

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

**In the Matter of:**

**CLAIMANT,**

**vs.**

**WESTSIDE REGIONAL CENTER,**

**Service Agency.**

**OAH No. 2022030514**

**DECISION**

Harden Sooper, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on May 18, 2022.

Candace J. Hein, Fair Hearing Specialist, represented Westside Regional Center (WRC).

Claimant did not attend the hearing. His mother (Mother) was present and represented claimant. Names are omitted to protect the privacy of claimant and his family.

The ALJ received oral and documentary evidence. The record was closed and the matter was submitted for decision on May 18, 2022.

## **ISSUE**

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

## **EVIDENCE RELIED UPON**

In reaching this decision, the ALJ relied upon WRC's exhibits 1 through 8, 10, and 11, as well as the testimony of Mother and WRC Intake Manager and Kaely Shilakes, Psy.D.

## **FACTUAL FINDINGS**

### **Parties and Jurisdiction**

1. Claimant is a seven-year-old boy who lives with his parents and two siblings. In September 2021, physicians at the University of California, Los Angeles (UCLA) diagnosed claimant with Autism Spectrum Disorder (ASD) and referred him to WRC for further evaluation.

2. WRC is the regional center designated by the Department of Developmental Services to provide funding for services and supports to persons with developmental disabilities under the Lanterman Act, among other entitlement programs. (Welf. & Inst. Code (Code), § 4500 et seq.)

3. On February 5, 2022, WRC sent Mother a Notice of Proposed Action finding claimant ineligible for WRC services because claimant was not substantially disabled as a result of autism, intellectual disability, cerebral palsy, epilepsy, or other conditions similar to intellectual disability. (Ex. 2, p. A16–A17.)

4. On March 3, 2022, Mother filed a Fair Hearing Request challenging WRC’s eligibility determination. Specifically, Mother challenged WRC’s determination concerning claimant’s eligibility under the category of autism. (Ex. 2, p. A15.)

5. Following an informal meeting with Mother on April 4, 2022, WRC adhered to its determination. This hearing ensued.

### **Claimant’s Autism Spectrum Disorder Diagnosis**

6. In November 2021, Sarah Forman, Psy.D., and Gabrielle du Verglas, Ph.D., conducted a psychological assessment of claimant at WRC’s request. Drs. Forman and du Verglas concurred with the UCLA physicians who evaluated claimant in September 2021, diagnosing claimant as presenting with ASD, without accompanying intellectual impairment and without accompanying language impairment. Drs. Forman and du Verglas issued a report, dated December 3, 2021, documenting their findings. (Ex. 6.)

7. At Mother’s behest, on December 6, 2021, Negar Afshar, Psy.D and Pantea Sharifi-Hannauer, M.D., of Pediatric Minds, a clinic specializing in child developmental disability evaluations and treatment, evaluated claimant and diagnosed him as presenting with ASD without accompanying intellectual impairment and without accompanying language impairment. Drs. Afshar and Sharifi-Hannauer issued a report dated December 7, 2021, documenting their findings. (Ex. 4.)

8. At hearing, WRC did not dispute claimant's ASD diagnosis.

### **WRC's Evaluation of Claimant's Eligibility for Services**

9. On February 2, 2022, a WRC multidisciplinary team determined claimant was not eligible to receive regional center services because he was not substantially disabled by his ASD. The WRC team consisted of a service coordinator, an autism specialist, a psychologist, and a psychology consultant. A neurologist later joined the team when it reviewed claimant's case a second time. In its second review, the WRC team determined claimant had significant functional limitations in self-direction but did not have significant functional limitations in the areas of expressive and receptive language, learning, self-care, and mobility. Based on claimant's young age, the team did not assess him in the areas of capacity for independent living and economic self-sufficiency. Because claimant did not have significant functional limitations in at least three areas, the team concluded he was not eligible for regional center services.

