

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

In the Matter of:

CLAIMANT

and

INLAND REGIONAL CENTER, Service Agency

DDS No. CS0021909

OAH No. 2024110369

DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this consolidated matter¹ on January 28, 2025, by videoconference and telephone.

Claimant's mother represented claimant, who was not present.

¹ This matter was consolidated for hearing with DDS No. CS0021910, OAH No. 2024110368, claimant's twin sister's appeal of the same issue, but separate decisions for each appeal were issued.

Senait Teweldebrhan, 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 January 28, 2025.

ISSUES

Is claimant eligible for regional center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) as a result of autism, an intellectual developmental disorder (intellectual disability), or a disability closely related to an intellectual disability or that requires treatment similar to that required for individuals with an intellectual disability (the "fifth category"), that constitutes a substantial disability?

Is IRC required to perform an evaluation of claimant to determine eligibility or is a records review sufficient?

SUMMARY

Claimant failed to show by a preponderance of the evidence that she had a qualifying developmental disability. Although she has some substantial disabilities, none are due to a qualifying diagnosis. Instead, her substantial disabilities are due to diagnoses specifically excluded by the Lanterman Act or due to non-qualifying diagnoses. IRC need not perform an evaluation of claimant to determine eligibility; the records review IRC performed was sufficient. 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 five-year-old female, sought regional center services and was evaluated under the qualifying categories of autism, intellectual developmental disorder, and fifth category.

2. Claimant received Early Start Services while at South Central Los Angeles Regional Center (SCLARC) due to developmental delays in her communication and social/emotional skills. Upon aging out of the Early Start program at age three, she was determined to be provisionally eligible based on her diagnosis of language disorder and her significant functional limitations in the area of receptive and expressive language and self-direction.

3. In 2022 claimant transferred to IRC's catchment area.

4. On October 3, 2024, IRC issued a Notice of Action (NOA) advising claimant that based upon its Intake Evaluation, IRC determined claimant did not have a substantial disability as a result of a qualifying condition, so was not eligible for regional center services. IRC made this decision based on records it reviewed and decided that no further intake services beyond the records review were warranted.

5. On November 1, 2024, IRC received claimant's mother's Appeals Tracking Request. In the appeal, claimant's mother asserted that when claimant was approved for provisional eligibility, she was told she "would receive another psychological evaluation to determine further eligibility." Thereafter, during claimant's annual meeting in July 2024, claimant's mother was told she, "would receive a call before"

claimant turned six years old "in regards to the psychological evaluation." Instead, she received the NOA.

6. Upon receipt of the appeal, the matter was set for hearing.

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 book 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.

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 Disability²

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

The “Fifth Category”

9. 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

² The Lanterman Act uses the term “intellectual disability.” The DSM-5-TR uses the “equivalent term,” “intellectual developmental disorder,” to “clarify its relationship with” the World Health Organization’s classification system. Both terms are used interchangeably in this decision.

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 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 disability], with many of the same, or close to the same, factors required in classifying a person as [having an intellectual developmental disability]. Furthermore, the various additional factors required in designating an individual developmentally disabled and substantially handicapped must apply as well.”

10. 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 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 disability.) There was no showing that IRC did not comply with these guidelines in reaching its determination.

11. 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.*)

Evidence Introduced at Hearing

12. IRC staff psychologist Holly Miller-Sabouhi, Psy.D., and claimant’s mother testified in this hearing, and numerous documents were received. The factual findings reached herein are based on that evidence.

13. IRC’s January 13, 2025, and January 28, 2025, Position Statements provided the reasons for its decision.

14. Dr. Miller-Sabouhi’s curriculum vitae set forth her education and experience. She has a Bachelor of Arts in psychology from the University of California, Riverside; and a Master of Science in psychology and a Doctor of Psychology, both from the University of La Verne. Her duties at IRC include evaluating individuals for regional center eligibility by participating in intake evaluations.

15. Dr. Miller-Sabouhi reviewed claimant’s Early Start records, none of which documented any concerns for autism, intellectual disability, or a condition closely related to an intellectual disability or requiring similar treatment for one with an intellectual disability.

