

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

**In the Matter of:**

**CLAIMANT**

**and**

**INLAND REGIONAL CENTER,**

**Service Agency**

**DDS No. CS0021380**

**OAH No. 2024100339**

**DECISION**

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter at Inland Regional Center (IRC) on February 18 and March 25, 2025.

Jemina Ahir, Fair Hearing Representative, Fair Hearings and Legal Affairs, Inland Regional Center, appeared on behalf of IRC.

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

The record was closed, and the matter was submitted for decision on March 25, 2025.

## **ISSUES**

Is claimant eligible for regional center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) as a result of autism, intellectual disability (ID), or a condition similar to ID or one that requires similar treatment that constitutes a substantial disability (also known as the Fifth Category)?

## **FACTUAL FINDINGS**

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

1. Claimant is currently a 7-year-old male. On September 9, 2023, claimant submitted an intake application to IRC for regional center services under the Autism Spectrum Disorder (ASD) eligibility category. IRC obtained claimant's medical, psychological, and education records and referred claimant for a psychological assessment with Theodore Swigert, Ph.D. Dr. Swigert prepared a report and submitted it to IRC. On October 4, 2024, IRC's eligibility team determined, based on Dr. Swigert's report and the submitted records and reports, that claimant did not qualify for regional center services. IRC issued a Notice of Action on October 4, 2024, denying claimant's application for regional center services. On October 4, 2024, claimant appealed that decision.

2. The matter was initially set for hearing for November 18, 2024, at IRC. Claimant asked that the hearing be continued to obtain the results of an upcoming psychological assessment. That request was granted and the hearing was continued to February 18, 2025. Claimant, however, was not able to obtain the report of that assessment by that date. At that hearing, claimant asked to continue the hearing to obtain, and have IRC review, this assessment. Without objection, the hearing was continued, and IRC obtained that assessment from High Desert Psychological Services. IRC's eligibility team reviewed the assessment and affirmed its denial in a determination dated March 4, 2025.

3. In its eligibility determination document, the team states that it reviewed psychological reports from Michael O'Halleran, M.D., dated October 5, 2023, Dr. Swigert's report, dated August 20, 2024, and the report dated February 4, 2025, from High Desert Psychological Services. The team determined that claimant does not qualify for regional center services under the ASD category, or any other category.

## **Evidence**

4. The following documents were admitted as evidence in this proceeding:

- Child and Adolescent Needs and Strengths (CANS) dated April 21, 2022
- CANS Treatment Progress Report from San Bernardino County dated June 28, 2022
- High Desert Neuro Diagnostics Medical Group Report dated June 23, 2023
- Pathways to College K-8 Charter School, Student Success Team (SST) Meeting Form dated September 30, 2023

- IRC Intake Application dated October 20, 2023
- Report of Michael O'Halleran, M.D., As You Are Virtual Autism Evaluations report dated October 5, 2023
- Autism Letter with Accommodations signed by Dr. O'Halleran dated November 21, 2023
- Functional Behavioral Assessment Report signed by April Robinson, M.A., BCBA, Director, Center for Autism Treatment, dated December 1, 2023
- SST Meeting Form dated December 8, 2023
- Treatment Summary from Desert/Mountain Children's Center dated February 27, 2024
- Claimant's Individualized Education Program (IEP) dated February 29, 2024
- IRC Social Assessment dated July 9, 2024
- Psychological Assessment for IRC by Theodore Swigart, Ph.D., for AB Psych Consulting dated August 20, 2024
- IRC's Eligibility Determination dated October 4, 2024
- Sylvan Insight Reading Assessment dated February 1, 2025
- Sylvan Insight Writing Observation dated February 1, 2025
- Sylvian Tutoring Letter dated February 6, 2025
- IRC Eligibility Determination dated February 12, 2025

- Psychological Evaluation Report signed by Sean Sterling, Ph.D., ABPP, High Desert Psychological Services, dated February 14, 2025
- IRC Eligibility Determination dated March 4, 2025

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

5. Sandra Brooks, Ph.D., testified at the hearing on IRC's behalf. Dr. Brooks is a licensed clinical psychologist. She obtained her Ph.D. in clinical psychology in 2006 from Loma Linda University. She also has a Bachelor of Arts degree in English and Psychology and a Master of Science in Experimental Psychology. Dr. Brooks has been a staff psychologist at IRC since 2010, where she specializes in assessment and diagnosis for the purpose of determining eligibility for regional center services.