10. In making its determination, the WRC multidisciplinary team relied on a combination of its own assessments of claimant and documents provided by claimant's family. The team considered a psychosocial evaluation of claimant conducted by WRC Intake Counselor Jennifer Morales and the WRC psychological assessment performed by Drs. Forman and du Verglas. (Exs. 5 and 6.) The team also considered the following documents provided by claimant's family: the psychological assessment performed by Drs. Afshar and Sharifi-Hannauer of Pediatric Minds, a psychological and attentional evaluation performed by Jamie McClaren, Ph.D., and Lisa Blanchard, Psy.D., of Reiss Davis Child Study Center (Reiss Davis), and a Los Angeles Unified School District (LAUSD) assessment performed by School Psychologist Heidi Sperber. (Exs. 4, 10, and 11.)

11. Dr. Kaely Shilakes was a member of the multidisciplinary team and testified at hearing regarding the team's assessment of claimant.

### **RECEPTIVE AND EXPRESSIVE LANGUAGE**

12. Receptive language refers to a person's ability to understand communication or language; expressive language refers to a person's ability to express oneself using language to communicate. When assessed by Dr. Forman, claimant scored in the "average" range for both receptive vocabulary and information. (Ex. 6, p. A50.) When assessed by psychologists at Reiss Davis, claimant scored in the "average" range for verbal comprehension. (Ex. 11, p. A87.) When assessed by LAUSD School Psychologist Sperber, claimant scored in the "average" range for receptive language, expressive language, and communication functioning. (Ex. 10, p. A65, A68.) Based on these assessments, the WRC team determined claimant did not have significant functional limitations in receptive and expressive language.

### **LEARNING**

13. Learning refers to a person's academic performance and cognitive scores. When assessed by Dr. Forman, claimant had a full-scale IQ score of 80, which fell in the "low average" range. (Ex. 6, p. A40.) When assessed by psychologists at Reiss Davis, claimant had a full-scale IQ score of 89, also within the "low average" range. (Ex. 11, p. A86.) When assessed by psychologists at Pediatric Minds, claimant scored in the "average" range on a test of nonverbal intelligence. (Ex. 4, p. A27.) LAUSD School Psychologist Sperber found claimant's cognitive functioning was within the "average" range and did not identify an academic performance or school readiness issue. (Ex. 10, p. A66–A67.) Based on these assessments, the WRC team determined claimant did not have significant functional limitations in learning.

## **SELF-CARE**

14. Self-care is the ability to acquire and perform basic self-care skills, such as getting dressed, eating with utensils, chewing, swallowing, and using the bathroom. When assessed by LAUSD School Psychologist Sperber, claimant scored in the "average" range for self-help and adaptive functioning. (Ex. 10, p. A73.) When assessed by psychologists at Pediatric Minds, claimant also scored in the "average" range for adaptive behavior, including daily living skills. (Ex. 4, p. A26.) When assessed by Dr. Forman, claimant scored in the "above average" range for self-care. (Ex. 6, p. A51.) Based on these assessments, the WRC team determined claimant did not have significant functional limitations in self-care.

## **MOBILITY**

15. Mobility refers to a person's motor skills, including the ability to walk without assistance. None of the reports considered by the WRC team noted any issues related to claimant's mobility. LAUSD School Psychologist Sperber found claimant's motor skills were in the "average" range. (Ex. 10, p. A70.) Based on these assessments, the WRC team determined claimant did not have significant functional limitations in mobility.

## **SELF-DIRECTION**

16. Self-direction is the ability to make and apply personal and social judgments and decisions. Claimant's family provided background information to various doctors regarding claimant's difficulties with social and emotional development, interpersonal skills, and social skills. Some of the relevant information appears in the Pediatric Minds report (Ex. 4, p. A23) and the WRC psychological

assessment report. (Ex. 6, p. A36–A37.) Based on this information, the WRC team determined claimant had significant functional limitations in self-direction.

