

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

In the Matter of:

CLAIMANT

and

INLAND REGIONAL CENTER,

Service Agency

DDS No. CS0022482

OAH No. 2024110831

DECISION

Kimberly J. Belvedere, Senior Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on April 21, 2025.

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

Claimant's mother appeared on claimant's behalf.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on April 21, 2025.

ISSUE

Is claimant eligible for regional center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) under the category of autism spectrum disorder (autism)?

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is a five-year-old boy. Claimant received regional center services pursuant to the California Early Intervention Services Act (Gov. Code, § 95000 et seq.) as an infant that continued until he turned three years old. When claimant turned three years old, claimant's mother sought services for claimant pursuant to the Lanterman Act.

2. On May 26, 2023, an IRC multidisciplinary eligibility team comprised of a psychologist, medical doctor, and program manager reviewed the records pertaining to claimant. At that time, there was conflicting documentation regarding whether claimant had autism, but claimant did have significant functional limitations in the areas of receptive and expressive language and self-direction. A person may be found provisionally eligible for regional center services if the person has two or more significant functional limitations in specified areas attributable to a qualifying condition. Despite the conflicting documentation regarding a diagnosis of autism, the eligibility team erred on the side of caution and found claimant provisionally eligible for regional center services. A child found provisionally eligible is reassessed at or near the time the child turns five years old.

3. On October 24, 2024, just before claimant turned five years old, another IRC eligibility team reviewed all then-available records and determined that the records did not show claimant has a substantial disability as a result of autism, intellectual disability, cerebral palsy, epilepsy, or a condition that is closely related to an intellectual disability or requires treatment similar to a person with an intellectual disability. On that same day,¹ IRC issued a Notice of Action advising claimant that he was no longer eligible for regional center services.

4. On November 25, 2024, claimant's mother filed an appeal on claimant's behalf, challenging IRC's denial. In the appeal, claimant's mother stated she disagreed with the eligibility determination because: claimant has been diagnosed with autism and, although he is a "very bright child," he is delayed in expressive and receptive language. Claimant cannot follow simple instructions or have a back-and-forth conversation. Claimant is delayed in self-care and needs verbal prompts for most of his self-care needs. Claimant has no sense of self-direction and does not tolerate changes to his environment. Claimant struggles with meltdowns, aggressive behavior, and social interactions. Claimant interacts well with adults and loves playing with them but he is not that way with children. Claimant is a picky eater and has food aversions, walks on the tips of his toes, and likes to spin. Claimant needs the social recreation stipend that he has been receiving from IRC to continue his gymnastics classes to get out his energy, and claimant's mother needs the respite service IRC has been providing so she can tend to herself, her family, and the household.

¹ The Notice of Action incorrectly indicates that the date it was issued to claimant was October 24, 2025.

5. Thereafter, additional records were provided and two additional IRC multidisciplinary eligibility teams again reconsidered claimant's eligibility on December 24, 2024, and March 25, 2025. Those eligibility teams similarly concluded that claimant was not eligible for regional center services under the Lanterman Act. This hearing followed.

Diagnostic Criteria for Autism

6. The American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revised* (DSM-5 TR) identifies criteria for the diagnosis of autism spectrum disorder. The diagnostic criteria include persistent deficits in social communication and social interaction across multiple contexts; restricted repetitive and stereotyped 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 function; and disturbances that are not better explained by intellectual disability or global developmental delay. An individual must have a DSM-5 TR diagnosis of autism spectrum disorder to qualify for regional center services based on autism.

