

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

**In the Matter of:**

**CLAIMANT,**

**vs.**

**NORTH LOS ANGELES COUNTY REGIONAL CENTER,**

**Service Agency.**

**OAH No. 2021030317**

**DECISION**

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter via telephone and video conference on May 19, 2021. Monica Munguia, M.A., Fair Hearing Representative, represented North Los Angeles County Regional Center (NLACRC or service agency). Foster Parent represented Claimant, who was not present at the hearing. To preserve privacy and confidentiality neither Foster Parent nor Claimant is referenced by name.

Testimony and documents were received in evidence. The record closed, and the matter was submitted for decision at the conclusion of the hearing.

## **ISSUES FOR DETERMINATION**

1. Whether Claimant is eligible for regional center services and supports under the qualifying category of "intellectual disability" as provided for in the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500, et seq.

2. Whether Claimant is eligible for regional center services and supports under the qualifying category of "autism" as provided for in the Lanterman Act.

3. Whether Claimant is eligible for regional center services and supports under the category of "disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability," which is commonly referenced as "the fifth category," as provided for in the Lanterman Act.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. By Notice of Proposed Action, effective February 1, 2021, NLACRC informed Foster Parent Claimant "does not meet criteria for developmental disability as defined by . . . the Welfare and Institutions Code." (Exh. 29.)

2. On March 1, 2021, Foster Parent, acting on Claimant's behalf, filed a Fair Hearing Request.

3. All jurisdictional requirements are satisfied.

## **Claimant's Background**

4. Claimant's biological parents have a history of psychiatric illness and attempted suicide, narcotics possession and distribution, firearm possession, substance abuse, incarceration, and domestic violence. In 2018, at approximately age seven, the Department of Child and Family Services (DCFS) detained Claimant and placed him in foster care after he witnessed several incidents of domestic violence.

5. At the time of Claimant's detainment, DCFS referred him to Children's Bureau, where he was subjected to a Full Child/Adolescent Intake Assessment. The therapist who interviewed and assessed Claimant notes Claimant maintained eye contact, spoke clearly, exhibited no difficulty sustaining attention or concentration while conversing, appeared to have an average level of vocabulary, abstraction, and intelligence, and engaged in an appropriate level of activity for his developmental age. The therapist was aware Claimant exhibited moodiness, tantrums, and defiant behaviors in his elementary school setting, but reports observing none of these behaviors during the intake interview and assessment. According to the therapist, Claimant appeared in a good mood and was friendly. He expressed sadness about not being with his biological family but he did not exhibit any agitation, anxiety, irritability, or hostility. Claimant "appeared to be insightful for his age and motivated to make positive changes in his life. . . . [H]e want[ed] to learn how to calm down and control his temper." (Exh. 8 at p. 10.)

6. The Children's Bureau therapist diagnoses Claimant with Adjustment Disorder with Depressed Mood and provides the following explanation:

Due to [Claimant's] recent detainment from biological father and subsequent placement in foster care, a diagnosis

of Adjustment Disorder with depressed mood. This diagnosis is given due to client's recent change in living situation, school, and separation from family as well as current symptoms appear to be in line with depression in children often manifesting as irritability. [Claimant] stated that he often thinks about his family, how much he misses them, and reports feeling sad daily. Adjustment Disorder with depressed mood is given rather than AD with disturbance of conduct as client is exhibiting behaviors only in one setting and reports daily feelings of sadness. [Claimant's] symptoms have a significant impact on his ability to function in the school setting as he often has temper tantrums in class, often getting sent out of class which impairs his ability to remain in class and learn. [Claimant's] defiance in class inhibits his ability to develop a relationship with his teacher which would be a source of support for [Claimant]. [Claimant is hard on himself and very sensitive when making mistakes in class which has a negative impact on his overall self-esteem.

(Exh. 8 at p. 11.)

