

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

**In the Matter of:**

**CLAIMANT**

**and**

**INLAND REGIONAL CENTER,**

**Service Agency**

**DDS No. CS0018555**

**OAH No. 2024060871**

**DECISION**

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on August 8, 2024, by video conference.

Keri Neal, Fair Hearing Representative, Fair Hearings and Legal Affairs, Inland Regional Center, appeared on behalf of Inland Regional Center (IRC).

Claimant's authorized representative, his mother, appeared on his behalf. Claimant did not appear.

The record was closed, and the matter was submitted for decision on August 8, 2024.

## **ISSUES**

Is claimant eligible for regional center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act)? Is IRC required to conduct a psychological assessment of claimant to determine whether he is eligible for regional center services?

## **FACTUAL FINDINGS**

### **IRC'S Denial of Claimant's Request for Services and Claimant's Fair Hearing Request**

1. Claimant is a 20-year-old male. On September 23, 2023, claimant applied to IRC for regional center services under the Autism Spectrum Disorder (ASD) category for eligibility. IRC found that claimant was not eligible in a Notice of Action dated May 31, 2024, and claimant, through his authorized representative, filed a fair hearing request on June 30, 2024. This proceeding followed.

2. An IRC eligibility team reviewed claimant's medical records from 2007 to 2022, and education records from 2018 through September 11, 2023. This team consisted of a staff psychologist, medical doctor, and program manager. The team determined that claimant was not eligible under any category for regional center services. The team, in a document dated May 30, 2024, states as its reason for its conclusion "History of ADHD."

3. Subsequent to this determination, IRC obtained additional documents, including a Diagnostic Evaluation Report dated April 25, 2024, from Lisa French, Psy.D. at Collaborative Autism Management Programs. Dr. French, as will be discussed in more detail below, diagnosed claimant with ASD, Level 1, and stated that claimant currently requires substantial support for social deficits in communication and daily living skills.

4. In addition to Dr. French's report, IRC obtained Individualized Education Programs (IEPs) for claimant from April 11, 2011, to February 1, 2022.

5. The eligibility team conducted a second review based on these new materials. The team included Sandra Brooks, Psy.D., who testified in this matter. In an eligibility determination dated July 31, 2024, the team again concluded that claimant is not eligible for regional center service under any category. The team reviewed IEPs documenting claimant's development between 2011 and 2022, medical records, and Dr. French's report. In its eligibility determination document, the team stated:

Consumer was dx with ASD, Level 1 at age 19. Consumer did not demonstrate 3 significant functional limitations. Records prior to age 18 do not support the presence of a Lanterman-eligible developmental disability. SPED [special education] eligibility based on SLD [*s/d*][Speech and Language Impairment] and OHI [Other Health Impairment]. Consumer previously denied eligibility 5/30/24. New documents do not warrant further evaluation.

6. IRC sent claimant a notice of action dated May 31, 2024. The regional center said that, after reviewing the records that claimant submitted, the regional

center determined that it could not provide intake services because the records indicate that claimant does not have a "substantial disability" as a result of any of the five eligibility categories. As noted above, claimant through his mother as his authorized representative, timely requested a fair hearing. In the fair hearing request, claimant's mother states that "The reason for the appeal is that [claimant] is diagnosed autistic and desperately needs support services."

### **Testimony of Sandra Brooks, Ph.D.**

7. 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 assessment and diagnosis for the purpose of determining eligibility for regional center services. Dr. Brooks is an expert in the assessment of individuals for regional center services.

8. Dr. Brooks reviewed claimant's records, which, as noted, included IEPs, medical records, and Dr. French's report. Dr. Brooks testified that those materials do not show claimant has a developmental disability that makes him eligible for regional center services under the Lanterman Act. She addressed the eligibility criteria for regional center services under the Lanterman Act, and the criteria for eligibility under the "Fifth Category" per guidelines of the Association of Regional Center Agencies. She noted to qualify for regional center services an individual must have one of those qualifying diagnoses and significant functional limitations in three of seven areas such as self-care, capacity for independent living, and or economic self-sufficiency. She added that some conditions are precluded from regional center eligibility, such as conditions that are solely psychiatric or physical in nature, or learning disabilities.