6. Dr. Brooks testified she reviewed everything in the evidence packet including Dr. O'Halleran's and Dr. Swigert's reports. Dr. Brooks also reviewed the High Desert Psychological Services report signed by Dr. Sterling. Dr. Brooks testified that these materials do not show claimant has a developmental disability under the ASD or ID categories, or under the Fifth Category.

7. Dr. Brooks first addressed the eligibility criteria for regional center services under the Lanterman Act, and the criteria for eligibility under the "Fifth Category" per guidelines of the Association of Regional Center Agencies (ARCA).<sup>1</sup> She noted that to qualify for regional center services, an individual must have one of the qualifying diagnoses and significant functional limitations in three of seven areas. She

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<sup>1</sup> These guidelines are entitled "Guidelines for Determining 5th Category Eligibility for the California Regional Centers."

added that some conditions are precluded from regional center eligibility, such as conditions that are solely psychiatric or physical in nature, or learning disabilities. (Cal. Code Reg., title 54000, subd. (c)(1).) The Fifth Category authorizes regional center services for a condition similar to ID or one that requires similar treatment.

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

9. With respect to ASD, Dr. Brooks stated that Dr. O'Halleran diagnosed claimant with ASD, but based on her review of the record, she does not believe claimant diagnostically has ASD and discounted Dr. O'Halleran's opinion, as discussed below. As also discussed below, Dr. Brooks found Dr. Swigert's assessment more valid based on the results of psychological assessments Dr. Swigert administered.

10. Dr. Brooks noted that claimant qualifies for an Individualized Education Plan (IEP) at school due to a delay in communication and an articulation disorder under speech or language impairment with deficits in language skills and delays in articulation. As it relates to ASD, Dr. Brooks stated that individuals with ASD usually have deficits in language skills. In terms of his communication development, claimant's IEP documents demonstrate that under the Clinical Evaluation of Language Fundamentals-5 (CELF-5), claimant had a standard score of 98 and under the Oral and Written Language Scales II (OWLS II) he had an Oral Language Composite score of 88. These scores measured claimant's abilities in receptive and expressive language and were in the average range.

Claimant's only speech deficit is in his ability to pronounce words. He otherwise tested average in pragmatic language skills, which Dr. Brooks said is inconsistent with an ASD diagnosis. Dr. Brooks said persons with ASD would "definitely" have deficits in pragmatic language skills in the context of social communication like learning how to use gestures appropriately.

11. Dr. Brooks testified further that claimant's documented behaviors are inconsistent for a person with ASD. Per the September 30, 2023, SST Meeting summary, claimant is able on good days to pay attention to his lesson and can do his work without interrupting others; he participates in lessons and talks to classmates; and he likes to volunteer to help students and enjoys being the leader. On his good days, he is described in the summary as "even sweeter and more kind to others." This description does not describe someone with ASD. Children with ASD do not volunteer because most of the time they do not show an interest in being helpful and they lack empathy, which are part of the disorder. The December 8, 2023, SST meeting summary again records that claimant likes to volunteer and enjoys being the leader. The summary further states claimant is able to complete his classwork and can sit "nicely."

12. The Centre for Autism (Centre) report also does not describe a person with ASD, according to Dr. Brooks. The report notes that claimant brought several toys to show the person performing the assessment. Such "shared enjoyment" is not consistent with an ASD diagnosis.

The report also notes that claimant "improved" per the Centre's evaluator because he was able to say he was "having a not so nice day." Dr. Brooks commented that his ability to express himself this way is inconsistent with an ASD diagnosis.

13. Further, the Centre evaluator observed that claimant has a lot of distractibility and lack of focus but nothing indicative of ASD. Claimant also is reported to have a difficult time with self-control, has poor impulse control and boundaries, and interrupts others. These symptoms are more like a child with Attention-Deficit/Hyperactivity Disorder (ADHD). In fact, claimant's treating doctor, Eduardo T. Gallego, M.D., diagnosed him with ADHD, combined type, in the July 23, 2023, High Desert Neuro Diagnostics report.

14. Dr. Brooks commented that children with ADHD can have poor boundaries and impulsivity and difficulty interacting with other children whereas children with ASD lack social awareness and social interest. The main difference between the diagnoses is the social awareness component and desire to interact with other kids.

15. The Centre evaluator also commented that claimant is very smart and he learns fast. This characterization is not suggestive of ID.