7. A Health and Education Passport (HEP), which travels with Claimant when his foster placement changes, contains a record of his medical, dental, and education visits. Claimant's HEP memorializes the following additional diagnoses: on March 23, 2020, "Attention Deficit Hyperactivity Disorder/Impulse Disorder-Unspecified" and on June 22, 2020, "Attention Deficit Disorder-Combine Type." (Exh. 12 at p. 3.)

8. Claimant's HEP records additionally identify treatments including administration of Risperidone, a psychotropic medication used for treating schizophrenia, bipolar disorder, and irritability, Adderall, a stimulant to improve focus and reduce impulsivity, and Trazodone, an antidepressant used to treat depression and anxiety.

9. From 2017 to the start of the COVID-19 pandemic emergency, on multiple occasions Claimant exhibited challenging behaviors in his educational settings that resulted in his multiple suspension for varying lengths of time. For example, he engaged in obscene acts, profanity, and vulgarity, he caused physical injury to other students, he disrupted classroom and school activities, and he defied the authority of teachers and other adult school personnel. During this time, Claimant's school district offered a comprehensive assessment, including psychoeducational evaluation and academic achievement evaluation, for Claimant. Claimant had no access to special education services, however, because his biological parent withheld consent for the assessment.

10. Late 2020, Foster Parent expressed concerns with Claimant's educational performance and academic progress and requested his school district conduct a psychoeducational evaluation of Claimant. Using standard procedures and measurements, school district evaluators determined Claimant's communications skills are within average to below average range and concluded he does not meet special education eligibility criteria for Speech or Language Impairment.

11. School district evaluators additionally determined Claimant presents with average cognitive abilities. "He demonstrated average, age appropriate, abilities in all areas of processing: crystalized knowledge, fluid reasoning, short-term memory, long-term storage and retrieval, phonological processing, visual processing, and processing

speed. No significant weaknesses were seen." (Exh. 19 at p. 22.) Claimant's performance on reading, mathematics, and writing tasks is in the average range. As a fourth grader, Claimant's instructional reading level is assessed at a third grade, second month level. The school district evaluators observed Claimant had difficulties following classroom procedures, complying with requests, and remaining on tasks but noted his teachers regarded him as a capable student with compliance challenges. They conclude, "Overall, [Claimant's] overall abilities were in the average range with no significant processing weaknesses. No significant academic weaknesses were seen on standardized academic assessments. [Claimant] has difficulties remaining on task, completing assignments, and complying with adult directives." (*Ibid.*)

12. School district evaluators found Claimant presented with social and emotional behaviors with elevated scores indicating high levels of maladaptive behavior or emotional and behavioral disturbances. Based on Foster Parent's responses to the Behavior Assessment System for Children-3 (BASC-3), the evaluators report, Claimant's "overall behavior is in the clinically significant range. Atypicality and Withdrawal were in the clinically significant range. [Foster Mother] indicated [Claimant] almost always acts confused, confuses real with make-believe, seems out of touch with reality, often says things that makes no sense, is often shy around other children, sometimes avoids making friends, and almost always isolates himself from others." (Exh. 19 at p. 21.)

13. Based on the results of their evaluation and assessment, the school district evaluators determined Claimant does not meet the special education eligibility requirement as a student with a Special Learning Disability. They determined Claimant meets the special education eligibility criteria as a student with an Other Health Impairment due to his demonstrated inattentiveness, hyperactivity, and impulsive

behaviors impacting his academics. Accordingly, Claimant's February 11, 2021 Individualized Education Program (IEP) notes his general education placement with certain classroom and testing accommodations including, among other things, separate seating for limited distraction to complete work and shortened assignments.

