

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

In the Matter of:

CLAIMANT

and

INLAND REGIONAL CENTER, Service Agency

DDS No. CS0022684

OAH No. 2024120225

DECISION

Administrative Law Judge Traci C. Belmore, Office of Administrative Hearings, State of California, heard this matter on February 4, 2025, at Inland Regional Center in San Bernardino, California.

Hilberto Echeverria Jr., Fair Hearing Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center, the service agency.

Maria Payne represented claimant who was not present.

The record was closed, and the matter was submitted for decision on February 4, 2025.

ISSUE

Is claimant eligible for regional center services on the basis of autism spectrum disorder (ASD), epilepsy, cerebral palsy, intellectual disability disorder (IDD),¹ or a disabling condition found to be closely related to IDD or that requires treatment similar to that required for individuals with IDD (fifth category)?

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is a nine-year-old female who lives with her parents. Claimant was placed in foster care and then adopted by her foster family.
2. On a date not established by the record, claimant submitted an intake application to Inland Regional Center (IRC) for an assessment of regional center

¹ The Lanterman Act was amended long ago to eliminate the term "mental retardation" and replace it with "intellectual disability," as reflected in the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5). The more current DSM-5, text revision (DSM-5-TR) no longer uses the term "intellectual disability" and instead refers to the condition as IDD. Many of the regional center forms have not been updated to reflect this change, and in both exhibits and during testimony, all of the terms were used interchangeably. Accordingly, for purposes of this decision, "mental retardation," "intellectual disability," and "IDD" mean the same thing.

eligibility based on the suspicion of claimant having ASD, epilepsy, IDD, or under the fifth category.

3. On October 10, 2024, IRC issued a Notice of Action (NOA). The NOA set forth the determination by IRC that claimant was not eligible for regional center services because she did not have a “substantial disability” as a result of IDD, ASD, cerebral palsy, epilepsy, or the fifth category, as defined by the Lanterman Developmental Disabilities Act (Lanterman Act).

4. On December 2, 2024, IRC received claimant’s appeal request.

5. On December 11, 2024, an informal conference was held at IRC to further discuss claimant’s eligibility. In a letter dated December 16, 2024, IRC affirmed the denial of eligibility for claimant, and this hearing followed.

Early Start Eligibility

6. On September 15, 2015, in an Individualized Family Service Plan (ISFP), claimant was deemed eligible to receive services from IRC as part of the Early Start Program due to cognitive, fine and gross motor delays. The Early Start Program is a program designed to provide regional center services for children up to the age of three years old. Once the child attains the age of three, they must be reevaluated for eligibility. In claimant’s case, IRC was unable to reevaluate claimant in 2018 due to an inability to communicate with claimant’s parent/guardian.

Treatment Records

7. On July 2, 2015, the day after claimant was born, the pediatrician treating her noticed that claimant was having shallow breathing and “twitching movement of the left upper and lower limbs.” Claimant was transferred to the newborn ICU at Loma

Linda University Children's Hospital (Loma Linda), where she was diagnosed with seizures.

8. On September 15, 2017, claimant was seen by Jasmine Reid, PA-C, in the office of Richard F. Jones, M.D., claimant's pediatrician for a routine child health examination. PA-C Reid assessed claimant for a developmental disorder of speech and language and as a result of the assessment, referred claimant to a speech and language therapist.

9. On August 22, 2019, when claimant was four years old, Shabbir Sabir, M.D., treated claimant for a seizure with loss of consciousness and muscle spasms at Victor Valley Global Medical Center (Victor Valley) emergency department (ED). Dr. Sabir noted that claimant had a history of seizures and diagnosed claimant with "Seizures-epilepsy." Dr. Sabir discharged claimant from the ED with instructions to follow up with her primary care physician (PCP) and neurologist in two days.

10. On September 22, 2020, claimant was seen by Mario Herrera² in Dr. Jones's office for a routine examination. Claimant was assessed for attention-deficit hyperactivity disorder (ADHD) and was referred to psychology to follow up for ADHD. ADHD is not a qualifying diagnosis for regional center services.

11. On April 13, 2021, claimant was seen by her PCP, Dr. Jones for a new referral to a pediatric neurologist. Dr. Jones diagnosed claimant with "localization related (focal) (partial) symptomatic epilepsy and epileptic syndromes."