9. In assessing claimant's eligibility for regional center services, Dr. Brooks followed the criteria for eligibility for ASD and Intellectual Developmental Disability (IDD) under the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision* (DSM-5 TR). An individual must have a DSM diagnosis of autism or autism spectrum disorder, or IDD, to qualify for regional center services based on autism or intellectual disability, the term used in the Lanterman Act.

10. With respect to ASD, Dr. Brooks stated that ASD is usually diagnosed early in life. With respect to IDD, the condition is usually measured by cognitive or intellectual testing that shows significant deficits in intellectual functioning and adaptive functioning. For eligibility under the Fifth Category, the individual must have a condition closely related to IDD, or one that requires similar treatment.

11. Dr. Brooks testified that claimant's IEPs, which date back to April 11, 2011, do not show concerns that claimant might have ASD or IDD but did document a learning disability. The records show that claimant had Attentive Deficit Hyperactivity Disorder (ADHD), and he had difficulty paying attention in school, which is consistent with this condition. ADHD is not a qualifying condition.

12. In her analysis, Dr. Brooks cited cognitive testing done on March 3, 2018, when claimant was 13 years old, the Test of Non-Verbal Intelligence 4th Edition (TONI-4). Specifically, claimant achieved a standard score of 106, which was in the average range. Dr. Brooks testified that this score tells us that claimant does not have an IDD, or similar cognitive functioning to qualify under the Fifth Category.

13. Also, per this testing done, claimant was able to communicate his needs, which Dr. Brooks found significant because it shows he does not have ASD. He also appeared to have age-appropriate self-help skills.

14. Dr. Brooks also cited the results of cognitive testing administered under the Woodcock Johnson IV Edition (WK-IV) to claimant on May 9, 2022, when he was 17 years old to confirm claimant does not have an IDD. Claimant achieved standard scores in the average range, except in two areas, cognitive processing speed and auditory processing. To qualify under the IDD category, the standard scores are typically 70 or below. The low scores in cognitive processing speed and auditory processing are consistent with ADHD. Dr. Brooks noted that the scores are not consistent with a condition similar to IDD under the Fifth Category.

15. Dr. Brooks testified that claimant's IEPs, which as noted date back to April 2011, show that claimant does not qualify for regional center services under the ASD, ID, or Fifth Category. She referenced claimant's May 9, 2022, IEP, when he was 17, as evidence that claimant does not have ASD, IDD, or a condition similar to IDD, or one that requires similar treatment. This IEP recorded claimant's exit from special education. It notes that claimant was on track to graduate high school and currently had straight A grades. The IEP further records that claimant had age-appropriate communication skills, had adaptive self-help skills, and he engaged when prompted.

16. Dr. Brooks stated that none of the IEPs from 2011 through 2022 document a concern that claimant might have ASD. These IEPs document that claimant qualified for special education services under the Speech Language Impairment and OHI, and this assessment continued through the IEP of May 9, 2022.

17. These IEPs document that claimant was liked by his peers, had a good sense of humor, he was described as sweet and sensitive, plays well with his peers, and enjoys talking about animals with adults. His activities of daily living and communication skills were described as age appropriate. He was able to follow classroom and school rules. None of this suggests that claimant had ASD or IDD.

18. Dr. Brooks did not change her opinion that claimant does not qualify for regional center services based on Dr. French's assessment of claimant.

19. Dr. French diagnosed claimant, as noted, with ASD, Level 1. She based her conclusion on the results of Autism Diagnostic Observation Schedule, 2nd Edition (ADOS-2). Per this testing, claimant's ADOS classification score was 10, with the cutoff score for ASD as 7. This score fell within the ADOS-2 Classification for ASD.