14. In early 2021, at approximately age nine, Claimant tied a bathrobe around his neck and made suicidal statements after being upset about having his blood drawn during an outpatient doctor's appointment. A psychiatric evaluation determined Claimant presented with low suicide risk and he did "not meet LPS [the Lanterman-Petris-Short Act] hold criteria at this time." (Exh. 11 at p. 4.) Claimant's medical records note, "Presentation is suggestive of reactionary behavior in response to acute stressors (doctor's appt, recent contact with bio dad, and changes in outpt providers) in the context of ADHD and possible underlying mood disorder." (*Ibid.*) Claimant's medical records additionally provide the following diagnosis, "ADHD, r/o [rule out] adjustment disorder, r/o [rule out] mood disorder". (*Id.*)

### **NLACRC's Determination of Ineligibility**

15. In May 2020, prior to any school district evaluation of Claimant, Foster Parent requested services and supports for Claimant from NLACRC.

16. Heike Ballmaier, Psy.D., supervises NLACRC'S staff psychologists and intake case managers, associates, and staff. She serves on NLACRC's interdisciplinary team conducting eligibility assessments. At the administrative hearing, Dr. Ballmaier explained the eligibility categories and substantial disability requirement set forth in the Lanterman Act and its regulations. She explained the interdisciplinary team consults diagnostic criteria and identifying characteristics of Intellectual Disability (ID) and Autism Spectrum Disorder (ASD) in the Diagnostic and Statistical Manual of

Mental Disorders, Fifth Edition (DSM-5) to determine eligibility for services and supports under the Lanterman Act's qualifying categories of "autism" and "intellectual disability."

17. The DSM-5 defines ID as "a disorder with onset during the developmental period that includes both intellectual and adaptive functioning deficits in conceptual, social, and practical domains." (Exh. 4.) The following three criteria must be met:

A. Deficits in intellectual functions, such as reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience, confirmed by both clinical assessment and individualized, standardized intelligence testing.

B. Deficits in adaptive functioning that result in failure to meet developmental and socio-cultural standards for personal independence and social responsibility. Without ongoing support, the adaptive deficits limit functioning in one or more activities of daily life, such as communication, social participation, and independent living, across multiple environments, such as home, school, work, and community.

C. Onset of intellectual and adaptive deficits during the developmental period.

(See Exh. 4.)



18. Thus, the definitive characteristics of ID include deficits in general mental abilities (Criterion A) and impairment in everyday adaptive functioning, in comparison to an individual's age, gender, and socio-culturally matched peers (Criterion B). To meet the diagnostic criteria for ID, the deficits in adaptive functioning must be directly related to the intellectual impairments described in Criterion A. Onset is during the developmental period (Criterion C). A diagnosis of ID should not be assumed because of a particular genetic or medical condition. Any genetic or medical diagnosis is a concurrent diagnosis when ID is present. The DSM-5 emphasizes the need for an assessment of both cognitive capacity and adaptive functioning. The severity of ID is determined by adaptive functioning rather than IQ score. (See Exh. 4.)

19. The DMS-5 diagnostic criteria for ASD are as follows:

A. Persistent deficits in social communication and social interaction across multiple contexts, as manifested by the following, currently or by history:

1. Deficits in social-emotional reciprocity, ranging, for example, from abnormal social approach and failure of normal back-and-forth conversation; to reduced sharing of interests, emotions, or affect; to failure to initiate or respond to social interactions.

2. Deficits in nonverbal communicative behaviors used for social interaction, ranging, for example, from poorly integrated verbal and nonverbal communication; to abnormalities in eye contact and body language or deficits

in understanding and use of gestures; to a total lack of facial expressions and nonverbal communication.

3. Deficits in developing, maintaining, and understanding relationships, ranging, for example, from difficulties adjusting behavior to suit various social contexts; to difficulties in sharing imaginative play or in making friends; to absence of interest in peers.

B. Restricted, repetitive patterns of behavior, interests, or activities, as manifested by at least two of the following, currently or by history:

1. Stereotyped or repetitive motor movements, use of objects, or speech (e.g., simple motor stereotypies, lining up toys or flipping objects, echolalia, idiosyncratic phrases).

2. Insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior (e.g., extreme distress at small changes, difficulties with transitions, rigid thinking patterns, greeting rituals, need to take same route or eat same food every day).

3. Highly restricted, fixated interests that are abnormal in intensity or focus (e.g., strong attachment to or preoccupation with unusual objects, excessively circumscribed or perseverative interests).

4. Hyper- or hyporeactivity to sensory input or unusual interest in sensory aspects of the environment (e.g., apparent indifference to pain/temperature, adverse response to specific sound or textures, excessive smelling or touching of objects, visual fascination with lights or movement).

C. Symptoms must be present in early developmental period (but may not become fully manifest until social demands exceed limited capacities, or may be masked by learned strategies in later life).

D. Symptoms cause clinically significant impairment in social, occupational, or other important areas of current functioning.

(See Exh. 3.)

20. These essential diagnostic features of ASD—deficits in social communication and social interaction (Criterion A) and restricted repetitive patterns of behavior, interests and activities (Criterion B)—must be present from early childhood and limit or impair everyday functioning (Criteria C and D).

21. The DSM-5 has no diagnostic criteria for the Lanterman Act's "fifth category," which is intended to capture disabling conditions closely related to intellectual disability or conditions requiring treatment similar to that required for individuals with intellectual disability. Ballmaier explained the interdisciplinary team employs the *Association of Regional Center Agencies Guidelines for Determining "5<sup>th</sup> Category" Eligibility for the California Regional Centers* (Approved by the ARCA Board

of Directors on March 16, 2002) to determine whether an individual functions in a manner that is similar to that of a person with intellectual disability or requires treatment similar to that required by individuals with intellectual disability and is substantially handicapped with major impairment in several domains, including communication, learning, self-care, mobility, self-direction, independent living, and economic self-sufficiency.

22. Foster Parent provided the evaluators comprising NLACRC's interdisciplinary team with information indicating Claimant has significant difficulties with his adaptive functions across multiple domains, including self-care, communication, and social behavior.

- a. According to Foster Mother's report to NLACRC evaluators, Claimant requires assistance, prompts, and reminders performing personal hygiene tasks, including washing his hair, face, and hands, brushing his teeth, showering, toileting, and dressing himself. He eats with his fingers with a lot of spillage. He does not know how to clean his room. He does not know how to use a microwave. He is unable to identify coins or to understand their assigned values. He cannot tell the time. He is unable to use the telephone.
- b. He engages in echolalia and scripted speech. He has difficulty engaging in reciprocal conversations with others and he has difficulty understanding words and phrases. He enjoys watching movies, but he lacks understanding of the plot. He is unable to follow multi-step instructions.
- c. He lacks safety awareness in the community and at home. He requires supervision at all times. He is physically aggressive with peers and adults alike. He is resistant to commands. He has emotional outbursts, during

which he hits, kicks, bites, throws and breaks things. He elopes when angered. His emotional outbursts interfere with his social participation. Foster Parent described Claimant to the evaluators as anti-social and preferred being by himself.

- d. Claimant dislikes being touched. Claimant has sensitivity to certain clothing material and likes only wearing sweats. He is sensitive to loud sounds. He engages in rocking. He requires constant oral stimulation, and he chews on objects. He only sleeps two to four hours each night.

23. NLACRC retained Brigitte Griffin, Psy.D., a clinical psychologist who conducted a virtual/distance observation incorporating the Autistic Spectrum Disorder Observation (ADOS-2) and Autism Diagnostic Interview-Revised (ADI-R) to determine Claimant's current levels of cognitive, adaptive, and social functioning. In the September 14, 2020 Virtual Assessment report she prepared, Dr. Griffin acknowledges the pandemic emergency precluded a comprehensive psychodiagnostics assessment of Claimant's cognitive functioning and, based on the available information at the time, she indicates the most appropriate DSM-5 diagnosis for Claimant is Provisional Speech and Language Disorders, Provisional Disruptive Mood Dysregulation Disorder, Provisional Reactive Attachment Disorder and Rule Out Intellectual Disability.