² The record did not indicate what type of health provider Mario Herrera was. However, the note documenting the encounter was cosigned by Dr. Jones.

12. In July 2022, claimant was treated for a seizure. No documentation was provided for this treatment, but the parties agreed that claimant suffered her last seizure in July 2022.

13. On February 16, 2023, claimant was seen at Unicare Community Health Center by Christina Chow, D.O. Dr. Chow noted that claimant had been diagnosed with cerebral palsy, neurodevelopmental disorder, and seizure disorder. Dr. Chow treated claimant's seizure disorder with medications, including Depakote and Thorazine. Dr. Chow referred claimant to neurology and psychiatry for continued treatment.

14. On December 16, 2023, claimant was seen by psychiatrist Jayant S. Choure, M.D. Dr. Choure diagnosed claimant with unspecified disruptive, impulse control disorder, developmental delay, and ADHD. Dr. Choure prescribed Zoloft and Concerta for claimant.

ASD Diagnosis

15. The DSM-5-TR identifies criteria for the diagnosis of ASD. 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.

IDD Diagnosis

16. The DSM-5-TR contains the diagnostic criteria used for IDD. The essential features of IDD are deficits in general mental abilities and impairment in everyday adaptive functioning, as compared to an individual's age, gender, and socio-culturally matched peers. Intellectual functioning is typically measured using intelligence tests. Individuals with IDD typically have IQ scores in the 65-75 range (unless an individual is African American, in which case IQ results are not considered). In order to have a DSM-5-TR diagnosis of IDD, three diagnostic criteria must be met. The DSM-5-TR states in pertinent part as follows:

IDD is a disorder with onset during the developmental period that includes both intellectual and adaptive functioning deficits in conceptual, social, and practical domains. The following three criteria must be met: deficits in intellectual functions, such as reasoning, problem solving, planning, abstract thinking, and academic learning, which are confirmed by both clinical assessment and individualized, standardized, intelligence testing; deficits in adaptive functioning that result in a failure to meet developmental and sociocultural standards for personal independence and social responsibility; onset of intellectual and adaptive deficits during the developmental period.

Fifth Category Diagnosis

17. The Lanterman Act states that regional center assistance may be provided to individuals with a disabling condition closely related to IDD or that requires similar treatment to an individual with IDD, but does not include other handicapping conditions that are "solely physical in nature." (Welf. & Inst. Code, § 4512, subd. (a).) A disability involving the fifth category must also have originated

before an individual turns 18 years old, must continue or be expected to continue indefinitely, and must constitute a substantial disability.

18. A person functions in a manner similar to a person with IDD if the person has significant subaverage general intellectual functioning that is accompanied by significant functional limitations in adaptive functioning. Intellectual functioning is determined by standardized tests. A person has significant subaverage intellectual functioning if the person has an IQ of 70 or below. Factors a regional center should consider include: the ability of an individual to solve problems with insight, to adapt to new situations, and to think abstractly and profit from experience. If a person's IQ is above 70, it becomes increasingly essential that the person demonstrate significant and substantial adaptive deficits and that the substantial deficits are related to the cognitive limitations, as opposed to a medical or some other problem. It is also important that, whatever deficits in intelligence are exhibited, the deficits show stability over time.

19. Significant deficits in adaptive functioning are established based on the clinical judgements supplemented by formal adaptive behavioral assessments administered by qualified personnel. Adaptive skill deficits are deficits related to intellectual limitations that are expressed by an inability to perform essential tasks within adaptive domains or by an inability to perform those tasks with adequate judgement. Adaptive skill deficits are not performance deficits due to factors such as physical limitations, psychiatric conditions, socio-cultural deprivation, poor motivation, substance abuse, or limited experience.

20. In determining whether a person requires treatment similar to a person with IDD, a regional center should consider the nature of training and intervention that is most appropriate for the individual who has global cognitive deficits. This includes

consideration of the following: individuals demonstrating performance based deficits often need treatment to increase motivation rather than training to develop skills; individuals with skill deficits secondary to socio-cultural deprivation but not secondary to intellectual limitations need short-term, remedial training, which is not similar to that required by persons with IDD; persons requiring rehabilitation may be eligible, but persons primarily requiring rehabilitation are not typically eligible as the term rehabilitation implies recovery; individuals who require long-term training with steps broken down into small, discrete units taught through repetition may be eligible; and the type of educational supports needed to assist children with learning (generally, children with IDD need more supports, with modifications across many skill areas).