Testimony of Holly Miller-Sabouhi, Psy.D., and Summary of Pertinent Records

7. Holly Miller-Sabouhi, Psy.D., is a staff psychologist at IRC. Dr. Miller-Sabouhi also holds a Master of Science degree in psychology, and a Bachelor of Arts in psychology. She has been a licensed psychologist since 2013. As a staff psychologist at IRC, a position she has held since 2016, Dr. Miller-Sabouhi conducts psychological evaluations of children, adolescents, and adults to determine eligibility for regional center services under the Lanterman Act. Prior to serving as a staff psychologist at IRC,

Dr. Miller-Sabouhi worked as a clinical psychologist and clinical supervisor in different settings, where she conducted psychological evaluations of individuals, engaged in psychotherapy and family therapy services to adults and children, and conducted both counseling and training in the field of mental health services, among other things. Dr. Miller-Sabouhi has published in a peer-reviewed journal and received awards during her pre-doctoral study. Dr. Miller-Sabouhi is an expert in the field of psychology, and specifically, in the assessment of individuals for regional center services under the Lanterman Act.

EARLY START RECORDS

8. Claimant's Early Start records show that he has always had difficulties with communication.

9. An April 1, 2021, Speech-Language Therapy Evaluation showed claimant had ongoing issues with his speech. On the Developmental Assessment of Young Children, Second Edition, claimant was below average in receptive and expressive language skills as compared to typically developing, age-level peers. Claimant's scores were similarly low on the Receptive Expressive Emergent Language Test. This evaluation did not show any concerns regarding autism.

10. In a September 29, 2021, Semi-Annual Progress Infant Development Report, claimant was reported to be a very happy and playful child who loves music, books, and being outdoors. His mother, however, had concerns because claimant struggled communicating his needs. Claimant enjoyed daycare and made eye contact with others when trying to communicate his needs. During the time claimant was in the Early Start program, he improved in social and emotional reciprocity, adaptive/self-

help skills, fine motor skills, cognitive functioning, communication, and gross motor skills. This report did not show any concerns regarding autism.

11. Claimant's April 18, 2022, Early Start Individualized Family Service Plan showed concerns with claimant's communication abilities, as well as a reference to a diagnosis of attention-deficit/hyperactivity disorder (ADHD). No concerns regarding autism were noted.

12. Other records showed similar challenges, but were of limited value because the testing, which should be conducted in person for a proper assessment, occurred via Zoom. Regardless, none of the reports showed any concerns regarding autism.

NOVEMBER 15, 2022, PSYCHOLOGICAL ASSESSMENT

13. A November 15, 2022, psychological assessment conducted when claimant was two years and nine months old included clinical observations, the Adaptive Behavior Assessment System, Third Edition (ABAS-3); the Childhood Autism Rating Scale, Standard Version (CARS2-ST); the Autism Diagnostic Observation Scale, Second Edition (ADOS-2); and an intelligence test. The assessment contained only conclusions, and did not contain any raw data explaining those conclusions. Thus, it is unclear what the conclusions were based upon. Nonetheless, on the ABAS-3, the evaluator concluded claimant had below average adaptive skills. On the CARS2-ST, the results showed mild-moderate autism. On the ADOS-2, it showed moderate autism. The "clinical observations" section noted some areas of concern such as needing frequent prompting, being preoccupied with certain toys, and some stereotyped behaviors, however, the explanation was generic and did not give specific examples of what claimant was doing; in other words, the clinical observations were merely

conclusory. On the intelligence test, results were not obtained because of claimant's "inattention, noncompliance, and inability to comprehend test instructions." The assessment also did not indicate what historical reports, if any, were reviewed, and occurred before the most recent evaluations (to be discussed below) contradicting a finding of autism. Thus, Dr. Miller-Sabouhi considered, but did not give great weight, to this assessment.

OFFICE OF SPECIAL EDUCATION MULTIDISCIPLINARY REPORT

14. On November 14, 2022, when claimant was two years and nine months old, claimant's school psychologist conducted a psychological assessment to determine claimant's eligibility for special education. The assessment was conducted while wearing face coverings, which renders many of the observations and results questionable, as the tests are not standardized for wearing masks. The assessment specifically notes this, indicating that all obtained scores should be viewed with caution.