24. On November 12, 2020, NLACRC's interdisciplinary team evaluators made an initial determination Claimant is ineligible for Lanterman Act services and supports.

25. Thereafter, Alan Golian, Psy.D., on behalf of NLACRC, conducted an in-person psychological assessment of Claimant and prepared a December 24, 2020 Psychological Evaluation report, in which he documents diagnostic results obtained from his administration of the Wechsler Intelligence Scale, Fifth Edition (WISC-V),

ADOS-2, and Vineland Scales of Adaptive Functioning -III-Rater (Vineland) to conclude Claimant does not present with ID or ASD.

26. Dr. Golian reports Claimant's Full Scale IQ (FSIQ) is in the Average range but five composite scores are somewhat inconsistent, thereby indicating Claimant's FSIQ should be interpreted with some caution.

27. Dr. Golian notes that throughout his administration of the ADOS-2 to Claimant, Claimant's eye contact was inconsistent, but his facial expression appeared appropriate. Dr. Golian built rapport with Claimant and Claimant attempted to reciprocate social communication. Claimant played with toys in a functional and representational manner. He engaged Dr. Golian in joint play. He provided detail descriptions of events occurring in pictures and story books. He identified the emotions of characters. He demonstrated understanding of typical social relationships. Dr. Golian observed no sensory, stereotyped, or repetitive behaviors.

28. Dr. Golian reports that Claimant's Vineland ratings suggest his socialization skills are below an age-expected level compared to his peers of the same age. Claimant's overall communication skills are within the Low range of functioning. According to Dr. Golian, Claimant speaks in complete sentences with no speech abnormalities associated with ASD. Dr. Golian found Claimant's use of gestures appropriate. Claimant shared information about himself and inquired about Dr. Golian. Claimant's adaptive skills measured by Vineland is in the Low range. His Daily Living Skills domain scores are also in the Low range.

29. Overall, Dr. Golian concludes Claimant does not present with ID or ASD.

The results of the current evaluation do not suggest the presence of either condition. Although [Claimant's] eye

contact was inconsistent, his facial expressions and use of gestures appeared to be within normal limits. [Claimant] also engaged in conversation and interactive play, demonstrated continuity and empathy, imitated the actions that were depicted in the storybook, and played with toys in a functional and representational manner (i.e. had figures interact with one another and provided voices for each figure). Additionally, [Claimant] did not display any stereotyped, repetitive, sensory, or restricted patterns of behavior associated with Autism Spectrum Disorder.

Although adaptive limitations were reported on the [Vineland], testing does not indicate the presence of intellectual/cognitive deficits. Specifically, [Claimant's] classification on the WISC-V placed in the Average range, as measured by a standard score of 93, which falls within the 32<sup>nd</sup> percentile. [Claimant's] array of difficulties may be attributed to emotional and behavioral disturbances that have manifested as a result of family history of mental health conditions and endured trauma throughout his development. Therefore, based on the current testing, interviews, behavioral observations, and previous reports, the most appropriate diagnosis may be [Disruptive Mood Dysregulation Disorder and Attention-Deficit/Hyperactivity Disorder, Combined Type (by History)].

(Exh. 27 at p. 7.)

30. Dr. Golian recommends outpatient mental health services to address Claimant's irritability, defiance, aggression, and impulsivity, as well as his history of trauma.

31. On February 1, 2021, NLACRC notified Foster Parent that Claimant was again found ineligible for Lanterman Act's services and supports. After reviewing additional records containing background, medical, and educational information set forth above, the interdisciplinary team finalized its non-eligibility determination on May 10, 2021.

### **Foster Parent's Testimony**

32. After his initial placement, Claimant resided in 15 to 20 foster homes. Claimant's longest placement so far, lasting 18 months, has been with Foster Parent.