16. Dr. Brooks did not find Dr. O'Halleran's diagnosis persuasive for purposes of an ASD diagnosis. She stated that Dr. O'Halleran's report is not a comprehensive psychological assessment. For example, it does not include an in-depth developmental history of claimant, and the report utilizes the shorter observational Childhood Autism Rating Scale (CARS). The report further does not contain any measure of ID and adaptive functioning.

17. In contrast, Dr. Swigert, according to his psychological assessment, administered a wide range of psychological assessments: the CARS-2 HF High Functioning Version, the Autism Diagnosis Observational Schedule Second Edition (ADOS-2), the Adaptive Behavior Assessment Schedule, Second Edition (ABAS 2), and



the Weschler Intelligence Scale for Children Fifth Edition (WISC-V). Based on these assessments, Dr. Swigert concluded that claimant does not meet the diagnostic criteria for ASD.

18. Dr. Brook testified that the CARS-2 HF Dr. Swigert used is the more traditional and comprehensive assessment in contrast to the CARS version used by Dr. O'Halleran. Claimant obtained a score of 17 on the CARS-2 HF. That score does not support an ASD diagnosis.

19. In addition, the results of the ADOS-2 showed minimal to no evidence of ASD. Dr. Brooks cited Dr. Swigert's ADOS-2 assessment narrative where he detailed claimant's behaviors that were not indicative of a person with ASD. Dr. Swigert noted that claimant maintained eye contact, did not engage in repetitive activity, engaged in reciprocal play, suggested ideas for play actions, made requests for more play items, made use of communicative gestures, smiled and laughed during one part of the play activity, and expressed shared enjoyment. Dr. Brooks said these behaviors are not consistent with an ASD diagnosis.

20. In terms of the results of ABAS-2, the results of this assessment show that claimant has some deficits in some areas, namely leisure and self-care, but these deficits by themselves do not support an ASD diagnosis.

21. In terms of claimant's intellectual functioning, claimant's scores in the WISC-V, were in the low average or average range and not consistent with an ID diagnosis, in Dr. Brooks's view. Claimant scored 95 in Verbal Comprehension, 81 in Visual Spatial, and 85 in Working Memory. These scores are well above the borderline range needed to meet the diagnostic criteria for ID under the DSM-5 TR.

22. Dr. Brooks opined further that claimant is not eligible under the Fifth Category based on claimant's IQ and intellectual testing scores. In terms of his IQ score, because claimant has a learning disability, the test results show a significant deficit between IQ and achievement. Based on the records, claimant has some academic deficits. These deficits in her opinion are not due to his IQ.

As a result, as a matter of Fifth Category eligibility, claimant does not have such a history of borderline intellectual functioning. He does not, in her view, have a condition similar to ID or that requires treatment similar to ID.

23. Dr. Brooks discussed the results of the High Desert Psychological Assessment that Dr. Sterling signed. Dr. Brooks said that the assessment does not support an ASD diagnosis even though the evaluator diagnosed claimant with ASD. First, the results of the ADOS-2 that claimant was administered contains the finding that ASD is "not indicated." Moreover, the report's narrative details that claimant engaged in behaviors that are not consistent with an ASD diagnosis. This narrative records that claimant effectively expressed himself, used a rich vocabulary, had an impressive grasp of language structure, was able to engage in reciprocal conversation, and was able to initiate conversations. Claimant additionally used gestures, made eye contact, and had appropriate facial gestures he directed to the evaluator. Claimant was also able to elaborate on his responses to questions posed to him. He was noted to be able to understand another person's emotions. In addition, claimant used his imagination to play and was having fun with the evaluator by tickling her with a feather.

24. In terms of claimant's adaptive functioning, claimant scored in the low average range for adaptive behaviors according to the results of the Vineland Adaptive

Behavior Scales, 3rd Edition, assessment. These results were indicative of ADHD and not an ASD diagnosis according to Dr. Brooks.

25. Regarding claimant's intellectual functioning, claimant's scores on the WISC-V were widely variable with borderline results in Visual Spatial and Fluid Reasoning, and with scores in the average range in Verbal Comprehension and Working Memory with a Full-Scale IQ of 80. Dr. Brooks said that the result of the Full-Scale IQ may not be an accurate measure of claimant's intellectual capacity due to the variability in his scores. At any rate, Dr. Brooks stated that these scores are outside the range of ID and do not indicate a condition similar to ID, or one that requires similar treatment.

