BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

and

INLAND REGIONAL CENTER, Service Agency

DDS No. CS0020935

OAH No. 2024090948

DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on March 24, 2025.

Claimant's mother represented claimant, who was not present. As reflected in the documents, claimant's mother was previously his guardian. She will be referred to as "claimant's mother" in this decision, and any references to his birth mother will specifically identify that person as "claimant's birth mother."

Dana Hardy, Fair Hearings Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on March 24, 2025.

ISSUE

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

SUMMARY

Claimant failed to show by a preponderance of the evidence that he had a qualifying developmental disability. Although he has been diagnosed with autism, one evaluation giving that diagnosis was inconsistent and incomplete, another failed to address the many inconsistencies in the records, and the other evaluations found claimant did not have autism. Thus, the evidence presented at hearing did not demonstrate that claimant's condition was due to a qualifying diagnosis, although it may be if he agreed to undergo the additional assessment IRC offered; something he currently refuses to do. Absent that further comprehensive psychological evaluation, claimant is not eligible for regional center services.

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant, presently a nine-year-old male, sought regional center services and was evaluated under the qualifying category of autism. The evidence

demonstrated IRC also considered the categories of intellectual developmental disability and fifth category, ruling both of those out, as well.

2. On September 12, 2024, IRC sent a Notice of Action advising claimant he was not eligible for services.

3. Claimant sent IRC additional records, which it considered. The interdisciplinary team determined claimant was still ineligible. Although he had received a diagnosis of autism, there was insufficient evidence provided in that evaluation to warrant regional center eligibility under the Lanterman Act. IRC offered to refer claimant for a more comprehensive psychological evaluation. Claimant's mother declined that offer and advised she would work with claimant's psychologist to obtain a more comprehensive psychological report.

4. That revised report was sent to IRC, which reviewed it and determined it was still insufficient for regional center purposes. IRC again denied eligibility, but maintained its offer to refer claimant for a comprehensive psychological evaluation.

5. Claimant again rejected that offer, appealed IRC's determination, and this hearing followed.

6. As part of claimant's appeal, claimant's mother requested that Ms. Hardy be removed from the case. That request was denied at the start of hearing because OAH lacks jurisdiction to grant such a request.

Diagnostic Criteria for Autism Spectrum Disorder

7. The *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision* (DSM-5-TR) 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 resource for the diagnosis and treatment of mental disorders. IRC introduced excerpts from the DSM-5-TR, 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; restricted, repetitive patterns of behavior, interests, or activities; symptoms that are present in the early developmental period; symptoms that cause clinically significant impairment in social, occupational, or other important areas of current functioning; and disturbances that are not better explained by intellectual developmental disorder or global developmental delay.

8. There is no requirement for formal testing, rather the diagnostic criteria may be found "currently or by history." Autism diagnoses must specify "current 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.

Diagnostic Criteria for Intellectual Developmental Disorder[1]

9. The DSM-5-TR contains the three diagnostic criteria that must be met in order to make a diagnosis of intellectual developmental disorder. Criterion A: deficits

[1] The Lanterman Act uses the term "intellectual disability." The DSM-5-TR uses the "equivalent term," "intellectual developmental disorder," to "clarify its relationship

in intellectual functions; Criterion B: deficits in adaptive functioning; and Criterion C: the onset of these deficits during the developmental period. The diagnosis of intellectual developmental disorder is based on both clinical assessment and standardized testing of intellectual functions, standardized neuropsychological tests, and standardized tests of adaptive functioning. Intellectual functioning is typically measured using intelligence tests, and individuals with intellectual disability typically have IQ scores in the 65-75 range. Intellectual developmental disorder is divided into levels of severity -mild, moderate, severe, and profound. The levels of severity are defined on the basis of adaptive functioning and not IQ scores. An individual must have a diagnosis of intellectual disability to qualify for regional center services.

10. Although claimant was not seeking eligibility under the intellectual developmental disorder category, IRC did consider it given claimant's assertions in the appeal documents submitted.

The "Fifth Category"

11. Under the "fifth category," the Lanterman Act provides assistance to individuals with "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." (Welf.& Inst. Code, § 4512, subd. (a)(1).) Along with the other four qualifying conditions (cerebral palsy, epilepsy, autism spectrum disorder, and intellectual disability), a disability involving the fifth category must originate before an

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with" the World Health Organization's classification system. Both terms are used interchangeably in this decision.

individual attains 18 years of age, must continue or be expected to continue indefinitely, and must constitute a substantial disability.

