's Additional Evidence

32. Claimant's family testified on his behalf. Claimant's father's testimony is summarized as follows. Claimant's teacher gave him detention instead of helping him. Claimant was "rejected by society." From a very young age, claimant had difficulty paying attention and was very easily distracted. Claimant was diagnosed with ADHD. Claimant was indifferent to his personal hygiene, and often wanted to eat the same thing for one or two months at a time.

33. Claimant's mother's testimony is summarized as follows. She was told that claimant would need to see a psychologist because he would not focus or participate in school, and that he would play by himself. Claimant suffered from bullying. Claimant had difficulty learning, and eventually was expelled from school for

"disliking" it. He was taken for a brain mapping study, and the neuropsychiatrist stated that one side of claimant's brain was more developed than the other. That doctor also diagnosed claimant with ADHD. She did not want to medicate claimant due to his young age. Claimant was diagnosed with ASD when he was five or six years old. She is sure that her son has a developmental disability. She admits that it might not be ASD, but claimant has seizures and desperately needs help.

34. Claimant's sister, Lilia Delgadillo, testified that claimant always had difficulties. As a child, claimant would get explosively angry over insignificant things. Claimant needed frequent reminders to complete his chores, complete his homework, and even to eat properly. She noticed that claimant had trouble focusing in school. She stated that she believes that claimant suffered from ID but that they did not have the language and knowledge to identify it back then. She just thought he was "different" and "weird."

35. Claimant's sister, Paulina Gonzalez, testified that she believed that claimant had always suffered with ID. She recalls her parents trying to get help for claimant. She believed that claimant was misdiagnosed with ADHD, and that he should have been diagnosed with ASD based on her research. She has a good relationship with claimant, and they connect over a shared love of music.

36. Claimant's sister, Sofia Gonzalez, testified that claimant would often fixate on things. She initially believed that claimant was being "lazy and immature" but came to believe that he was suffering from ASD.

LEGAL CONCLUSIONS

1. In a proceeding to determine whether an individual is eligible for regional center services, the burden of proof is on the claimant to establish that he or she has a qualifying developmental disability. The standard of proof required is preponderance of the evidence.

2. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act. The Lanterman Act is found at Welfare and Institutions Code² section 4500 et seq. The purpose of the Lanterman Act is to rectify the problem of inadequate treatment and services for the developmentally disabled and to enable developmentally disabled individuals to lead independent and productive lives in the least restrictive setting possible. (§§ 4501, 4502; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.)

3. A developmental disability is a disability that originates before an individual reaches age 18; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for that individual. (§ 4512, subd. (a); Cal. Code Regs., tit. 17, § 54000, subd. (b).)

“Developmental disability” as defined in the Lanterman Act includes intellectual disability, cerebral palsy, epilepsy, autism, and disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for

² All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

individuals with an intellectual disability. (§ 4512, subd. (a); Cal. Code Regs., tit. 17, § 54000, subd. (a).)

“Substantial disability” means major impairment of cognitive and/or social functioning, and the existence of significant functional limitations, as appropriate to a person’s age, in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency. (§ 4512, subd. (l)(1); Cal. Code Regs., tit. 17, § 54000, subd. (a).)

4. Claimant has not met his burden of establishing that he is eligible for regional center services. Dr. Brooks and Dr. Garcia both credibly testified that claimant simply did not meet the diagnostic criteria for an eligible developmental disability, nor did he meet the substantial disability criteria necessary for eligibility. Claimant also did not meet the criteria for eligibility under the fifth category. Claimant failed to present sufficient evidence to contradict Dr. Brooks’s and Dr. Garcia’s conclusions.

5. Additionally, claimant’s records demonstrate that he has several significant diagnoses that explain some of the cognitive and social challenges he has experienced. Claimant has been diagnosed with ADHD, schizophrenia, depression, and anxiety disorder, among others. None of those conditions qualify a person for regional center services, and none of those conditions are similar to a diagnosis of ID or require treatment similar to ID.

6. Finally, although claimant has been diagnosed with a seizure disorder, he has never been diagnosed with epilepsy. Even assuming that claimant did have a diagnosis of epilepsy, because claimant does not have a substantial disability due to the epilepsy, he would not qualify for regional center services.

7. Claimant has failed to establish that he has a diagnosis of ASD, epilepsy, ID, or that he would qualify under the fifth category.

ORDER

Claimant's appeal is denied. Claimant is not eligible for regional center services.

DATE: October 7, 2024

TRACI C. BELMORE

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 reconsideration pursuant to Welfare and Institutions Code section 4713, subdivision (b), within 15 days of receipt of the decision, or appeal the decision to a court of competent jurisdiction within 180 days of receipt of the final decision.