Dr. French also administered the Gilliam Autism Rating Scale – Third Edition (GARS 3), Parent Report Scores, to claimant. Per the results of this test, claimant's overall Index Score was within 77, indicating the probability of ASD to fall within the "very likely" range.

In addition, claimant was administered the Vineland Adaptive Behavior Scales, 3rd Edition (Vineland-3). This assessment measures communication, daily living skills, and socialization skills. Claimant's mother provided the information for this assessment. Claimant's adaptive skills were measured at 78 in the "Moderately Low" range.

20. Dr. Brooks discounted Dr. French's diagnosis and assessment for several reasons. First, her diagnosis of ASD is not consistent with claimant's developmental history; it conflicts with claimant's development before he turned 18, as documented in the IEPs and claimant's medical records IRC reviewed. Dr. French reviewed only IEPs from 2019 and 2022. (She also reviewed 2011 speech and language and psychological assessments, a psychoeducational assessment from 2018, and a medical record from February 14, 2024.)

As Dr. Brooks put it, the best practice in assessing the possibility of ASD is to consider the person's historical record, which in her view Dr. French did not do, to

determine if claimant met the ASD criteria during the developmental period before he turned 18.

Second, as Dr. French documents in her report, claimant had behaviors and expressed self-insight regarding his emotions that were inconsistent with the conclusion he has ASD. He was social, friendly, able to retain a reciprocal conversation, able to understand emotions, and described his own emotions. He noted his brother annoys him, but "at the end of the day" claimant still loves him. Dr. Brooks commented that this is not the kind of language consistent with ASD.

In addition, the assessment does not show claimant has three significant areas of functional limitations. Further, she added that Dr. French's assessment does not indicate that claimant has IDD or a condition similar to IDD or that requires similar treatment to IDD. With this noted, Dr. Brooks testified that claimant's ADOS-2 score of 10 suggests very mild symptoms of ASD, with the cutoff at 7.

21. Dr. Brooks testified further that she does not believe a psychological assessment is warranted because the records, across all settings (school and medical) during claimant's developmental period do not show he had ASD, IDD, or would qualify under the Fifth Category for regional center services. If there were concerns, one would expect to see from "describers" some characteristics of ASD, even in the absence of a formal diagnosis, and the records do not show this. Dr. Brooks stressed that, as recorded in Dr. French's current assessment, claimant showed an understanding of social relationships, he was able to describe his own emotions, and able to take responsibility for his behaviors. None of this is consistent with a diagnosis of ASD.

But, Dr. Brooks added that even assuming claimant has a diagnosis of ASD, an assessment would be warranted only if the developmental history suggested claimant had significant adaptive limitations, which his history does not suggest.

22. Dr. Brooks concluded that claimant is not eligible for Lanterman Act services. Dr. Brooks' opinions regarding claimant's eligibility for regional center services are found persuasive and well-supported in the record.

### **Testimony of Claimant's Mother**

23. Claimant's mother testified that the Department of Behavioral Health diagnosed claimant with ASD when he was 8 years old, but she was not able to obtain the record of this diagnosis. She tried to get a diagnosis from claimant's doctor but was not able to get this. She does not believe he has ADHD because claimant's brother has this condition, and ADHD is not what claimant has in her view.

Claimant's mother blames herself somewhat for not having him evaluated for ASD before he turned 18 and for not having him properly evaluated. He can't live on his own, and he has substantial disabilities; he will not brush his teeth without guidance. He has no friends; he struggles with sarcasm; it has to be explained to him; in her view he has something that is consistent with ASD. He did graduate with a degree due to her one-on-one work with him. He was home-schooled, and she saw his struggles in a different way. She was able to support him and give him attention so that he was able to pass his classes. He was failing before that. She was trying to show him if he tried hard enough, he could accomplish getting his degree.

Claimant's mother feels he has fallen through the holes in the system. She didn't know what to do and tried to get him support. She got a referral to the Autism Center, and this is why claimant was assessed after he turned 18.

Claimant's mother is reaching out for support for her son to try to help him. She asked that IRC conduct a psychological assessment of him as part of the intake process even if IRC cannot find that he qualifies for regional center services under the ASD category.