The fifth category is not found in the DSM-5-TR, but has been addressed in case law. In *Mason v. Office of Administrative Hearings* (2001) 89 CalApp.4th 1119, 1129, the court held that the fifth category was not unconstitutionally vague and set down a general standard: "The fifth category condition must be very similar to [intellectual developmental disorder], with many of the same, or close to the same, factors required in classifying a person as [having an intellectual developmental disorder]. Furthermore, the various additional factors required in designating an individual developmentally disabled and substantially handicapped must apply as well."

12. The Association of Regional Center Agencies (ARCA) approved the *Guidelines for Determining 5th Category Eligibility for the California Regional Centers* (Guidelines). Notably, no evidence was introduced that these Guidelines have gone through the formal scrutiny required to become a regulation, and so they are not given the same weight as regulations. The Guidelines state that eligibility for regional center services under the fifth category require a "determination as to whether an individual functions in a manner that is similar to that of a person with mental retardation **OR** requires treatment similar to that required by individuals with mental retardation." (Emphasis in original.) (The Guidelines use the term "mental retardation," the former term used for intellectual developmental disorder.) There was no showing that IRC did not comply with these guidelines in reaching its determination.

13. The Lanterman Act distinguishes "treatment" from "services" as two different types of benefits available to consumers. (*Ronald F. v State Department of Developmental Services* (2017) 8 Cal.App.5th 84, 98.) "Treatment" is listed as one of the services available under Welfare and Institutions Code section 4512, subdivision

(b), indicating it is narrower in meaning and scope than "services and supports for persons with developmental disabilities." (*Ibid.*)

14. Although claimant was not seeking eligibility under the fifth category, IRC did consider that category given claimant's assertions in the appeal documents.

Evidence Introduced at Hearing

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

16. IRC's Position Statement provided the reasons for its decision.

17. Dr. Brooks's curriculum vitae set forth her education, experience, and awards received. She has a Bachelor of Arts in English and psychology from Oakwood College; a Masters in experimental psychology and a Doctor of Psychology (Ph.D.), both from Loma Linda University. Her duties at IRC include evaluating individuals for regional center eligibility by participating in intake evaluations and reviewing records.

18. Dr. Brooks reviewed claimant's records, explaining why they did not demonstrate claimant qualified for regional center services. She also explained why further testing is needed to address the inconsistencies in the records, as detailed more fully below.

19. Claimant's mother testified that her son has been diagnosed with autism by two different qualified professionals, and further testing would only cause additional behaviors and regression. She described the many issues claimant has had after testing, most recently necessitating an Individualized Education Program (IEP)

meeting. She said claimant's psychologist has also advised that undergoing multiple testing, especially in the same year, would be detrimental to claimant.

IEP AND SCHOOL DOCUMENTS

February 10, 2023, Assessment

20. A February 10, 2023, school district Assessment Plan and Prior Written Notice, had the box marked "Other" checked, indicating a Functional Behavioral Assessment was being performed because claimant's "behavior continues to escalate even with a Tier 2 which has not yielded the result the [IEP] team wanted." The school district proposed assessing claimant's social/adaptive/behavior/emotional areas of suspected disability. Tests were administered and school faculty completed various behavioral assessments, in which issues regarding attention, eloping, defiance, incomplete assignments, failure to follow direction, and difficulty staying awake were noted. Claimant's mother also completed a form noting similar issues but also documenting that her son's strengths were that he was friendly, helpful, sociable, liked by peers, had lots of friends, honest, easy going, kind to adults, had a good humor, had a positive attitude/outlook, and had good communication skills. She noted he can have a tantrum and become upset when asked to do tasks.

Although these documents noted some concerning behaviors, nothing in them established eligibility for regional center services.

March 17, 2023, IEP

21. Claimant's March 17, 2023, initial IEP, took place when he was seven years old. Claimant's primary disability category for special education services was "Other Health Impairment," there was no secondary disability category. In the section

describing how his disability affected his school involvement and progress, claimant's numerous behaviors were listed including struggling with short attention span, being inattentive and easily distracted, giving up easily on difficult tasks, not listening, requiring multiple redirections, and wandering outside the classroom. It was also noted that he had been given Attention Deficit Hyperactivity Disorder (ADHD) and Post Traumatic Stress Disorder (PTSD) diagnoses, although the records making those diagnoses were not introduced at hearing. Claimant had made improvements in his behavior and had made progress with social interactions with peers. His test scores had elevated ranges that were felt to be more aligned with ADHD and PTSD rather than due to autism. The IEP team specifically considered autism when evaluating claimant's behaviors but believed they were linked to his ADHD and PTSD diagnoses. Claimant's cognitive skills were in the average range, so he did not qualify for special education services under the category of specific learning disability, nor did he meet the special education eligibility criteria of autism.