33. At the hearing, Foster Parent recounted her observations of Claimant's behaviors which prompted her to apply for services and supports under the Lanterman Act. Foster Parent's testimony was consistent with prior reporting of her observations about Claimant's behaviors. (See Factual Finding 22.) Foster Parent was passionate expressing her concern's for Claimant's wellbeing. She testified, "It is not that he is bad. There is an underlying situation. I want him to do better."

## **LEGAL CONCLUSIONS**

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

1. As Claimant is seeking to establish eligibility for Lanterman Act supports and services, he has the burden of proving by a preponderance of the evidence he has met the Lanterman Act's eligibility criteria. (*Lindsay v. San Diego Retirement Bd.* (1964)



231 Cal.App.2d 156, 161[disability benefits]; *Greatorex v. Board of Admin.* (1979) 91 Cal.App.3d 54, 57 [retirement benefits]; Evid. Code, § 500.)

2. "Preponderance of the evidence means evidence that has more convincing force than that opposed to it.' (Citations.) . . . [T]he sole focus of the legal definition of 'preponderance' in the phrase 'preponderance of the evidence' is the *quality* of the evidence. The *quantity* of the evidence presented by each side is irrelevant." (*Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314, 324-325, original italics.) In meeting the burden of proof by a preponderance of the evidence, Claimant "must produce substantial evidence, contradicted or un-contradicted, which supports the finding." (*In re Shelley J.* (1998) 68 Cal.App.4th 322, 339.)

## **Applicable Law**

3. The Lanterman Act defines "developmental disability" to mean the following:

[A] disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. . . . [T]his 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 intellectual disability, but shall not include other handicapping conditions that are solely physical in nature.

(Welf. & Inst. Code, §4512, subd. (a).)

4. California Code of Regulations, title 17 (CCR), section 54000 further defines "developmental disability" as follows:

(a) "Developmental Disability" means a disability that is attributable to intellectual disability, cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with intellectual disability.

(b) The Developmental Disability shall:

(1) Originate before age eighteen;

(2) Be likely to continue indefinitely;

(3) Constitute a substantial disability for the individual . . .;

(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 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 need for treatment similar to that required for mental retardation.

5. Establishing the existence of a developmental disability within the meaning of the Lanterman Act and promulgated regulations requires Claimant additionally to establish by a preponderance of evidence the developmental disability is a "substantial disability," defined in section 4512, subdivision (j), to mean "the existence of significant 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: (1) Self-care. [¶] (2) Receptive and expressive language. [¶] (3) Learning. [¶] (4) Mobility. [¶] (5) Self-direction. [¶] (6) Capacity for independent living. [¶] (7) Economic self-sufficiency." (See also CCR, § 54001, subd. (a); CCR, § 54002 defines "cognitive" as "the ability of an individual to solve problems with insight to adapt to new situations, to think abstractly, and to profit from experience.")

## Discussion

6. Claimant has not proven by a preponderance of evidence he presents with ID. Dr. Golian's assessment of Claimant's intellectual functioning employing the WISC-V determined Claimant has an IQ score of 93, which indicates Claimant is of average intelligence. Although some inconsistent composite scores caused Dr. Golian to recommend a cautious interpretation of Claimant's IQ score, that score is in line with school district evaluators' findings of his demonstrated average, age-appropriate cognitive abilities. School district evaluators determined Claimant has not demonstrated any significant weakness in crystalized knowledge, fluid reasoning, short-term memory, long-term storage and retrieval, phonological processing, visual processing and processing speed. (See Factual Finding 11.) Claimant has exhibited non-compliant behaviors in his educational settings; however, his teachers regard him as academically capable. He is matriculated in the general education curriculum offered at his school. He has no demonstrated weaknesses on standardized academic assessments. The evidence of Claimant's cognitive functioning is not indicative of an individual with ID.