15. Claimant's verbal and nonverbal intelligence was generally average in the multiple individual tests administered, and claimant showed borderline functioning in expressive and receptive communication. Claimant showed a lot of struggles with language development across many different tests administered. On the Autism Spectrum Rating Scales (ASRS), claimant had an elevated score meaning that his mother described some behaviors that one would expect to see in a child with autism, but on the Childhood Autism Rating Scale, Second Edition (CARS-2), claimant's scores showed minimal to no symptoms of autism. Dr. Miller-Sabouhi noted that this assessment was given in the same month as the above-referenced November 15, 2022, psychological assessment, and the result concerning whether claimant having autism was directly opposite of that prior assessment.

INDIVIDUALIZED EDUCATION PROGRAM (IEP)

16. A January 9, 2023, IEP shows claimant is in transitional kindergarten and receives special education services under the categories of autism and speech and language impairment. Dr. Miller-Sabouhi explained that the criteria for special education are contained in Title 5 of the California Code of Regulations, and are much less stringent than the criteria for autism under the DSM-5 TR. Further, a person who has a DSM-5 TR diagnosis of autism must also have a significant functional limitation in three or more areas of a major life activity as appropriate for the person's age – a requirement that special education does not have. Thus, just because a person receives special education services under the category of autism does not mean they will be eligible for regional center services.

17. Dr. Miller-Sabouhi also noted that many of the behaviors in the IEP are not consistent with autism. For example, it is stated claimant follows instructions, is a happy child, is a positive child, enjoys active play, likes to climb, has good imagination, engages in pretend play, and is "very sweet" to others. Claimant prefers adults over children. When speaking, claimant struggled with pronouns and certain sounds, but he did speak. Claimant did exhibit meltdowns on occasion and would become frustrated, but would warm up throughout the school day and interact with the other students.

Psychological Assessment

18. AB Psych Consulting conducted a February 27, 2023, assessment to determine claimant's eligibility for regional center services under the Lanterman Act. The evaluator conducted a comprehensive review of records available as of the time of testing, and conducted a clinical interview with claimant and claimant's mother. Administered were the ABAS-3, the ADOS-2, and the CARS-2 ST. On the ADOS-2,

claimant exhibited minimal to no evidence of autism. The observations of the examiner during the assessment support those results, as they do not exhibit typical behaviors one would expect to see with autism (i.e., repetitive or stereotyped behaviors, lack of eye contact). On the CARS-2 ST, claimant's scores similarly showed minimal to no evidence of autism. On the ABAS-3, claimant showed challenges in areas like self-direction and communication, but average functioning in other areas. Overall, based on claimant's mother's reports, the evaluator found claimant exhibited some behaviors consistent with autism but did not meet the full criteria necessary for a DSM-5 TR diagnosis. The evaluator concluded:

[Claimant] is a 3-year-old boy who was referred to the Regional Center to assess for Lanterman eligibility under Autism Spectrum Disorder (ASD). Reported concerns included repetitive play, repetitive behaviors, ignoring people talking to him, head banging, difficulty with transitions, speech delay, and appearing afraid of other children. [Claimant] was administered a battery of tests to observe behaviors and traits associated with Autism Spectrum Disorder (ASD) as well as to assess his cognitive functioning and adaptive behaviors. Observations completed during the ADOS-2 indicate a minimal to no deficits in social affective functioning and stereotyped and repetitive behaviors. Additionally, ratings obtained via the CARS2-ST indicate minimal to no symptoms of ASD. As such, an ASD diagnosis is considered not appropriate.