Nothing in this document established eligibility for regional center services. As an aside, even if claimant's school district offered services under the autism category, a school providing services to a student under that category is insufficient to establish eligibility for regional center services. School districts 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 services are much more stringent than those of Title 5.

April 6, 2023, IEP

22. April 6, 2023, IEP documents noted concerns with claimant's speech and overall writing abilities, so speech and occupational therapy assessments were

recommended. Nothing in this document established eligibility for regional center services.

May 12, 2023, IEP

23. A May 12, 2023, IEP and meeting notes documented elopement and behavior issues. Claimant's category for special education services was still other health impairment with there being no secondary category. Claimant's academic strengths and weaknesses were noted, and his social/emotional/behavioral assessment documented he stays away from his classmates, does not interact in class or with small group activities, but will respond best with one-on-one support. His behaviors could be due to trauma he has experienced in the past. A severe regression in his behaviors with elopement and not completing classwork/assignments was observed, but claimant was able to care for his personal needs in school.

Nothing in this document established eligibility for regional center services.

September 6, 2023, IEP

24. On September 6, 2023, claimant was approved for an initial speech assessment with the school district, and underwent that assessment on four different days in September and October 2023. The examiner observed that claimant easily transitioned to the testing room and after a few minutes, was able to greet and converse with the examiner, and a rapport was easily established. During testing, claimant was able to follow simple directions, answer questions, and speak in full sentences that were both simple and complex. His attention span was short, and he often attempted to avoid the test by stating he was tired or hungry and asking how much longer the test would take and asking why he was taking it. He was easily redirected. As part of the testing, claimant was observed in his classroom and on

campus. He followed directions, but was observed to be much more comfortable with adults than with peers. Overall, claimant demonstrated appropriate skills in all areas of language, with the exception of speech sounds. He was observed to be closed off and isolated from peers, did not attempt to socialize with peers, but presented with acceptable pragmatic abilities in small settings. However, he did not exhibit appropriate skills in the classroom as he was very closed off which "could be due to the significant trauma he has had in his life, causing him to have severe PTSD."

Nothing in this document established eligibility for regional center services.

October 17, 2023, IEP

25. Claimant's October 17, 2023, IEP documented that his primary category for special education services was other health impairment, and his secondary category was now listed as speech or language impairment. Claimant has difficulty sustaining attention, waiting his turn, and is easily distracted. He requires multiple redirection. Below average scores on cognitive tests were linked to his poor attention and concentration, and his articulation deficits negatively impacted his ability to communicate effectively. His strengths were that he loves to help and enjoys the ability to discuss his weekend and the new games he is learning to play with his sibling. He does well with all approaches to learning. He reads fluently but struggles with comprehension. He demonstrated appropriate skills in all areas of language with the exception of speech sounds. Claimant often participates and follows along, but gets out of his seat and talks out of turn. He gets along with adults on campus and sometimes gets along with his peers. Most of the time, he is happy at school, but it is difficult for him to self-soothe, and changes to the schedule are difficult for him. He is organized and can follow directions unless he is upset.

Nothing in this IEP established eligibility for regional center services.

GATE Documents

26. 2024 Gifted and Talented Education (GATE) testing administered documented that claimant did not qualify for GATE.

2024 Triennial Psychoeducational Assessment Report

27. A December 9, 2024, Triennial Psychoeducational Assessment Report, was performed at claimant's mother's request to determine claimant's "current educational needs and suspected autism due to recent behavioral incidents and emotional outbursts at school." Testing was administered over several days, observations were made, and input was received from faculty and claimant's mother. The report noted claimant's numerous behavioral incidents at school.

During testing, claimant appeared to make appropriate eye contact, was friendly, talkative and respectful. At times, he preferred to stand during testing and would attempt to engage in tangential topics, but was easily redirected. He often sought reassurance from the examiner during testing and was able to complete all tasks with encouragement, prompting, and frequent breaks. In the classroom, he was observed quietly working, complying with teacher instruction, asking if he could help the teacher, and briefly conversing with another student.

During one observation, claimant was playing (pretend punching) a classmate seated next to him. Both students were smiling and laughing. They slid on the benches and moved back and forth while trying to get away from each other's "punches." When they finished eating, they threw away their trash, and sat at another bench where they continued play-fighting each other. At recess time, they lined up but continued

conversing with each other. Claimant ran with most other students when released to recess, where he ran around the playground structure and near the basketball court. He engaged in interactive play with his classmates.