Evaluations and Assessments³

21. On September 30, 2021, school psychologist Elvia Beauchamp⁴ prepared a written report of a psycho-education assessment of claimant. Claimant was tested over the course of three testing sessions.

22. Beauchamp administered several tests to claimant including the Woodcock-Johnson Tests Academic Achievement (WJ-IV), Differential Ability Scales (DAS-2), and the Behavior Assessment System for Children (BASC-3). Beauchamp noted that during claimant's interview, claimant struggled with "impulsivity and self-

³ No evaluations or assessments between 2018 and 2021 were provided.

⁴ Other than that they were school psychologists, no credentials were provided for Beauchamp or Burciaga.

control." Claimant was in constant need of redirection and had difficulty sustaining attention.

23. The DAS-2 measures processing development for children. Claimant's scores indicated that she was below average in all categories except verbal comprehension. Beauchamp did note that claimant had "great difficulty with impulsivity and attention throughout the test. Lower scores should be interpreted with caution as they may not reflect" claimant's actual abilities. The WJ-IV is a test used to measure academic achievement. Claimant scored below average or well below average in all categories.

24. The BASC-3 was completed by claimant's guardian and her special education teacher. For adaptive skills, claimant's guardian rated her behaviors in the "at risk" range while her teacher rated claimant in the "average" range. Both indicated that claimant was "at risk" in the area of functional communication. Both rated claimant in the "clinically significant range" for externalizing problems, which is characterized by, "aggression, hyperactivity and conduct problems." Overall, Beauchamp opined that claimant needed special education services due to "other health impairment." Beauchamp stated that claimant was "exhibiting characteristics of ADHD." There was no mention of ASD or IDD in Beauchamp's report.

25. On May 9, 2024, school psychologist Maria Burciaga prepared a written report of a psycho-education assessment of claimant. Burciaga administered several tests including WJ-IV, Differential Test of Conduct and Emotional Problems (DT/CEP), and the Conners Comprehensive Behavior Rating Scale (CBRS). Burciaga noted that claimant's "testing scores should be interpreted with caution as her inattention and impulsivity may have impacted her performance in testing."

26. Claimant's scores on the WJ-IV ranged from very low to average. The CBRS is a parent and teacher rating scale. Both claimant's parent and her teacher ratings indicated that claimant had difficulty with maintaining attention, impulsivity and aggression. Burciaga opined that claimant's behaviors were consistent with one who has been diagnosed with ADHD.

27. Several Individual Education Plan (IEP) and amendments for claimant were submitted, dated May 25, 2021, April 13, 2022, September 23, 2022, September 18, 2023, February 13, 2024, and May 9, 2024. All IEPs and amendments indicated that claimant qualified for special education services under the category of other health impairment. None of the IEPs mentioned ASD or IDD.

IRC Eligibility Determination

28. Holly Miller-Sabouhi, Psy.D., is on the team of professionals tasked with making eligibility determinations for IRC. Dr. Miller-Sabouhi is a licensed clinical psychologist. She obtained her Psy.D. in clinical psychology from University of La Verne in 2009. She also holds bachelor's and master's degrees in psychology. Dr. Miller-Sabouhi has been employed by IRC in various positions since 2016. For the past nine years, she has been employed as a staff psychologist specializing in assessment and diagnosis of persons for the purpose of determining eligibility for regional center services. Dr. Miller-Sabouhi is an expert in the assessment of individuals for eligibility on the basis of ASD, IDD, or fifth category. Dr. Miller-Sabouhi testified at hearing regarding the basis for her opinion that claimant was not eligible for regional center services.

29. In making her determination, Dr. Miller-Sabouhi reviewed claimant's records, including the reports of Beauchamp and Burciaga, claimant's school records,

and medical records. Dr. Miller-Sabouhi stated the criteria for eligibility for services are that an individual must have a qualifying diagnosis, must have significant functional limitations in three of the seven areas of major life activity because of that diagnosis, and must have been diagnosed prior to 18 years of age.