## **LEGAL CONCLUSIONS**

### **Burden and Standard of Proof**

1. "Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting." (Evid. Code, § 500.) "'Burden of proof' means the obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court." (Evid. Code, § 115.) Claimant has the burden of proving that he is eligible for regional center services under the Lanterman Act. The standard of proof is proof by a preponderance of the evidence. (Evid. Code, § 115.)

### **The Law Regarding Eligibility**

2. Welfare and Institutions Code section 4512, subdivision (a), defines developmental disability as follows:

"Developmental disability" means 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. As defined by the Director of Developmental Services, in consultation with the

Superintendent of Public Instruction, this term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability, but shall not include other handicapping conditions that are solely physical in nature.

3. Welfare and Institutions Code section 4512, subdivision (b), concerns the determination of which services and supports are necessary for each consumer, and provides as follows:

“Services and supports for persons with developmental disabilities” means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, and normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the

effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option.

4. Welfare and Institutions Code section 4512, subdivision (b), lists examples of services and supports a regional center consumer might need.

5. Welfare and Institutions Code section 4512, subdivision (l)(1), defines substantial disability as that term is used in Welfare and Institutions Code section 4512, subdivision (a) as follows:

“Substantial disability” means the existence of significant functional limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person:

(A) Self-care.

(B) Receptive and expressive language.

(C) Learning.

(D) Mobility.

(E) Self-direction.

(F) Capacity for independent living.

(G) Economic self-sufficiency.

6. Welfare and Institutions Code section 4642, subdivision (a)(1), provides that “any person believed to have a developmental disability . . . shall be eligible for intake and assessment services in the regional centers. . . .”

7. Welfare and Institutions Code section 4643, subdivision (a), provides that an assessment may include collection and review of historical diagnostic data, provision or procurement of necessary tests and evaluations, and summarization of developmental levels and service needs.

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

(a) “Developmental Disability” means a disability that is attributable to mental retardation,<sup>1</sup> 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.

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<sup>1</sup> The regulation still uses the term “mental retardation”; the DSM-5 TR uses the term “intellectual developmental disorder.”

(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.

## **Evaluation and Disposition**

9. Claimant did not prove by a preponderance of the evidence, pursuant to Welfare and Institutions Code section 4642, subdivision (a)(1), that he has a developmental disability to qualify for regional center services. Claimant's IEPs between 2011 and 2022, do not show that claimant had ASD, IDD, or a condition similar to IDD, or one that requires similar treatment. Indeed, these records contain no mention of a concern for ASD. These records do document, however, claimant had a learning disability. A learning disability does not entitle one to regional center services pursuant to California Code of Regulations, title 17, section 54000.

Dr. French's diagnosis of ASD is not found persuasive to warrant concluding claimant qualifies for regional center services under the ASD category for several reasons. First, Dr. French did not review claimant's IEPs throughout the developmental period. IRC reviewed these IEPs, and as Dr. Brooks stated, they show claimant's development and do not record a concern claimant had ASD; claimant's behavior and self-insight, as reported in Dr. French's report, were inconsistent with a person who has ASD; and claimant was not reported to have three significant areas of functional limitations, even assuming the diagnosis of ASD was correct.

Based on the records presented, it is determined that claimant does not have a developmental disability that entitles him to regional center services.

10. With regard to claimant's request for a psychological assessment, this request is denied. Dr. Brooks testimony is found persuasive on this issue. IRC is not required to conduct an assessment to determine whether he qualifies for regional center services because the school and medical records, which document claimant's

development, do not show he had ASD, IDD, or would qualify under the Fifth Category for regional center services. IRC's records review was sufficient.

## **ORDER**

Claimant's appeal from Inland Regional Center's determination that he is not eligible for regional center services is denied. He is not eligible for regional center services. Claimant's request for a psychological assessment is denied.

DATE: August 16, 2024

ABRAHAM M. LEVY

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.