

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

In the Matter of:

CLAIMANT

v.

INLAND REGIONAL CENTER, Service Agency

OAH No. 2020080348

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on September 10, 2020.¹

¹ In light of the President's declaration of a national emergency over the COVID-19 pandemic; the Governor's proclamation of a State of Emergency and Executive Orders N-25-20 and N-33-20 pertaining to the pandemic; the declarations of county and city public health emergencies throughout the State; the directives from state and local officials to ensure social distancing and sheltering-in-place; and in order to protect the health and safety of all public and OAH personnel, this matter was heard telephonically.

Stephanie Zermeño, Consumer Services Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

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

Oral and documentary evidence was received. The record was closed and the matter submitted for decision on September 10, 2020.

ISSUE

Is claimant eligible for regional center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) based on a diagnosis of Autism Spectrum Disorder (autism)?

FACTUAL FINDINGS

Background

1. On July 13, 2020, IRC's eligibility team, which is comprised of a psychologist, program manager, and medical doctor, made an eligibility determination based on documents provided by claimant's mother that claimant, a three-year-old boy, was not eligible for regional center services because no evidence showed claimant had 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 (fifth category). On July 15, 2020, IRC sent claimant's mother a Notice of Proposed Action indicating claimant was not eligible for regional center services.

2. On July 27, 2020, claimant's mother filed a Fair Hearing Request challenging IRC's eligibility determination stating only that claimant "was not given a fair evaluation."

3. At the commencement of the hearing, claimant's mother confirmed that she is seeking eligibility for claimant under the category of autism.

Diagnostic Criteria for Autism

4. The *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5) identifies criteria for the diagnosis of autism. 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 diagnosis of autism spectrum disorder to qualify for regional center services based on autism.

Evidence Presented at Hearing

5. Holly Miller, Psy.D., testified on behalf of IRC. Dr. Miller is a staff psychologist at Inland Regional Center. She obtained her doctor of psychology in 2009, and already held a master of science in psychology and bachelor of arts in psychology. Dr. Miller has served in a variety of positions, including clinical supervisor where she was in charge of the mental health services provided by the County of Riverside Department of Public Social Services. She served in various internships, all of which involved conducting or assisting in psychological assessments. She has published scholarly works in two peer-reviewed professional journals and has won

awards in her field. Dr. Miller also has extensive experience in the assessment and diagnosis of individuals seeking to obtain regional center services under the Lanterman Act, and in serving on the multi-disciplinary team for IRC to review the cases of those seeking services. Dr. Miller is an expert in the area of autism.

6. Prior to the hearing, Dr. Miller reviewed the following documents provided by claimant's mother and on file at IRC: Individualized Family Service Plan (IFSP) dated October 17, 2019; Developmental Semi-Annual Report by Family Intervention Nurturing Empowerment (FINE), Inc., dated April 1, 2020; Developmental Closing Report by FINE dated May 15, 2020; and a Progress Report by Inland Regional Center dated May 20, 2020. No other documents were submitted. The following is a summary of those documents and Dr. Miller's testimony.

Claimant received Early Start services from the regional center due to a qualifying delay in cognitive skills, fine/gross motor skills, adaptive/self-help skills, and social/emotional behavior. In order to qualify for Early Start services, which are provided to children that meet certain criteria under the age of three years old, the delay in each area must be at least 33 percent. Claimant's IFSP dated October 17, 2019, list claimant's primary areas of concern as tantrums, aggression, speech, and language. Claimant began receiving services from FINE shortly after his IFSP to address those concerns.

The April 1, 2020, Developmental Semi-Annual Report completed by FINE showed that the only continued area of concern at that time was a substantial deficit in the area of expressive and receptive language. The report makes reference to the skills claimant mastered, such as the ability to show praise; interact with others; eat independently; and imitate the actions of others. No concerns of autism were noted,

and the behaviors described are inconsistent with autism. A child with autism typically has repetitive or restricted interests, and nothing of the sort was indicated.

According to the Developmental Closing Report by FINE dated May 15, 2020, completed when claimant was exiting FINE, showed claimant is "highly active and great at gross motor activities." The report details numerous behavioral interventions that were developed for claimant and employed by staff and claimant's mother, which had positive results in redirecting problematic behaviors. Claimant's mother expressed satisfaction with how wonderful the FINE program had been and how it was helping claimant achieve his developmental outcomes. Although claimant was still underperforming for his age in the areas of fine motor skills, social/emotional skills, and expressive/receptive language, no concerns regarding autism were noted and no behaviors/symptoms of autism were noted.

The only other document provided to assess whether claimant would be eligible for regional center services based on a diagnosis of autism was a Progress Report completed by IRC on May 20, 2020. The Progress Report does not contain any new assessments, summaries, or other diagnostic information. Rather, it is merely a form that reports claimant's personal information and the progress he had made at that point in time, as reflected in the two FINE reports discussed above. No information was contained in this form to help assess whether claimant would meet the DSM-5 diagnostic criteria for autism.

Due to the scant evidence presented by way of documentation, Dr. Miller concurred with the eligibility team determination made on July 13, 2020, that nothing in the documents indicated claimant was eligible for regional center services under the Lanterman Act and nothing indicated that an assessment for autism was warranted. After hearing claimant's mother's testimony concerning claimant's behaviors, Dr. Miller

adhered to her conclusion and added that the behaviors described were not indicative of autism, rather, behaviors that showed repetitive or restricted interests were what one typically sees in a child with autism. Aggression and tantrums alone do not indicate an assessment for autism is needed.

Claimant's Mother's Testimony

7. Claimant's mother's testimony is summarized as follows: Claimant's mother has been trying to get him evaluated because he has problems with "aggression." Claimant's mother sometimes has to hold on to claimant because if she does not do so he will throw himself against a wall or furniture. Claimant's mother has continuously asked claimant's pediatrician for help and she has been referred to IRC. Claimant's mother has researched autism she believes her son qualifies under that diagnosis and if not addressed soon his behaviors will worsen. Claimant's mother's testimony was sincere and credible and she clearly has her son's best interests in mind.

LEGAL CONCLUSIONS

Applicable Law

1. The Legislature enacted a comprehensive statutory scheme known as 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 statutory scheme 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.) 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.

2. The Department of Developmental Disabilities 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.)

3. The Lanterman Act is set forth at Welfare and Institutions Code section 4500 et seq. Welfare and Institutions Code section 4501 provides:

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), 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 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.

(2) Be likely to continue indefinitely;

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

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

(1) Solely psychiatric disorders where there is impaired intellectual or social functioning which originated as a result of the psychiatric disorder or treatment given for such a disorder. Such psychiatric disorders include psychosocial 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 psychosocial 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.)

Evaluation

8. Claimant's mother's testimony concerning claimant's challenges was sincere and heartfelt. Her claims that claimant suffers from behavioral tantrums and

engages in certain self-injurious behaviors were credible. However, behavioral problems alone do not meet the diagnostic criteria for autism, and as Dr. Miller explained, can be indicative of a host of other psychological disorders that do not qualify a person for regional center services. The documents provided were merely summaries of progress made during claimant's sessions with FINE, and no formal psychological assessments were provided. No concerns regarding autism were documented in any of the four documents provided. The only expert who testified was Dr. Miller. Based on the records provided, Dr. Miller's uncontested expert opinion was that claimant does not meet the DSM-5 diagnostic criteria for autism and therefore is not eligible for regional center services.

ORDER

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

DATE: September 21, 2020

KIMBERLY J. BELVEDERE
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.