

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

In the Matter of:

CLAIMANT

and

INLAND REGIONAL CENTER, Service Agency

DDS No. CS0019590

OAH No. 2024080038

DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on November 18, 2024, by videoconference.

Claimant's parents represented claimant who was not present.

Hilberto Echeverria, Jr., Fair Hearings Representative, represented Inland Regional Center (IRC).

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on November 18, 2024.

ISSUES

Is claimant eligible for regional center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) as a result of Autism Spectrum Disorder (autism) that constitutes a substantial disability?

SUMMARY

Claimant failed to show by a preponderance of the evidence that she had a qualifying developmental disability. Although she benefitted from Early Start services at IRC, she does not currently have a qualifying diagnosis and substantial disabilities so as to be eligible for regional center services as required by the Lanterman Act. While claimant does have a prior autism diagnosis, those findings were not valid given the modified testing performed, and her recent assessment was more persuasive. On this record, 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, currently a six-year-old female, sought regional center services under the qualifying category of autism. She received services at IRC under the California Early Intervention Services Act (Gov't. Code § 90000, et seq.), commonly referred to as Early Start services, due to delays caused at birth. She continued receiving IRC services under the provisional eligibility for children ages three or four.

On March 25, 2024, after conducting an assessment, IRC notified claimant she was not eligible for regional center services.

2. On July 31, 2024, IRC received claimant's authorized representative's Appeals Tracking Request, and the matter was set for hearing.

Diagnostic Criteria for Autism Spectrum Disorder

3. The *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition*, (DSM-5)¹ is a publication by the American Psychiatric Association for the classification of mental disorders using a common language and standard criteria. It is the main book for the diagnosis and treatment of mental disorders. IRC introduced excerpts from the DSM-5, which contains the diagnostic criteria that must be met in order to make a diagnosis of autism. To be eligible for regional center services based on autism spectrum disorder, a claimant must meet that diagnostic criteria. The criteria include: persistent deficits in social communication and social interaction across multiple contexts (Criterion A); restricted, repetitive patterns of behavior, interests, or activities (Criterion B); symptoms that are present in the early developmental period (Criterion C); symptoms that cause clinically significant impairment in social, occupational, or other important areas of current functioning (Criterion D); and disturbances that are not better explained by intellectual developmental disorder or global developmental delay (Criterion E). There is no requirement for formal testing, rather the diagnostic criteria may be found "currently or by history." Autism diagnoses must specify "current

¹ The DSM-5 has been updated, and the newer version is the DSM-5-TR. There was no evidence introduced that the newer version of the DSM-5 would have changed IRC's position.

severity based on social communication impairments and restricted, repetitive patterns of behavior.” The severity is divided into three levels. Level 1 is the severity level assigned to individuals who have mild symptoms and can function independently with support; Level 2 is the severity level assigned to individuals who have moderate symptoms and require substantial support; and Level 3 is the severity level assigned to individuals who have severe symptoms and require very substantial support.

Evidence Introduced at Hearing

4. IRC staff psychologist Sandra Brooks, Ph.D., and claimant’s parents testified in this hearing, and numerous documents were received. The factual findings reached herein are based on that evidence.

5. Dr. Brooks is a staff psychologist at IRC. 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. At IRC, Dr. Brooks 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. Dr. Brooks explained that individuals without developmental disabilities can benefit from services, but that does not make them eligible for regional center services. Moreover, an individual can have a substantial handicap and not have a qualifying developmental disability. Dr. Brooks reviewed various documents, explaining why they did not show that claimant was eligible for regional center services. Her opinions are incorporated in the findings reached below.

6. IRC’s Position Statement set forth the reasons for its decision.

7. Claimant's birth records documented that her low Apgar scores placed her at risk. She was admitted to the Neonatal Intensive Care (NICU) for respiratory distress and discharged home two days later.

Nothing in this record established eligibility for regional center services.

8. 2020 and 2021 About the Kids reports documented the early intervention services provided to claimant. Concerns regarding her speech and limited vocabulary were noted, as well as her occupational therapy progress.