Claimant's mother reported issues at home with claimant's work habits, communication skills and attention, and that while he has good days, he is easily "set off." Claimant's teacher reported that his reading comprehension varied depending on his focus, but he is reading fluently at grade level. Claimant understands multiplication and is very interested in division. He does very well with addition but needs reminders with subtraction. His strengths are that he is very caring and loves to help out in the classroom and with other teachers. He is very affectionate and "loves to give hugs and put a smile on someone's face." The teacher reported that claimant is very sweet. There were concerns that when claimant gets upset, he will shut down and not respond. He has had elopement issues and is frequently off task in the classroom.

Claimant's subtest scores on the Wechsler Intelligence Scale for Children - Fifth Edition (WISC-V) were all in the average range except for his working memory and picture span subtest scores which were in the below average ranges. Claimant's full-scale IQ score was in the average range but, "due to significant variance between indices, dissemination may be interpreted with caution" and claimant's "cognitive abilities may best be interpreted through individual index scores." Claimant's scores on the Autism Spectrum Rating Scale showed his "behavioral characteristics are not similar to behaviors of youth diagnosed with Autism Spectrum Disorder."

Based upon the triennial psychoeducational assessment, the school psychologist determined that claimant did not meet the criteria for autism, did not meet the criteria for emotional disturbance, did not meet the criteria for intellectual disability, and did not meet the criteria for specific learning disability. Claimant met the

criteria for other health impairment due to his diagnoses of fetal alcohol syndrome, ADHD, oppositional defiant disorder (note below in neurology report), and PTSD.

Nothing in this document established eligibility for regional center services.

January 30, 2025, IEP

28. Claimant's January 30, 2025, IEP continued to note the eligibility categories of other health impairment and speech or language impairment. Claimant had ADHD characteristics in addition to his fetal alcohol syndrome and PTSD diagnoses that impact his attention, behavior, social interactions, and ability to complete grade level tasks. Claimant demonstrated strengths in expressive/receptive language and pragmatics. He can communicate his wants and needs using appropriate grammar. He is able to follow directions, taking into consideration his desire to do so at that moment. He takes turns during conversations with peers. His voice is within normal limits but he has demonstrated difficulty with some sound production. He responds well to prompting and feedback. Claimant is kind and helpful, has friends, and gets along with others. He is organized and follows directions unless when upset. He was born with fetal alcohol syndrome.

Nothing in this document established eligibility for regional center services.

School Behavior Reports and Emails

29. School behavior reports documented claimant's August 19, 2024, refusal to comply with the request to put away his laptop, his elopement from class, his refusal to respond to faculty when he was located on campus, and his laying on the floor and being unresponsive until claimant's mother picked him up at school.

30. A September 6, 2024, note documented claimant's return to class and wanting a break from the class activity, being checked on by staff to take him out of class, but him having a "great rest of the day" after that incident. A September 11, 2024, note documented claimant submitting his math homework without having done it and being told he would get a zero for not even trying to solve the math problems. A September 13, 2024, note documented the claimant "had a bit of a rougher day today" where he was refusing to listen, but was eventually "fine." A September 20, 2024, note documented that claimant "had a great week this week, except for leaving the classroom yesterday and sitting next to the bushes around the corner from my door for couple minutes." On September 23, 2024, and September 25, 2024, claimant had great days. On September 26, 2024, he also had a great day but needed a few reminders.

31. October 1, 2024, claimant had an off day where he pushed a peer and ignored staff. Claimant had a much better day on October 2, 2024. He was focused and "had a great conversation about his emotions and what he was feeling upset" about the previous day. He had a "great day" on October 3, 2024, and again on October 4, 2024. October 7, 2024, he had a "bit of a rough day." He was running and almost ran into a teacher, who tried to talk to him, but he completely ignored her. He eventually returned to class and apologized for his behavior and to the teacher. Later he became upset when told he could not call claimant's mother or could not find another staff member, but was told that if that happens in the future he could go to the office and he was "fine after that."

32. Emails documented tutoring or schoolwork help claimant's mother requested, and the teacher's responses thereto, providing materials to her. Still other

emails documented claimant's mother's concern regarding claimant's regression in math, especially with his subtraction skills.

Nothing in these behavior documents or emails established eligibility for regional center services.

FOSTER CARE DOCUMENTS

33. Foster care health and education documents detailed claimant's medical history and his birth parents' drug and alcohol histories. Documents also contained information regarding claimant's placement. Issues regarding neglect and abuse were noted. Nothing in these documents established eligibility for regional center services.

LOMA LINDA MEDICAL RECORDS

34. On August 12, 2024, Loma Linda University Health System referred claimant to IRC to assess him for possible autism. The referral noted that claimant was eight years old at the time, in foster care placement with current behavioral concerns, delays, sensory disorder, and a history of trauma. Nothing in that document established eligibility for regional center services.