16. A Remote Psychological Evaluation performed by Azin Monghate, Psy.D., on January 7, 2022, via telephone and on January 15, 2022, via Zoom, when claimant

was two years, eight months old, was done to determine claimant's current levels of cognitive and adaptive functioning to assess her continued eligibility for regional center services. The assessment consisted of an interview of claimant's mother, a review of records, clinical observations, play observation, and administering the Developmental Profile-3rd Edition (DP-3) (a standardized assessment tool designed to evaluate the development and functioning of children from birth through age 12 years, 11 months), the Vineland Adaptive Behavior Scales-Third Edition (which assesses an individual's level of daily functioning), and the TELE-ASD-PEDS (a semi-structured assessment to evaluate autism in toddlers, age 36 months and under using a telemedicine based assessment).

Claimant's scores on the DP-3 were as follows: her general development score, which summarizes her overall functioning, was below average; her physical skills and adaptive behavior were average; her social-emotional skills were delayed; and her cognitive skills and communication skills were below average. On the Vineland, according to claimant's mother's report, claimant was performing moderately low on most of the assessed tasks, and overall her functioning was in the moderately low range. Her performance was low and delayed in the areas of expressive communication and coping skills. She performed moderately low on receptive communication, personal daily living skills, interpersonal relationships, and play and leisure time. She performed in the adequate range on gross and fine motor skills.

On the TELE-ASD-PEDS, claimant's score of 10 did not classify her "at risk" of having autism spectrum disorder. Claimant made appropriate eye contact, she sometimes responded to her name and followed a distal point. She demonstrated joint attention, showed and shared toys of interest with others, and played interactively. She played with her mother, engaged in reciprocal play, and identified a series of objects.

Dr. Monghate diagnosed claimant with Language Disorder. He recommended claimant's parents be referred to SCLARC's Resource Center for information to assist them in helping claimant develop to her full potential, that claimant continue receiving occupational therapy and speech therapy services, that she seek support services through her school district to be evaluated before her third birthday and begin attending an appropriate school program, and that her cognitive and adaptive skills be re-evaluated in two to three years if language concerns persist.

Although this report was the basis for claimant to remain provisionally eligible, nothing in it established claimant had a qualifying diagnosis to receive regional center services after age five.

17. Claimant's March 28, 2022, Early Start Individualized Family Service Plan (IFSP) meeting type was "Exit IFSP." The IFSP Plan noted that claimant was found eligible for the SCLARC Early Start program on August 31, 2021, due to having a delay in one or more developmental areas, which were noted to be communication and social or emotional. Per claimant's mother, claimant "made many positive gains during the time she has received Early Start services." The IFSP Plan documented that claimant's mother was reminded that Early Start services would end on her child's third birthday and documented the transition services that were being provided to assist claimant with obtaining services from her school district.

The "Lanterman Eligibility Redetermination" section of the IFSP Plan referenced Dr. Monghate's evaluation and Language Disorder diagnosis. The redetermination team had reviewed claimant's case for Lanterman eligibility and determined she was provisionally eligible because of her significant functional limitations in the areas of receptive and expressive language and self-direction. Further, "Mother was informed [claimant's] case will be reassessed by a psychologist for Lanterman eligibility using

standard criteria up to 90 days prior to her 5th birthday.” Of note, although claimant’s mother asserted she was advised that claimant would have a psychological evaluation, the report clearly documented that claimant’s case would be reassessed by a psychologist, which is what IRC did; there is no documentation that claimant’s mother was informed that claimant would undergo another psychological evaluation.

Provisional eligibility for a language disorder diagnosis does not establish eligibility for regional center services after age five.

18. Claimant’s Individualized Education Plan (IEP) prepared by her school district on May 10, 2024, when she was five years old, documented that claimant’s qualifying disability for special education services was Speech or Language Impairment. The IEP documented the assessments the school district performed, identified claimant’s skills, development, behaviors, and health. Goals would be written to address claimant’s following areas of need: receptive/expressive language and articulation, which were then documented, and language and speech services would be provided.

Nothing in this IEP established claimant had a qualifying diagnosis to receive regional center services after age five. Moreover, school districts are governed by California Code of Regulations, Title 5, whereas 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. Here, even though its qualifying criteria are less stringent, claimant’s school district did not identify autism or intellectual disability as qualifying categories for special education services.

19. Claimant’s July 12, 2024, Individual Program Plan (IPP), documented the speech therapy services claimant was receiving through her school district and her

private medical insurer. Nothing in this IPP established claimant had a qualifying diagnosis to receive regional center services after age five.