Nothing in these reports established eligibility for regional center services.

9. An April 13, 2021, Individual Family Services Plan (IFSP) – Transition Steps and Services, completed when claimant was three years old, documented claimant's parent's concerns regarding claimant's communication. Her mother would continue to take her to occupational therapy and to social settings to help develop her social skills. Claimant's school district was going to evaluate her for a suspected communication disability. About the Kids would continue providing specialized instruction once a week, and twice a week occupational therapy would continue.

Nothing in this record established eligibility for regional center services.

10. A Speech and Language Initial Assessment Report from Enriched Learning Services, for the period from June 25, 2021, through July 9, 2021, when claimant was two years, 11 months old, documented its speech language evaluation of claimant. The evaluation concluded that claimant was in need of targeted-evidenced based intervention requiring individualized attention regarding her communication. Claimant's expressive and receptive language skills were significantly delayed. She uses less than 100 words spontaneously and consistently, uses a limited vocabulary for her

age, uses more echoed and generalized language for a variety of needs more than expected for her age, and struggles with answering and understanding questions asked of her. Additionally, claimant presented with many social behaviors that are inappropriate such as repetitive noises and movements, severe and excessive tantrums, tiptoeing, eating animate objects, fleeing in crowded places, and lack of social enjoyment with others. Direct speech and language services are required to address those concerns. Claimant's current delays impact her ability to get her needs and wants met, answer questions, and engage in a variety of interactions that facilitate learning in her environment. It was recommended claimant receive speech therapy services to address these communication concerns.

Nothing in this report established eligibility for regional center services.

11. Claimant's July 8, 2021, Individualized Education Plan (IEP) completed by her school district, indicated that her primary disability category for special education services was speech or language impairment, there was no secondary disability category. The IEP documented claimant's areas of need and goals to address those needs. Speech and language services would be offered by the district. Dr. Brooks noted that the school psychologist reviewed various adaptive skills and noted that claimant had good eye contact, stayed on task, greeted the examiner when she entered the room, and had average problem solving and social skills.

Nothing in this report established eligibility for regional center services.

12. A September 24, 2021, Multidisciplinary Report prepared by claimant's school district documented its preschool psychoeducational assessment of claimant when she was two years, 11 months old. The report referenced IRC's October 21, 2020, prior assessment with the goal of increasing claimant's expressive language skills.

During the preschool assessment, claimant was very active, had good eye contact, responded to her name, and followed directions. Claimant named all colors "blue" or "azul." Claimant's mother reported that claimant calls all food "cookie," and calls all drinks "water." She was becoming a picky eater, had no interest in other children, and continued to mouth items.

Numerous behavioral and developmental tests administered included the Autism Spectrum Rating Scale Short Form, Behavior Assessment System for Children (BASC), Childhood Autism Rating Scale (CARS), and the Vineland Adaptive Behavior Scales (Vineland). Claimant was observed in the classroom where she easily transitioned. She required multiple prompts to stay engaged. She socially greeted others, directed play at times, asked simple questions, identified items she wanted, and indicated when she did not want to do an activity. She was observed to be very active, flapping her hands and arms. Claimant's mother reported her daughter's frequent mood changes from happy to upset and her continuing to eat inedible items and bite on her crib.

Based upon the assessment, including test score results, the school district concluded that claimant did not meet the criteria as a student with an intellectual disability, and did not meet the criteria as a student with visual, hearing, orthopedic, traumatic brain injury, emotional disturbance or multi-handicaps. Citing to the Education Code, the assessment concluded that claimant "appears to meet the educational eligibility criteria as a student with a speech or language impairment, in the area of articulation." The IEP Team would need to determine if this was "her primary handicapping condition as result of an underlying handicapping condition." Claimant "presents with many behaviors that are considered autistic like however she does not at this time present with impairments with her verbal and nonverbal

communication therefore this would suggest she does not meet the educational eligibility criteria for Autism.” Further, given her reported elevated behaviors, eligibility under the Other Health Impairment code could be considered.