JANUARY 24, 2025, COLLABORATIVE PSYCHOLOGY GROUP ASSESSMENT

19. On January 24, 2025, Collaborative Psychology Group conducted a psychological assessment to determine claimant's eligibility for regional center services. This assessment included the following tests: CARS-2 ST; the Gilliam Autism Rating Scale, Third Edition (GARS-3); and the Vineland Adaptive Behavior Scales, Third Edition (Vineland), among others. Previous reports and assessments were also reviewed. Overall on the GARS-3, claimant had scores placing him in the very likely range, meaning, his behaviors – based on parent reporting – were consistent with autism. On the CARS-2 ST, it showed mild to moderate symptoms of autism. The Vineland also showed claimant had adaptive challenges. Overall, the evaluator concluded claimant's "results across measurements indicated clinically significant symptoms of Autism." However, many of the behaviors observed (lack of stereotypical or repetitive behaviors, good eye contact, etc.) and the review of the historical data, resulted in the evaluator finding claimant did not meet the diagnostic criteria for autism. Specifically, the evaluator wrote:

According to the Diagnostic and Statistical Manual of Mental Disorders Fifth Edition (DSM-5), an individual must demonstrate persistent deficits in social communication and social interaction across multiple contexts in order to meet criteria for a diagnosis of Autism Spectrum Disorder (ASD). The individual must also display restricted, repetitive patterns of behavior, interests, or activities. These symptoms must be present in the early developmental period and cause clinically significant impairment in functioning. Based on all available information, [claimant]

does not meet the above criteria to warrant a diagnosis of ASD. While the parent noted behaviors that could be interpreted as autistic traits, these signs were not clinically significant and were not observed during testing. He does not evidence clinically significant restricted, repetitive patterns of behavior, interests, or activities at this time.

DR. MILLER-SABOUHI'S CONCLUSIONS

20. Dr. Miller-Sabouhi reviewed all documentary evidence and concurred with the findings of the most recent eligibility team that claimant is not eligible for regional center services because the records did not show claimant has a substantial disability as a result of autism, intellectual disability, cerebral palsy, epilepsy, or a condition that is closely related to an intellectual disability or requires treatment similar to a person with an intellectual disability. The only document that really supports a finding of autism was the November 15, 2022, assessment, but that report is flawed and conclusory for the reasons discussed above. It also did not take into consideration many of the historical reports that IRC now has – including the most recent 2023 and 2025 evaluations that conclude claimant does not meet the diagnostic criteria under the DSM-5 TR for autism. Thus, a diagnosis of autism is not appropriate, and claimant is not eligible for services.

Claimant's Mother's Testimony

21. Claimant started in Early Start at 14 months old because of concerns with his language development. When claimant turned one year old, all language stopped. Claimant had many behavioral problems, tantrums, and engaged in head banging and throwing things. He was very hyperactive and showed sensory sensitivities. Claimant

was enrolled in daycare at 18 months and claimant's mother was shocked because claimant would hit and bite other children. As claimant got older, around three years old, claimant's mother became more concerned about autism. Per the daycare's recommendation due to what they observed, claimant was evaluated in November 2022 and that was when he was diagnosed with autism. When he was evaluated by AB Psych, claimant was "super social" with the evaluator and enjoyed working with her, so claimant's mother feels because of that he was not found to have autism, so they only gave him regional center services on a provisional basis.

22. As claimant has gotten older, his language has really developed but he has a lot of bad behaviors. Claimant needs to have a routine, needs everything to be the same, does not like change, and is obsessive when he plays. Claimant struggles dealing with other children because everything has to be his way. He also has articulation problems. Claimant's mother felt claimant's language issues were cause for concern during the psychological assessments that found claimant did not have autism because she would often have to repeat what the evaluator was asking. Claimant refuses new foods. He walks on his toes and likes to spin until he falls. Claimant does get along well with adults but does not interact well with children. He goes to gymnastics but gravitates towards adults. Claimant benefited from applied behavioral analysis (ABA) but claimant's mother changed jobs and is looking for a new provider (because her insurance changed). Claimant is a very sweet little boy sometimes, but other times he seems to have no emotion.

23. Claimant does not dress himself and still has some toileting accidents. Claimant needs verbal prompts for self-care and is not happy if his playroom is rearranged. Claimant's mother said claimant really benefitted from occupational therapy, speech therapy, and ABA that he received in the past, but he has regressed.

Claimant's mother believes claimant meets the DSM-5 TR criteria for autism, has significant functional limitations, and is eligible for regional center services.