35. On August 29, 2024, claimant underwent a video telemedicine conference with a neurologist at Loma Linda, on a referral from his pediatrician. Claimant had a history of fetal alcohol syndrome, ADHD, mood swings, an inability to control his behavior, and difficulties in school. In addition to alcohol, there was also suspected in utero drug use exposure. Claimant had four siblings, all of whom had various neurodevelopmental disabilities suspected due to fetal alcohol and/or fetal drug exposure. Claimant had been referred by his pediatrician to the Autism Assessment Center, which diagnosed him as having primarily oppositional defiant

disorder, but the neurologist did not have a copy of that report. The neurologist had previously seen claimant in May 2024, at which time he was extremely inattentive and hyperactive, with prior diagnoses of ADHD and PTSD. The neurologist did not think that claimant had autistic spectrum disorder. Based upon his examination, the neurologist diagnosed claimant with fetal exposure to alcohol; ADHD, combined type; suspected fetal alcohol spectrum disorder in pediatric patient; behavioral disorder in pediatric patient; and PTSD. The neurologist changed claimant's medication, as the original one the neurologist previously prescribed was believed to cause increased aggression and oversedation. The neurologist wrote that he was no longer able to follow claimant "because we have an enormous waitlist of new patient[s] and return patients to come back to our clinic." The neurologist noted further that claimant's problem is primarily neuropsychiatric, and he needs a referral to a child psychiatrist to manage his behavioral problems with medication and counseling. Continuation of claimant's special education programs and therapy programs was also recommended. Claimant should "be followed by a child psychiatrist and also get behavioral therapy." Nothing in that document established eligibility for regional center services.

36. On March 19, 2025, a nurse practitioner at claimant's pediatrician's office noted that claimant has "complex medical and behavioral needs and significant delays." He was recently diagnosed with autism, and the Autism Assessment Center's full report was provided for the nurse practitioner's review. She noted there have been reported ongoing concerns regarding claimant's inability to self-care, his continued receptive and expressive language delays, and his inability to self-direct. He is heavily impacted by behaviors that continue to make his ability to independently thrive with skills required for daily living very difficult. He reportedly also has some self-injurious behaviors. She noted that claimant "would greatly benefit from a comprehensive developmental assessment, consideration of an IEP and re-assessment of what IRC

needs," which could be beneficial in the continued coordination of services and care. She requested claimant be evaluated for his needs of service. Nothing in this document established eligibility for regional center services.

PSYCHOLOGICAL EVALUATIONS

Dr. Crawford's March 5, 2025, Report

37. On January 15, 2025, and March 1, 2025, claimant underwent a psychological evaluation with Gregory D. Crawford, Psy.D., who authored a report on March 5, 2025. Dr. Crawford identified the evaluation instruments and sources of information he used, noting that assessment testing had been requested "for diagnostic clarification of Autism Spectrum Disorder." Claimant did not present for the intake part of the evaluation, claimant's mother presented alone. The social issues present were deficits in verbal interaction, limited initiation of social interaction, lack of response to social overtures, issues of changing focus, inattention of not listening, and not following direction. During the March 1, 2025, testing, claimant was oriented to time and place. His word finding/comprehension were adequate to conversational screening; his speech rate, quality and tone were absent. His thought processes were appropriate. He was mostly cooperative and gave sustained effort with no identified motivation to malingerer. The observation during performance suggested claimant's test results were likely a valid representation of his current ability level.

Claimant completed the Adaptive Behavior Assessment Scale, Third Edition (ABAS-3). His general adaptive composite, conceptual, social, and practical scores were all extremely low. Claimant was administered the Autism Diagnostic Observation Schedule, Second Edition (ADOS-2), but was "uninterested in completing" it. Claimant was administered the Wechsler Intelligence Scale for Children, Fifth Edition (WISC-V)

to assess cognition but was "uninterested in completing" it. Claimant was administered the Mental System Assessment, Intermediate Addition (MeSA-IE) to assess attention/cognitive flexibility, and the STROOP Color and Word Test for Children (STROOP) to assess sorting/selective reaction, but was "uninterested in completing" either test. Dr. Crawford noted: "Behaviors present indicated Autism Spectrum Disorder (see Behavioral Observations)."

Dr. Crawford wrote that claimant's mother reported tantrums "due to a lack of frustration tolerance." The social issues present were deficits in verbal interaction, limited initiation of social interaction, lack of response to social overtures, issues changing focus, inattention of not listening, and not following direction. Dr. Crawford opined that "based on information gathered during assessment process, social issues meet [DSM-5-TR] criteria for Autism Spectrum disorder." The adaptation results indicated extremely low adaptive ability. Among his recommendations, Dr. Crawford suggested claimant's IEP be updated to reflect an autism spectrum diagnosis, he be given extended time to complete work, have supervised breaks, and receive referrals to therapy, IRC, Social Security, and the Inland Empire Autism Society.