Nothing in this report established eligibility for regional center services.

13. A February 16, 2022, After Visit Summary note from claimant’s pediatrician at Kaiser documented that referrals for genetic testing, pediatrics, and physical therapy/occupational therapy were ordered.

14. A February 20, 2022, Kaiser Multidisciplinary Autism Team Results report documented that claimant was evaluated by the Multidisciplinary Autism Assessment Team when she was three years, seven months old. The report discussed the team’s findings, evaluations, results, DSM-5 criteria and recommendations. The report also attached reports from each of the team’s evaluators. The team determined that claimant “**did** fulfill DSM 5 (*sic*) criteria for autism spectrum disorder based on the PLAD multidisciplinary team evaluation.” (Emphasis in original, acronym not explained.) In light of those findings, the team recommended referrals to applied behavioral analysis (ABA) therapy, speech therapy given her language delays, occupational therapy because of her impaired functional self-help/daily living skills, and made other recommendations noted in each team member’s attached report. The team recommended genetic testing, that claimant’s parents contact the school district to request an evaluation for possible eligibility for educational services, and that parents share the report with IRC for possible eligibility.

The Kaiser report documented the DSM-5 Criterion A and Criterion B behaviors observed by the team and reported by the parents. Under Criterion A, the team observed that claimant did not display a lot of reciprocal interaction, gave inconsistent

responses to her name, had limited eye contact, engaged in repetitive pretend play, and had a poor sense of personal space. Under Criterion B, the team observed that claimant tensed her body, used jargon, lined up toys, engaged in echolalia, used side gaze, put things at her mouth, and watched the wheels of cars spin. Parents also reported similar behaviors.

15. The February 8, 2022, report from the Kaiser autism team's clinical psychologist contained her behavioral observations, tests administered, test results, and summary. The clinical psychologist observed that claimant waved to the examiner when called from the waiting room and transitioned easily into the exam room. Claimant played loudly with toys on the table while the clinical psychologist interviewed the mother. Occasionally, claimant would interrupt to get her mother's attention, and would often direct her mother in playing with the toys. Claimant watched the wheels of a toy truck spin and touched the wheel to her mouth. She demonstrated a brief side gaze at times, and walked in circles around the table.

During testing, claimant was excited about the additional toys presented, pretended to talk on the phone to the examiner, but struggled to respond to conversational questions. Claimant was somewhat rigid in her play, insisting the examiner not pretend to use a toy wrench as a phone. Claimant often told examiner "stop" and "no" when the examiner did pretend play not initiated by claimant. Claimant responded to her name when called. She enjoyed throwing a ball with the examiner, but often threw it over the examiner's head or behind the examiner, instead of to the examiner. Claimant's eye contact was inconsistent, she would sometimes look past the examiner's face instead of making eye contact. Claimant tended to not coordinate eye contact during play activities. She was unable to follow the examiner's gaze, but did follow her point on the second attempt. Claimant would not imitate the

examiner's use of toys and again told examiner "no" when examiner prompted her to imitate. Claimant used frequent jargon, but was also noted to use meaningful speech. At the end of the evaluation, claimant helped put the toys away and transitioned easily out of the room.

The psychologist wrote that the evaluation procedures were modified because of COVID, with claimant and the psychologist wearing masks and trying to maintain a distance of six feet. A modified use of the Autism Diagnostic Observation Schedule-2 (ADOS-2) was given for observational purposes. Claimant's score on the Childhood Autism Rating Scale, Second Edition (CARS-2-ST) was 35.5, which fell in the mild to moderate symptoms of autism spectrum disorder severity group. In her summary, the psychologist reported that claimant was pleasant and cooperative throughout the evaluation. She demonstrated social skills deficits including limited reciprocity, inconsistent eye contact, and limited use of pretend play. Claimant also demonstrated repetitive and stereotyped behaviors including jargon, body tensing, rigidity in play, side gaze, watching wheels spin, and touching a wheel to her mouth. Claimant's diagnosis was "deferred to the multidisciplinary team report."