30. From her review of claimant's records, Dr. Miller-Sabouhi determined that claimant did have two qualifying diagnoses, epilepsy and cerebral palsy. However, claimant did not have significant limitations in three of the seven areas of major life activity due to either epilepsy or cerebral palsy. Dr. Miller-Sabouhi acknowledged that claimant had ADHD, and that there were significant limitations in the area of receptive and expressive language. Dr. Miller-Sabouhi stated that there was no documentation that claimant had ever been diagnosed with ASD or IDD.

31. Desiree Nycholat, M.D., is part of the eligibility team at IRC that evaluates for epilepsy and cerebral palsy. Dr. Nycholat is a licensed physician. Dr. Nycholat testified at hearing regarding the basis for her opinion that claimant was not eligible for regional center services based on epilepsy or cerebral palsy.

32. In order to make her determination, Dr. Nycholat reviewed claimant's medical history. Dr. Nycholat acknowledged that claimant had been diagnosed with epilepsy and cerebral palsy. However, Dr. Nycholat stated claimant does not meet the criteria for a substantial disability as she does not have significant deficiencies in three or more areas of daily functioning as she has not had a seizure since 2022. Dr. Nycholat stated that claimant's epilepsy appeared to be well controlled with medication.

Claimant's Additional Evidence

33. Claimant's mother's testimony is summarized as follows. She was referred to IRC by a social worker. Claimant has cerebral palsy and epilepsy, but she is active. Claimant requires 24-hour supervision. Claimant has had a recent seizure. She tries telling claimant's doctors about the issues, but the doctors do not always document what she is telling them. Claimant could definitely benefit from services from IRC.

LEGAL CONCLUSIONS

1. In a proceeding to determine whether an individual is eligible for regional center services, the burden of proof is on the claimant to establish that he or she has a qualifying developmental disability. The standard of proof required is preponderance of the evidence.

2. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act. The Lanterman Act is found at Welfare and Institutions Code⁵ section 4500 et seq. The purpose of the Lanterman Act is to rectify the problem of inadequate treatment and services for the developmentally disabled and to enable developmentally disabled individuals to lead independent and productive lives in the least restrictive setting possible. (§§ 4501, 4502; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.)

⁵ All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

3. A developmental disability is a disability that originates before an individual reaches age 18; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for that individual. (§ 4512, subd. (a); Cal. Code Regs., tit. 17, § 54000, subd. (b).)

“Developmental disability” as defined in the Lanterman Act includes intellectual disability, cerebral palsy, epilepsy, autism, and disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability. (§ 4512, subd. (a); Cal. Code Regs., tit. 17, § 54000, subd. (a).)

“Substantial disability” means major impairment of cognitive and/or social functioning, and the existence of significant functional limitations, as appropriate to a person’s age, in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency. (§ 4512, subd. (l)(1); Cal. Code Regs., tit. 17, § 54000, subd. (a).)

4. Claimant has not met her burden of establishing that she is eligible for regional center services. Dr. Miller-Sabouhi and Dr. Nycholat both credibly testified that while claimant met the diagnostic criteria for an eligible developmental disability, she did not meet the substantial disability criteria necessary for eligibility. Claimant also did not meet the criteria for eligibility under the fifth category. Claimant failed to present sufficient evidence to contradict Dr. Miller-Sabouhi’s and Dr. Nycholat’s conclusions.

5. Additionally, claimant’s records demonstrate that she has several significant diagnoses that explain some of the cognitive and social challenges she has

experienced. Claimant has been diagnosed with ADHD, and mood disorder. Neither of those conditions qualify a person for regional center services, and none of those conditions are similar to a diagnosis of IDD or require treatment similar to IDD.

6. Finally, although claimant has been diagnosed with epilepsy and cerebral palsy, she does not have a substantial disability due to either of those diagnoses, and therefore does not qualify for regional center services.

7. Claimant has failed to establish that she has a substantial disability due to a diagnosis of ASD, epilepsy, cerebral palsy, IDD, or that she would qualify under the fifth category.

ORDER

Claimant's appeal is denied. Claimant is not eligible for regional center services.

DATE: February 19, 2025

TRACI C. BELMORE

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 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.