## **Claimant’s Evidence**

17. Mother testified credibly about the challenges faced by claimant and his family. She described a variety of claimant’s unsafe behaviors, such as elopement and non-compliance. Mother further described claimant’s difficulty engaging in social situations and communicating with others. Mother has experienced extraordinary stress, caused by her constant concern about claimant’s behavior and safety. Mother believes claimant needs help with his social skills and academics; she further asserted he needs a companion or aide to ensure his safety both at school and at home. Mother believes claimant should be eligible for regional center services based on his ASD diagnosis and his related challenges.

18. In her testimony, Mother acknowledged claimant “may not be fully falling into the three categories,” referring to the minimum requirement of three areas of significant functional limitations. Other than the LAUSD report and Pediatric Minds report she provided to WRC, Mother did not submit any evidence to support her position about claimant’s eligibility for services. Mother testified claimant receives Applied Behavior Analysis (ABA) therapy, but she did not know whether claimant’s therapist had written a report. She testified claimant’s ABA therapist identified multiple “problem areas” similar to the ones she described in her testimony.

19. Under cross-examination by Mother, Dr. Shilakes reiterated the WRC team’s determination claimant had significant functional limitations in only one area. Dr. Shilakes categorized claimant’s communication challenges as “pragmatic” and “in the social realm,” and therefore related to self-direction rather than receptive and

expressive language deficits. Dr. Shilakes testified claimant's unsafe behaviors are also related to self-direction rather than self-care, as claimant scored in the "average" range for his adaptive skills, despite his lack of safety awareness. Dr. Shilakes also testified claimant's difficulties in a school environment may be addressed by an Individualized Education Plan through claimant's school district.

## **LEGAL CONCLUSIONS**

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

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 by a preponderance of the evidence he or she meets the proper criteria. (Evid. Code, §§ 115; 500.)

### **Applicable Law**

2. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Act (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.)



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

4. Code section 4512, subdivision (a) defines a 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 intellectual disability, cerebral palsy, epilepsy, and autism.

5. Code section 4512, subdivision (1)(1) defines "substantial disability" as follows:

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

(A) Self-care.

(B) Receptive and expressive language.

(C) Learning.

(D) Mobility.

(E) Self-direction.

(F) Capacity for independent living.

(G) Economic self-sufficiency.

6. California Code of Regulations, title 17 (CCR), section 54001 further defines "substantial disability" as follows:

(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.

7. CCR section 54001, subdivisions (b) through (d), set forth the following procedure for assessment of substantial disability:

(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.

### **Determination of Claimant's Eligibility for Services**

8. Claimant established by a preponderance of evidence he has a developmental disability, as defined by Code section 4512, subdivision (a). Claimant's ASD diagnosis is undisputed. (Factual Findings 5–7.)

9. Claimant failed to establish by a preponderance of evidence he is "substantially disabled" by his ASD. As required by CCR section 54001, subdivision (b), a group of WRC professionals convened to assess whether claimant is substantially disabled. The WRC team assessed claimant in five of the seven major life areas listed in

Code section 4512, subdivision (1)(1), and CCR section 54001. Because claimant was six years old when assessed, the WRC team did not assess him in the areas of capacity for independent living and economic self-sufficiency. After considering both WRC assessments and the additional documentation provided by claimant's family, the WRC team determined claimant had significant functional limitations only in self-direction. He did not have significant functional limitations in the areas of receptive and expressive language, learning, self-care, and mobility. Mother's testimony did not establish claimant had significant functional limitations in areas other than self-direction. (Factual Findings 8–15.) The evidence therefore did not establish claimant is "substantially disabled," as he does not have significant functional limitations in the minimum three areas of major life activity, as defined by Code section 4512, subdivision (1)(1), and CCR section 54001.

10. Claimant is not eligible for regional center services because he is not currently "substantially disabled" by his ASD.

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## **ORDER**

Claimant's appeal is denied. Claimant is not currently eligible to receive regional center services.

This decision does not preclude claimant from presenting further evidence to the regional center, at some later date, so that he can be re-assessed for his eligibility for services.

DATE:

HARDEN SOOPER

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.