16. The February 8, 2022, report from the Kaiser autism team's occupational therapist noted claimant had difficulty with sensory processing, self-care skills, and feeding. The areas of concern were claimant's progressively limited diet, her sensory triggered behaviors, and her lack of cooperation and participation in activities of daily living, regulation, and organizing her behavior to handle transitions and participate in age-appropriate roles. Claimant also had sensory processing underlying deficits affecting her functional participation in daily routines of self-help/self-care skills and abilities.

Claimant's mother reported to the occupational therapist her concerns with claimant's speech and being a picky eater. She reported how claimant lines up toys, orders toys, is destructive with toys, rocks herself on her knees to go to sleep or soothe herself, bites toys and breaks them, and engages in spinning and flapping when excited. Claimant frequently mouths objects, and is in constant motion/cannot sit still. Claimant has difficulty waiting her turn, plays by herself, and does not play with peers. She tantrums, screams, and will often elope. The occupational therapist documented her behavioral observations, which included claimant making eye contact, having a poor awareness of personal space, jargoning, rolling a toy car onto the wall, speaking both English and Spanish, engaging in echolalia, cleaning up toys with much prompting, being active and moving around the room, being sensory seeking, responding to greeting and her name, being impulsive, and being able to establish a good working in social rapport with the therapist.

On testing, claimant demonstrated functional fine motor and gross motor skills, and questionable praxis/motor planning skills. Claimant was able to tolerate change but was impulsive, moving quickly between toys but having a better attention with drawing. Claimant's self-care functional skills were several standard deviations below the mean. For activities of daily living, she has sleep difficulties, eating difficulties, eats only limited food categories and textures, and plays with her food. Claimant could not cooperate with many of the routines of daily living such as dressing and washing. Claimant had tactile, taste/smell, and visual/auditory sensitivity, and sought sensation. Her sensory processing areas outside the typical range were significantly impacting her participation in self-care skills and her participation in the community. The occupational therapist noted claimant's sensory difficulties included stomping her feet, tactile difficulties including being touched, walking in circles and moving around often, difficulty following directions, and sensory seeking behaviors.

The occupational therapist found that claimant had average range fine and gross motor skills, limited diet, tactile sensitivity, oral sensitivity, impulsivity, decreased reciprocal play skills and decreased self-care skills. The findings were concerning because they impact claimant's functional performance, ability to attend to direction, and participate in activities related to developmental skill building. Claimant would greatly benefit from occupational therapy intervention to address motor delays, skill enhancement, sensorimotor processing and organization behavior. Claimant and her parents would benefit from short-term occupational therapy in a healthcare setting to address impairments and claimant may benefit from a home program of exercises and activities.

Following the evaluation, the occupational therapist determined that occupational therapy was clinically indicated. Claimant's school district and IRC may also assess claimant and make recommendations. The occupational therapist noted that claimant was diagnosed with autism and had impaired functional self-help/daily living skills. Her parents were encouraged to seek out community resources to support sensory processing/integration through appropriate sensory experiences. Claimant would benefit from a home sensory program aimed at promoting self-regulation, and her family would benefit from training in understanding claimant's behavior and needs. The report set forth numerous goals.

17. The Kaiser autism team's speech therapist reported that claimant was referred with a diagnosis of developmental speech and language disorder. Claimant's mother reported that claimant babbles, and communicates with gestures, words, and two to three phrases. She is currently attending speech therapy at her school. Claimant was receiving Early Start services, which recently ceased, but claimant continues having issues expressing herself. Claimant gets frustrated when not understood, and will hit or

bite. Claimant lacks safety awareness. The speech therapist identified the testing administered and their results. Claimant communicated using gestures, words, short phrases, and simple sentences. She demonstrated reduced acknowledgment of personal boundaries, inconsistently responded to her name, and occasionally made eye contact. While she engaged in joint attention and turn-taking while rolling a ball back and forth, she had reduced eye contact during the activity. She was in constant motion throughout the evaluation and demonstrated impulsivity requiring frequent prompts. She engaged in repetitive behaviors such as walking in circles, and was observed lining up and stacking blocks. The speech therapist concluded that claimant "presents with a developmental speech and language disorder characterized by severe receptive language delay and mild expressive language delay." She would benefit from speech therapy services, and the speech therapist set forth several goals.