LEGAL CONCLUSIONS

Applicable Law

1. The Legislature enacted the Lanterman Act (Welf. & Inst. Code, § 4500 et seq.) to provide a pattern of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. The purpose of the Lanterman Act is twofold: To prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.)

2. Welfare and Institutions Code section 4501 outlines the state's responsibility for persons with developmental disabilities and the state's duty to establish services for those individuals.

3. The Department of Developmental Services (department) is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.)

4. Welfare and Institutions Code section 4512, subdivision (a), defines developmental disability as 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." A developmental disability includes "disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability." (*Ibid.*) Handicapping conditions that are "solely physical in nature" do not qualify as developmental disabilities under the Lanterman Act. (*Ibid.*)

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

(a) "Developmental Disability" means a disability that is attributable to mental retardation², 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.

² Although the Lanterman Act has been amended to eliminate the term "mental retardation" and replace it with "intellectual disability," the California Code of Regulations has not been amended to reflect the currently used terms.

(c) Developmental Disability shall not include handicapping conditions that are:

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

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

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

6. California Code of Regulations, title 17, section 54001, provides:

(a) "Substantial disability" means:

(1) A condition which results in major impairment of cognitive and/or social functioning, representing sufficient impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential; and

(2) The existence of significant functional limitations, as determined by the regional center, in three or more of the following areas of major life activity, as appropriate to the person's age:

(A) Receptive and expressive language;

(B) Learning;

(C) Self-care;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living;

(G) Economic self-sufficiency.

(b) The assessment of substantial disability shall be made by a group of Regional Center professionals of differing disciplines and shall include consideration of similar qualification appraisals performed by other interdisciplinary bodies of the Department serving the potential client. The

group shall include as a minimum a program coordinator, a physician, and a psychologist.

(c) The Regional Center professional group shall consult the potential client, parents, guardians/conservators, educators, advocates, and other client representatives to the extent that they are willing and available to participate in its deliberations and to the extent that the appropriate consent is obtained.

(d) Any reassessment of substantial disability for purposes of continuing eligibility shall utilize the same criteria under which the individual was originally made eligible.

7. In a proceeding to determine whether an individual is eligible for regional center services, the burden of proof is on the claimant to establish by a preponderance of the evidence that he or she meets the proper criteria. (Evid. Code, §§ 115; 500.)

Conclusion

8. A preponderance of the evidence did not establish that claimant is eligible for regional center services under any qualifying category. No evidence was presented, nor was it claimed, that claimant was eligible under the categories of epilepsy, cerebral palsy, intellectual disability, or the fifth category. There were multiple psychological assessments available, and all were conducted within the past few years so they were recent. Other than the November 15, 2022, psychological assessment that found claimant had autism, no other documentary evidence supported that conclusion. Further, the November 15, 2022, assessment was problematic for many

reasons, notably, because it was written in a conclusory fashion and did not contain any raw data explaining those conclusions, and did not take into consideration all of the historical data and pre-dated the more current data now available to IRC. Many of the behaviors observed across the psychological assessments were not consistent with autism, and although some were suggestive of that condition, the evidence was very much in conflict. Based on the overall review of the records and multiple opinions of the different eligibility teams, Dr. Miller-Sabouhi's expert opinion is that claimant does not meet the diagnostic criteria for autism. Therefore, there is no need to address substantial disability because even if claimant has adaptive challenges, they are not attributable to a qualifying condition.

9. Accordingly, a preponderance of the evidence does not support eligibility for regional center services under any qualifying category and claimant's appeal must be denied.

ORDER

Claimant's appeal is denied. Claimant is not eligible for regional center services due to a substantial disability that resulted from autism, intellectual disability, cerebral palsy, epilepsy, a condition that is closely related to an intellectual disability, or a condition that requires treatment similar to a person with an intellectual disability.

DATE: April 28, 2023

KIMBERLY J. BELVEDERE

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 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.