20. On October 1, 2024, an IRC Eligibility Determination/Team Review documented its review of Dr. Monghate's report, the IEP, and the IPPs, and determined that based on their review of those records, a psychological or medical evaluation was not necessary to determine eligibility status. The team determined that claimant was not eligible for regional center services.

21. In response thereto, claimant submitted additional documents for review. A September 17, 2024, Annual Parent Notification Letter from claimant's school district advised that it was "required to assess her child and notify you of your child's proficiency level in English," because claimant was identified as an English learner. The letter provided the results of claimant's English language proficiency tests and noted claimant's standardized test results were in the 86 percentile for mathematics and 58 percentile for reading.

22. Claimant also provided an October 28, 2024, Speech-Language Pathology Re-Evaluation Report prepared by claimant's speech therapist. The report contained a "diagnosis" section with diagnoses options of "Developmental Speech and Language Disorder" and "Autism Spectrum Disorder," but only the box marked "Developmental Speech and Language Disorder" was checked, indicating the speech therapist did not identify autism as a diagnosis for claimant. Moreover, the speech language diagnosis given was "Developmental Expressive Language Disorder."

23. On January 13, 2025, an IRC Eligibility Determination/Team Review documented its review of Dr. Monghate's report, the IEP, the Annual Parent Notification Letter, the Speech-Language Pathology Re-Evaluation Report, and the

Early Start records, and again determined that claimant was not eligible for regional center services based upon a qualifying diagnosis.

24. Claimant's mother testified she was told her child would have another psychological evaluation before age 6, but instead received the NOA. After receiving that document, she made several attempts to find out why a psychological evaluation was not being performed, but her calls went unreturned and/or she was given no answer for why an evaluation was not being performed, other than being told all the information showed that claimant was no longer eligible.

25. Claimant's mother further testified that although claimant's speech has improved, she still does not make eye contact, refuses to talk to others and takes a very long time for her to warm up to others. She desires to be alone rather than play with others, including her sister, a behavior which has also been observed at school. Claimant and her sister will spend an entire day acting like cats and meowing, rather than using words. The sisters do not do this at the same time, rather alternating this behavior on different days. Claimant also requires that her schedule be maintained and gets very fussy if her schedule is interrupted, which is why claimant's mother schedules activities on the weekends. Claimant will only eat the same thing over and over. When new foods are introduced, she will not try them. She also has a blanket that is always with her that she rubs on her nose. She also walks by tiptoeing. Claimant refuses to go to school and has tantrums/meltdowns when faced with the prospect of going to school. Claimant's mother has even spoken with the school counselor about it because it has gotten so bad. Claimant's mother wants to make sure claimant does not go through life undiagnosed, which is why she wants another psychological evaluation performed. If claimant does not have autism or intellectual disability, "that would be great," and she "would be happy and go on."

26. In response to this testimony, Dr. Miller-Sabouhi testified that while some of those behaviors claimant's mother mentioned could be examined, they could also be age-appropriate behaviors. There was nothing claimant's mother shared that indicated significant concerns or evidence that claimant has a qualifying condition. Moreover, regional center evaluations are performed to determine eligibility, not to clarify other diagnoses. When the records show no evidence of a qualifying diagnosis being present, such as in this case, regional centers are not required to perform evaluations; record reviews are sufficient.

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) [emphasis added].)

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

(a) “Developmental Disability” means a disability that is attributable to mental retardation,³ 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

³ 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.”

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.

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 she has a qualifying diagnosis. The evidence introduced in this hearing did not demonstrate that claimant has a diagnosis of either autism or intellectual disability that constitutes a substantial disability, or that she qualifies under the fifth category, which is defined as a disability closely related to an intellectual disability, or that requires treatment similar to that required for individuals with an intellectual disability, that constitutes a substantial disability.

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 do not indicate the individual has a qualifying developmental disability, a records review is sufficient and an evaluation need not be performed.

While claimant's mother's testimony was sincere and genuine, and she clearly has her child's best interests at heart, her testimony did not establish that claimant was eligible for regional center services. Nor did it establish she had been promised a psychological evaluation. Instead, as documented, she was advised that an eligibility reassessment would be performed, and that is what occurred.

On this record, claimant's appeal must be denied. This does not preclude claimant from applying for regional center services in the future if there is new information demonstrating claimant has a qualifying condition.

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. IRC's records review was sufficient; no further intake services are required.

DATE: January 31, 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.