18. A February 20, 2022, note from claimant's pediatrician at Kaiser documented her discussion with claimant's mother regarding claimant's evaluation by the Kaiser Multidisciplinary Autism Assessment Team. Claimant's mother was advised that claimant did meet DSM-5 criteria for an autism spectrum disorder diagnosis. Given that diagnosis, claimant may benefit from ABA therapy, and a referral was made. Speech therapy was recommended to address her language delay. An occupational therapy referral was also made to address claimant's impaired functional self-help/daily living skills. Genetic testing was also recommended given the autism diagnosis. Claimant's parents were recommended to contact claimant's school district to request an evaluation for possible eligibility for educational services, and share the Kaiser report with IRC for possible eligibility for regional center services.

19. Claimant's May 31, 2022, IEP conducted when she was three years, ten months old, now documented that her primary disability for special education services

was autism, and her secondary disability was speech or language impairment. The IEP noted the change was made after the IEP team reviewed the Kaiser assessment team report. The various developmental, academic, and functional skills to be addressed were identified, notably claimant's communication, gross/fine motor development, and sensory issues. Claimant was noted to often need re-direction. Her many areas of need and goals to address them were identified. Claimant was approved to receive specialized services, including speech services and specialized academic instruction.

20. Reports from Intercare Therapy, a behavioral therapy company, noted claimant's diagnosis of autism spectrum disorder and the behavioral intervention therapies given to her beginning August 1, 2022. Goals in claimant's treatment plan were constructed using caregiver input, information from the Vineland, assessments, observation and professional input. ABA principles were utilized in the program. The various skills addressed, claimant's responses, and program goals were identified. In the initial plan, 20 hours per week of direct service and 140 hours of enhanced supervision across six months was recommended "due to the number of behavior excesses [claimant] exhibits." These behaviors were identified as tantrum, throwing, and aggression.

21. Claimant's Intercare 6-Month Progress Report, dated October 13, 2022, noted that based upon the progress claimant demonstrated, the recommended number of direct intervention and supervision hours should be decreased. It was recommended she now receive 15 hours per week of direct service and 78 hours of enhanced supervision across six months.

22. Claimant's Intercare Annual Progress Report, dated April 6, 2023, noted that based upon claimant's continued progress, it was recommended that the number

of direct intervention and supervision service hours be decreased to 12 hours per week of direct service and 10 hours of enhanced supervision per month.

23. Claimant's May 12, 2023, IEP, conducted when she was four years, nine months old, identified her primary disability as autism and her secondary disability as speech or language impairment. Her annual goals were identified. She had made significant gains in speech and her fine motor and gross motor skills were age-appropriate. Claimant was social and had many friends. She follows classroom rules and teacher directions, and tries very hard in class. Claimant moves through her school day appropriately and takes care of her daily living skills appropriately. Her areas of need are articulation, language, comprehension, and math. Claimant's overall speech intelligibility was impacted by her fast rate of speech and slurring of words. Various services at different times offered to claimant were speech and language services, specialized academic instruction, and individual and small group instruction. During the IEP meeting, it was discussed and agreed that when claimant transitions from preschool, she should be in a general education kindergarten class with specialized academic instruction and speech services provided.

24. IRC referred claimant to Veronica Ramirez, Psy.D., for a psychological evaluation that was conducted on February 13, 2024, to assess eligibility for regional center services. Dr. Ramirez identified the testing she administered including CARS-2ST, ADOS-2, Katzman Brief Intelligence Test 2nd Edition (KBIT-2), and Vineland scales, third edition. She did a comprehensive interview and file review, interviewed claimant's parent, and made observations. At the time of the assessment, claimant was five years, six months old. Dr. Ramirez took a history from claimant's mother, including claimant's medical and educational history.