Autism Center March 13, 2025, Report

38. On August 20, 2024, and March 13, 2025, claimant underwent testing at the Autism Center with Pardis Amirhoushmand, Ph.D., ABPP (acronym not explained), who authored a report on March 13, 2025. At claimant's mother's request, claimant was referred by his pediatrician for a psychological reevaluation to reassess for a diagnosis of autism spectrum disorder. There were concerns about claimant's poor communication, picky eating habits, tantrums involving unresponsiveness, and lack of socialization. Dr. Crawford diagnosed claimant with Autism Spectrum Disorder. An evaluation by Inland Autism Assessment Center of Excellence on July 26, 2024, resulted

in diagnoses and general concerns of oppositional defiant disorder, selective mutism, history of ADHD and PTSD diagnoses, adaptive skill delay, and feeding difficulties. Services currently pending included Applied Behavior Analysis (ABA) services from his health insurance. Claimant was currently receiving Wraparound services from the Department of Social Services. Much of claimant's history was unknown. Claimant's mother reported an onset of symptoms at age seven due to sensitivity to food textures and tantrums. She described claimant as fussy, irritable, with a quick onset of meltdowns. His ritualistic eating behaviors included eating with his hands, smelling his food, and licking his food, and he had narrow food selections. His medical history included ear tube placement surgery, a tonsillectomy and adenoidectomy, and a diagnosis of sleep apnea.

The Clinical Observation part of Dr. Amirhoushmand's report noted that claimant hesitantly entered the assessment room, and his mood and affect were labile and easily distracted. Claimant's eye contact was inconsistent, and he needed frequent prompting. He displayed behavioral mannerisms such as finger posturing, tapping, pacing the room, leaving the exam room, hitting himself in the head with his hand, covering his ears with his headphones, repetitive play with only toy cars, which he lined up in every room, lack of socialization, disengagement, flitting attention, and hyperactivity. He displayed difficulty sustaining his attention during the assessment activities and struggled to remain seated, focused, or engaged. He demonstrated difficulty with changes, and exhibited resistances to commands, requests, and redirection. He demonstrated impairment in his expressive and repetitive speech, which impacted his performance on intelligence testing. His vocalizations were minimal, mostly directed towards claimant's mother, with minimal use of audible free speech. There was minimal engagement with the assessment items and preoccupation with lining up toys. Claimant did not engage in reciprocal social interaction and

showed evidence of stereotyped behaviors with restricted interests during the assessment activities.

Dr. Amirhoushmand administered the ABAS-3, Childhood Autism Rating Scale, Standard Version (CARS2-ST), Gilliam Autism Rating Scale 3rd Edition (GARS-3), ADOS-2, and Stanford Binet Intelligence Test, 5th Edition (SB-5). He concluded that the results of his evaluation demonstrated that claimant does meet criteria for a formal diagnosis of autism spectrum disorder. That diagnosis was consistent with the qualitative measures, examiner observations, and assessment findings. Claimant's general adaptive composite score on the ABAS-3 was 59, indicating his overall level of adaptive behavior fell in the extremely low range. His autism index T-score on the CARS2-ST was 46, falling in the range of mild to moderate symptoms of autism spectrum disorder. On the GARS-3, an autism index score of 124 was obtained, with the probability of autism spectrum disorder falling in the very likely range and a severity level of 3, which is described as requiring very substantial support. On the ADOS-2, a total score of 21 was obtained, which falls in the classification range of autism. On the SB-5, a score of 67 was obtained, which falls in the mildly impaired or delayed range for intellectual ability, but an accurate evaluation of his cognitive abilities may be limited by other factors and personal qualities impacting his overall performance. Dr. Amirhoushmand suggested retesting claimant within two years after he received the recommended treatments.

Dr. Amirhoushmand's diagnostic impressions were autism spectrum disorder with accompanying language impairment, with accompanying intellectual impairment, social communication - Level 2 requiring substantial support, restricted, repetitive behaviors - Level 2, requiring substantial support; and language disorder. Dr. Amirhoushmand recommended claimant continue his ABA services, be referred for

speech and language and occupational therapy evaluations, seek school services, engage in planned and structured activities, contact IRC, seek Supplemental Security Income (SSI) payments, and seek In-Home Supportive Services (IHSS).

DR. AMIRHOUSHMAND'S REVISED REPORT

39. Dr. Amirhoushmand's revised report was essentially the same as his initial report, except copies of the ABAS-3 and ADOS-2 score results were attached to it.