26. Dr. Brooks testified that further testing of claimant is not needed to determine his possible eligibility for regional center services.

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

27. Claimant's mother believes that claimant may possibly have ASD based on his behaviors. She said when he was first adopted, he would whine for hours and stare. Claimant did not play with other children. His autism was more visible in crowds and when there was noise. At Disneyland, she informed the park that claimant is scared of noises and he was able to qualify for the park's disability service that allows for guests to not have to wait in regular queues for the rides if they have certain disabilities.

At his school he needs to have an aide with him all days. Claimant has good days, but he cannot focus by himself.

28. Claimant's mother testified she was told claimant is autistic and at the first hearing in this matter said she was waiting for the High Desert Psychological Services assessment. As mentioned, this report was obtained and IRC's eligibility team reviewed it before the continued hearing.

## **LEGAL CONCLUSIONS**

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

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

### **The Law Regarding Eligibility**

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

"Developmental disability" means a disability that originates before an individual attains 18 years of age; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the

Superintendent of Public Instruction, this term shall include intellectual disability, cerebral palsy, epilepsy, and autism.

This term shall also include disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability, but shall not include other handicapping conditions that are solely physical in nature.

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

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

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

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

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

(A) Self-care.

(B) Receptive and expressive language.

(C) Learning.

(D) Mobility.

(E) Self-direction.

(F) Capacity for independent living.

(G) Economic self-sufficiency.

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

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

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

(a) "Developmental Disability" means a disability that is attributable to mental retardation,<sup>2</sup> cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation.

(b) The Developmental Disability shall:

(1) Originate before age eighteen;

(2) Be likely to continue indefinitely;

(3) Constitute a substantial disability for the individual as defined in the article.

(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

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<sup>2</sup> The regulation still uses the term "mental retardation"; the DSM-5 TR uses the term "intellectual developmental disorder."

of the psychiatric disorder or treatment given for such a disorder. Such psychiatric disorders include psycho-social deprivation and/or psychosis, severe neurosis or personality disorders even where social and intellectual functioning have become seriously impaired as an integral manifestation of the disorder.

(2) Solely learning disabilities. A learning disability is a condition which manifests as a significant discrepancy between estimated cognitive potential and actual level of educational performance and which is not a result of generalized mental retardation, educational or psycho-social deprivation, psychiatric disorder, or sensory loss.

(3) Solely physical in nature. These conditions include congenital anomalies or conditions acquired through disease, accident, or faulty development which are not associated with a neurological impairment that results in a need for treatment similar to that required for mental retardation.

## **Evaluation and Disposition**

8. Claimant did not prove by a preponderance of the evidence, pursuant to Welfare and Institutions Code section 4512, subdivision (a), that he has a developmental disability to qualify for regional center services. This conclusion is based on Dr. Brooks's persuasive testimony, which was based on the evidence of record.



Dr. Brooks relied on Dr. Swigert's conclusion that claimant does not meet the DSM-5 TR diagnostic criteria for ASD. Dr. Swigert's opinion is based on the results of the CARS-2 HF and ADOS-2 he administered to claimant and claimant's behaviors during his assessment. His behaviors were not consistent with an ASD diagnosis. In contrast to Dr. Swigert's assessment, Dr. O'Halleran utilized the less comprehensive CARS-2. His diagnosis of ASD was not consistent with claimant's behaviors as documented in his report and in the SST meeting summaries and by the Centre for Autism.

9. In addition, claimant does not qualify for regional center services under the ID category or under the Fifth Category. Dr. Brooks testified that claimant does not meet the DSM-5 TR criteria for ID based on his performance on the WISC-V, and he does not have a condition similar to ID or one that requires similar treatment. (See, for general standard for the Fifth Category, *Mason v. Office of Administrative Hearings* (2001) 89 CalApp.4th 1119, at p. 1129.) Dr. Brooks stated that it appears claimant's deficits in functioning are attributable to ADHD.

## **ORDER**

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

DATE: April 4, 2025

ABRAHAM M. LEVY  
Administrative Law Judge  
Office of Administrative Hearings

## **NOTICE**

This is the final administrative decision. Each party is bound by this decision. Either party may request a reconsideration pursuant to Welfare and Institutions Code section 4713, subdivision (b), within 15 days of receiving the decision, or appeal the decision to a court of competent jurisdiction within 180 days of receiving the final decision.