The ADOS-2 results showed minimal to no evidence of autism. The CARS-2 results showed minimal to no symptoms of autism. The Vineland scores were in the moderately low, and low ranges, with the socialization score being the highest. Claimant's scores on the KBIT-2 were in the average ranges. Dr. Ramirez wrote that claimant recognizes emotions in others, is very social, but has poor boundaries. She will speak with unfamiliar people and will easily go with anyone. She enjoys playing with peers but has difficulty waiting her turn. Claimant has difficulty with transitions to non-preferred activities and tantrums with consistent crying, screaming, and occasionally hitting her mother. Dr. Ramirez documented her interactions and observations with claimant noting her to be "a social little girl," who was observed to share enjoyment with Dr. Ramirez. Claimant engaged in reciprocal conversation and shared enjoyment. She engaged in play. Claimant's mother reported concerns with claimant eloping and putting a variety of inanimate objects in her mouth, but acknowledged that behavior had decreased. Claimant's mother also described claimant sensitivity to certain smells and reported that claimant is hyperactive.

Dr. Ramirez opined that claimant presents with some symptoms associated with autism, but does not meet all criteria. She continues to present with sensory processing differences, attentional problems, and behavioral problems. She did not present with deficits in social-emotional reciprocity nor deficits in nonverbal communicative behaviors used for social interaction. Dr. Ramirez concluded that the results of the evaluation indicated that claimant's behavioral presentation was not consistent with a diagnosis of autism spectrum disorder. Claimant presents with symptoms associated with attention deficit hyperactivity disorder (ADHD), and Dr. Ramirez recommended she be assessed for that condition. Claimant also continues to present sensory processing differences for which Dr. Ramirez recommended an occupational therapy evaluation. Dr. Ramirez also concluded that claimant did not

meet the criteria for intellectual developmental disorder diagnosis as her intellectual abilities are in the low average range and not indicative of that disorder.

Dr. Ramirez concluded that claimant did not meet eligibility criteria for regional center services on the basis of autism spectrum disorder, intellectual developmental disorder and/or fifth category. Dr. Ramirez's diagnosis was language disorder deferred to speech language professional, and rule out ADHD.

25. Claimant's May 6, 2024, IEP, when she was five years, nine months old, documented her continued eligibility for services under a primary disability of autism and a secondary disability of speech or language impairment. The report noted that claimant was no longer eligible for special education services because she does not continue to qualify for an IEP based on results of assessments. It was recommended that because of her autism medical diagnosis, a 504 plan would be more appropriate for academic and social-emotional success.

The IEP noted that claimant had met all goals from her prior IEP. Her academic skills were in the low, low average, average, and high average ranges. Claimant had made "significant growth over the past year," and met her speech IEP goals. Based upon assessments performed, and reaching her current speech goals, she no longer qualified for speech and language services. Claimant still struggled with textures and needs help with cutting. She is very social with many friends and loves to help others. She follows classroom rules and teacher directions and always tries very hard. She seems to enjoy going to school and "is a pleasure to have in class." One area of concern is her ability to focus and wait. Claimant was able to follow her daily schedule and routine with little to no assistance. She takes care of her daily living skills appropriately. During the IEP meeting, claimant's father expressed his concerns that claimant is not at grade level and concerns of her overall academic ability. The IEP

team shared claimant's progress toward current goals, noting that claimant met all of her current goals, and there were no services to be provided at this time.

26. A May 6, 2024, triennial Speech and Language Evaluation Report from claimant's school district, contained claimant's mother's report of claimant's tantrums. The speech therapist conducted classroom observations, testing observations, and administered several tests. Many of claimant's scores were in the average range. Additional consideration for claimant's speech centered on her bilingual abilities, which can interfere with her speech. The therapist concluded that despite claimant's diagnosis of autism, her speech and language skills were in the average range for her age and grade level. Thus, she did not qualify for speech and language services.