7. Foster Parent reported observing Claimant having difficulties with his everyday adaptive functioning. Dr. Golian, using the Vineland, determined Claimant's daily living skills are in the Low average range. Nonetheless, a preponderance of the evidence does not establish Claimant presents with adaptive functioning deficits or limitations related to an intellectual impairment and which requires ongoing support. Rather, as Dr. Golian concludes, a preponderance of the persuasive evidence establishes Claimant's difficulties are related to a history of trauma endured throughout his development. (See Factual Findings 29.)

8. Claimant has not proven by a preponderance of evidence he presents with ASD. Notwithstanding evidence of Claimant's disruptive and non-compliant behaviors, observations and assessments establish Claimant presents with typical social communication and social interaction skills. (See Factual Findings 5 and 28.) He maintains eye contact. He converses in full sentences without difficulty. While conversing, he displays an average level of vocabulary, abstraction, and intelligence. He uses gestures appropriately. He engages in reciprocal communications in which, for example, he shares information about himself and inquires about others. He has demonstrated affection for biological family members. Any obstacles to his maintenance of peer relations have been attributed to irritability, moodiness, and depression associated with his efforts coping with trauma and separation. Claimant does not, either currently or by history, manifest persistent deficits in social communication and interactions across multiple contexts that are characteristic of ASD.

9. Reportedly, Claimant has engaged in echolalic and scripted speech as well as rocking. He has exhibited sensitivity to loud sounds and dislikes being touched. Such sensory, stereotyped, or repetitive behaviors were not confirmed in clinical settings where Claimant was subjected to the administration of multiple assessments. (See Factual Findings 10 and 26.) But even accepting the reported history of these behaviors, a preponderance of the evidence did not establish such behaviors as significant limitations in Claimant's everyday functioning.

10. Claimant has not proven by a preponderance of evidence he presents with a "fifth category" condition closely related or similar to ID. As previously discussed, Claimant presents with average intellectual functioning. (See Legal Conclusion 6.) Assessment of his academic learning, which enables analysis of his

capacity for reasoning, planning, abstract thinking, and judgment, revealed no significant weaknesses. (Factual Finding 10.) He receives his educational instruction in a general education classroom with accommodations to avoid distractions and to ensure completion of assignments. (Factual Finding 13.) The challenges confronting Claimant in his educational setting are attributable to and best explained by his ADHD and mental health status, including inattentiveness and impulsivity. (See Factual Findings 6, 7, 13, and 29.) Dr. Golian additionally identified Claimant's family history and associated trauma as impactful. (Factual Finding 29.)

11. Nor has Claimant proven by a preponderance of evidence he presents with a "fifth category" condition requiring treatment similar to that required by an individual with ID. "Treatment" is about instruction. For an individual with ID, treatment entails breaking down skills into small steps and systematically and repeatedly practicing those steps with the individual. (See *Max C. v. Westside Regional Center* (Oct. 12, 2018, B283062 [nonpub. opn].) Treatment is distinct from "service," which is something intended to provide assistance or help. For example, services in hygiene, housekeeping, money management, and transportation. (*Id.*) The credible evidence offered at the hearing neither suggests nor supports a finding Claimant requires treatment(s) similar to those required by a person with an intellectual disability. Claimant presents with ADHD and Disruptive Mood Dysregulation Disorder, neither of which substantially limits his self-care, receptive and expressive language, mobility, self-direction, capacity for independent living or economic self-sufficiency.

12. By reason of Factual Findings 1 through 33 and Legal Conclusions 1 through 11, cause exists to deny Claimant's appeal. Claimant has not met his burden of establishing by a preponderance of evidence his eligibility for Lanterman Act

services and supports under section 4512, subdivision (a), of the Welfare and Institutions Code.

### **ORDER**

1. Claimant's appeal is denied.
2. North Los Angeles County Regional Center's determination that Claimant is ineligible for Lanterman Act services and supports is affirmed.

DATE:

JENNIFER M. RUSSELL  
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.