IRC DOCUMENTS AND EMAILS

40. IRC intake documents indicated claimant was taking medication for ADHD. He was seeking regional center services based on autism because of difficulties he was having with social communication, forming relationships, engaging effectively with peers, participating in daily activities, displaying repetitive behaviors, an intense focus on restricted interests, and sensory activities that affected his overall development and daily function. He was seeking services to improve his social skills, manage his sensory sensitivities, and enhance his overall quality of life. The intake document detailed claimant descriptions regarding his language, social interaction, and behaviors. He was not seeking services under the Intellectual Developmental Disability category, but in response to questions regarding fifth category eligibility, claimant described his heightened sensory activities, which caused him to overreact or under react to sensory inputs. Those sensitivities can lead to discomfort and distress impacting his ability to focus and engage in various settings. He has difficulties transitioning between activities and adapting to new situations which complicate his daily functioning and learning experiences.

41. Emails exchanged between IRC and claimant's mother documented discussions regarding eligibility, required diagnoses and substantially disabling

conditions, documents required and provided, fetal alcohol syndrome, and IRC's offer to refer claimant to a psychologist, who could provide comprehensive information to assist claimant in getting an accurate determination for Lanterman Act eligibility.

Dr. Brooks's Testimony

42. Dr. Brooks explained the eligibility criteria and pointed to the inconsistent and contradictory findings in the record, which led her to request that a comprehensive psychological evaluation be performed so that all of these factors could be addressed. She noted that claimant's IEP and school records documented the school specifically ruled out intellectual developmental disability and autism, instead qualifying him for services under ADHD, speech and language disorder, PTSD, substance abuse, and other health impairment categories. Owing to claimant's mother's appeal, in which she referenced that his conditions impact his cognitive and behavioral functioning, IRC also evaluated claimant under the intellectual developmental disorder and fifth category criteria. However, given claimant's cognitive test scores as reflected in his school records, which were in the average and below-average ranges, claimant did not have an intellectual developmental disorder or a condition similar to an intellectual developmental disorder or one requiring treatment similar to one with an intellectual disability. Claimant's 2023 IEP noted that claimant's test scores were felt to be more aligned with his ADHD and PTSD diagnoses rather than autism.

43. Dr. Brooks opined that Dr. Crawford's report failed to explain how he reached his autism diagnosis. He reported that claimant was uninterested in completing the ADOS-2, WISC-V, STROOP, and MeSA-IE assessments, so there was no basis reported for the autism diagnosis. Thus, Dr. Brooks did not think Dr. Crawford gathered enough information to reach his conclusion. Further, Dr. Crawford's reported

observations were unclear and inconsistent. Dr. Brooks does not know what Dr. Crawford meant by finding claimant had "absent" speech tone, rate, and quality. Dr. Crawford also referenced claimant as being cooperative but as also being uninterested, which was inconsistent.

44. After reviewing claimant's most recent psychological evaluation performed by Dr. Amirhoushmand, Dr. Brooks still felt a comprehensive evaluation was needed to clarify claimant's diagnosis because the entire record contains discrepancies between what was observed in clinic settings, what was observed at school, and what was reported at home. Further, the school district did not think claimant had autism, and schools have less restrictive criteria for determining that condition for special education purposes. Dr. Amirhoushmand's clinical observations also noted that claimant's speech impairment may be impacting his cognitive testing, but that was inconsistent with what the school found during its testing, and as described in the 2024 Triennial Psychoeducational Assessment Report. Again, this inconsistency was not addressed by Dr. Amirhoushmand.

45. Dr. Brooks further opined that individuals with autism do not typically demonstrate appropriate eye contact, shared enjoyment, socially interacting with peers and adults, displaying affection, understanding others' perspectives, or having empathy, all things claimant was noted to have as documented in the school records. The observations recorded in the school assessments were not congruent with Dr. Amirhoushmand's report. Dr. Brooks opined that a hallmark of autism is that it is consistent across settings, but claimant's presentation across settings has not been consistent, which suggests those presentations may be due to "behavioral or emotional components" and not due to autism.

46. Dr. Brooks testified further that what was "most important" to her in reviewing claimant's 2023 Speech and Language Evaluation Report were claimant's pragmatic skills documented in the report. Individuals with autism typically have deficits with pragmatic skills, using words correctly, even individuals with high functioning autism have these deficits, but claimant did not. Dr. Brooks found that Dr. Amirhoushmand's revised report was not different from the original one other than "some additional codes were provided" that had not been provided before.