27. Dr. Brooks testified that the records showed claimant's improving condition and that she did not qualify for regional center services. When asked about the Kaiser findings, Dr. Brooks testified that the evaluation was in 2022, and that the one conducted in 2024, which considered the Kaiser evaluation, showed claimant's continued improvement, so much so she did not have a qualifying diagnosis nor substantial handicapping conditions caused by a qualifying diagnosis. Dr. Brooks pointed out that the 2022 Kaiser evaluation included modified ADOS testing because of COVID, where claimant and the examiner wore masks. Dr. Brooks explained that the ADOS was not designed to be given when masks are worn, and doing so makes the results less valid. In contrast, the testing done in 2024 was without masks, making those results more valid. The 2024 CARS showed claimant had minimal to no symptoms of autism, and the 2024 ADOS showed claimant did not have autism. Dr. Brooks opined that none of the 2024 testing showed claimant had a qualifying diagnosis or substantial handicaps due to a qualifying diagnosis. Claimant's condition has been steadily improving.

28. Claimant's parents testified that claimant's doctors' opinions should carry more weight as they spent more time with claimant than IRC's evaluators. They described how claimant does not make eye contact, does not act age appropriate, and has another sibling with autism. As she is getting older, claimant's behaviors are increasing, and her differences from others her age are more apparent. Claimant is improving but only because of the services she is receiving and her parents' hard work. The parents expressed their gratitude for the services IRC has funded. Claimant's mother worries what will happen to claimant if services are stopped. Also, it takes so long to get services established that if they cease, she fears they may never resume. Claimant's mother took a job at claimant's school so she could help when claimant has tantrums, which she does when she defecates, and described the screaming claimant does when toileting. Both parents wish the services to continue.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. In a proceeding to determine eligibility, the burden of proof is on the claimant to establish he or she meets the proper criteria. The standard of proof is a preponderance of the evidence. (Evid. Code, § 115.)

Statutory and Regulatory Authority

2. The Lanterman Act is set forth at Welfare and Institutions Code section 4500 et seq.

3. Welfare and Institutions Code section 4501 states:

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), states in part:

As used in this division:

(a) (1) "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.

(2) (A) A child who is under five years of age shall be provisionally eligible for regional center services if the child has a disability that is not solely physical in nature and has significant functional limitations in at least two of the following areas of major life activity, as determined by a regional center and as appropriate to the age of the child:

(i) Self-care.

(ii) Receptive and expressive language.

(iii) Learning.

(iv) Mobility.

(v) Self-direction.

(B) To be provisionally eligible, a child is not required to have one of the developmental disabilities listed in paragraph (1).

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

(a) "Developmental Disability" means a disability that is attributable to mental retardation,² 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. (Note: The regulations still use the term "mental retardation," instead of the term "Intellectual Disability.")

(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

² The regulations still use the term "mental retardation," which was replaced with the term "intellectual disability" which has since been replaced with the term "intellectual developmental disability."

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.

Evaluation

7. The Lanterman Act and the applicable regulations set forth criteria that a claimant must meet in order to qualify for regional center services. Claimant did not establish by a preponderance of evidence that she presently has a qualifying diagnosis. Dr. Brooks's testimony as to why the Kaiser 2022 finding was not controlling was unrefuted. The 2024 evaluation, which considered the Kaiser reports, showed that claimant does not have autism or any qualifying diagnosis.

As such, it was not shown that claimant has a qualifying diagnosis that constitutes a substantial disability. Of note, a school providing services to a student under an autism disability category is insufficient to establish eligibility for regional center services. Schools are governed by California Code of Regulations, Title 5, and regional centers are governed by California Code of Regulations, Title 17. Title 17 eligibility requirements for regional center services are much more stringent than those of Title 5.

While claimant's parents' testimony was sincere and genuine, and they clearly have their daughter's best interests at heart, their testimony did not establish that claimant was eligible for regional center services. On this record, claimant's appeal must be denied. This decision does not preclude claimant from seeking regional center services in the future.

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: November 25, 2024

MARY AGNES MATYSZEWSKI
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.