47. Overall, based on her review of all the records, Dr. Brooks opined that there was not enough information provided for IRC to determine claimant was eligible for regional center services, and substantial handicaps in at least three of the required categories was not provided. Given the discrepancies in the records, Dr. Brooks believes that a comprehensive psychological evaluation is required to clarify claimant's diagnosis, and absent that, IRC cannot find him eligible, thereby making him ineligible.

48. Dr. Brooks did not believe that additional testing would cause more trauma or regression for claimant, but acknowledged she cannot say for sure. However, that would have "lots to do with the evaluator" and the evaluator's ability to establish rapport with claimant. Given claimant's complex history, which includes fetal alcohol syndrome and trauma, Dr. Brooks believes more care needs to be taken to give him an appropriate diagnosis and clarification is needed. Dr. Brooks explained that it is not the credentials of the evaluators that causes her to question the reports, it is the quality of those reports that causes concern. She explained that IRC will not simply override the findings of one evaluator when another evaluator makes different findings; instead, clarification of those different findings is required.

CLAIMANT'S MOTHER'S TESTIMONY

49. Claimant's mother testified that claimant has undergone two comprehensive psychological assessments, one on a referral from the school district, to evaluate him for autism. The evaluators performing those assessments have credentials consistent with Dr. Brooks, so their opinions should be accepted. Further testing is not in claimant's best interest because it would be redundant and unnecessary, and testing leads to claimant having regression and increased behaviors. Claimant relives prior traumas, which cause anxiety and stress. In fact, because of his March testing, an IEP meeting was scheduled for the day after this hearing to address the behaviors that have arisen after that testing.

50. Claimant's mother would like regional center services to begin so that claimant can receive the help he needs. Claimant's condition significantly impacts his ability to function independently, and he has significant impairments, especially with social interactions. The people with whom he is friendly and interacts, as documented in the school records, are staff with whom he is familiar, and he does behave well around familiar individuals but does not socially interact with those he does not know.

51. Claimant's mother disputes the oppositional defiant disorder diagnosis originally given because claimant is not a defiant child. Because she disagreed with that diagnosis, this is why she is fighting on claimant's behalf to get him properly diagnosed. She believes based on his diagnosis of autism, he should receive regional center services. She fears additional testing as he may get another incorrect diagnosis. She declines IRC's offer that claimant undergo further psychological evaluations.

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. Any person believed to have a developmental disability, and any person believed to have a high risk of parenting a developmentally disabled infant, and any infant at a high risk of becoming developmentally disabled shall be eligible for initial intake and assessment services in the regional centers. (Welf. & Inst. Code, § 4642, subd. (a)(1).) Initial intake includes, but is not limited to, providing information and advice about the nature and availability of services provided by the regional center and by other agencies in the community, and "shall also include a decision to provide assessment." (*Id.* at subd. (a)(2).)

6. 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 disorder. Such psychiatric disorders include psycho-social deprivation and/or psychosis, severe neurosis or personality

[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 disorder."

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.

7. 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

8. 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 he has a qualifying diagnosis. Dr. Crawford's report had too many inconsistencies and incomplete evaluations, making it unclear how he reached his diagnosis. While Dr. Amirhoushmand's report was more thorough and he opined that claimant had autism, he failed to address the numerous inconsistencies in the records and the other reports that found claimant did not have autism. As such, a preponderance of the evidence did not demonstrate that claimant has a diagnosis of autism that constitutes a substantial disability, as required by the Lanterman Act. While a comprehensive evaluation may result in claimant receiving that diagnosis, absent such an evaluation, it cannot be found on this record that he does.

IRC's role is to assess individuals for eligibility for services based on a qualifying developmental disability. IRC performs this role by reviewing records, and when necessary, performing evaluations. In cases like this one, where the records indicate the individual may have a qualifying developmental disability, IRC can offer to have the individual undergo a comprehensive psychological evaluation, as was offered here. Claimant refused that offer and, instead, had Dr. Amirhoushmand revise his report. That revised report still failed to provide the kind of information required by the

Lanterman Act to determine eligibility or address the inconsistent records. As such, on the evidence produced to date, claimant remains ineligible for regional center services.

While claimant's mother's testimony was sincere and genuine, and she clearly has claimant's best interests at heart, her testimony did not establish that claimant was eligible for regional center services. On this record, claimant's appeal must be denied. This does not preclude claimant from accepting IRC's offer he undergo a comprehensive psychological evaluation to determine if he has a qualifying condition.

ORDER

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

Claimant may still accept IRC's offer that he be referred for a comprehensive psychological evaluation to determine if the results of such an evaluation establish regional center eligibility. Absent that comprehensive evaluation, he remains ineligible.

DATE: April 3, 2025

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 reconsideration pursuant to subdivision (b) of Welfare and Institutions Code section 4713 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.