

**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. 2023010799**

**DECISION**

Thomas Lucero, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on August 3, 2023.

Dana Lawrence, Fair Hearing and Administrative Procedures Manager, appeared on behalf of the Service Agency, North Los Angeles County Regional Center (NLACRC). Mother represented Claimant. Their names are withheld to protect privacy.

This matter is governed by the Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code sections 4500 through 4885 (Lanterman Act). Each of the regulations cited below is a section of title 17 of the California Code of Regulations.

Testimony and documents were received in evidence. The record closed and the matter was submitted for decision on August 3, 2023.

## **STATEMENT OF THE CASE**

Claimant has difficulties at school and generally in socializing with his peers and others. But after much testing, discussed in detail below, Claimant has not been found to have any of the conditions that would qualify him for services from the Service Agency.

## **FINDINGS OF FACT**

1. In a letter dated December 20, 2022, the Service Agency advised Claimant that its Interdisciplinary Eligibility Committee had reviewed his case and determined that he was not eligible for services. The committee found that Claimant did not have a "developmental disability" as defined in the Lanterman Act, Welfare and Institutions Code section 4512, subdivisions (a) and (j) and Regulations 54000 and 54001.

2. The Service Agency received Claimant's appeal on December 29, 2022. The matter was set for hearing on August 3, 2023, following the parties' joint motion on April 26, 2023, to continue a previously set fair hearing. At that time Claimant waived his right to have a fair hearing within 50 days of the date the Service Agency received his fair hearing request under Welfare and Institution Code, section 4712, subdivision. (a). Claimant also then waived his right to have a final administrative decision rendered within 80 days of the date the Service Agency received his fair hearing request under Welfare and Institution Code, section 4712.5, subdivision (a), or

within 90 days if applicable to his case under Welfare and Institution Code, section 4712.5, subdivision (c).

## **Background**

3. Claimant, 11 years old, lives with his mother and older brother. Claimant is in the fifth grade in general education at a public school. He has been found ineligible for special education. Since first grade, Claimant has been under a 504 Plan, plans governed by section 504 of the U.S. Rehabilitation Act of 1973 offering accommodations to students with disabilities, such as front seating in a classroom or extra time to take tests.

4. Sandi J. Fischer, Ph.D., is Co-Supervisor of the Clinical and Intake Departments at the Service Agency. She received an M.A. and Ph.D. in Clinical Psychology and has been a California-licensed psychologist since 1990. Besides being a Staff Psychologist at NLACRC, Dr. Fischer has since 1990 conducted developmental, psychological, and Psycho-Educational assessments for children, adolescents, and adults in private practice.

5. Dr. Fischer testified at the fair hearing. She had reviewed all of the documents the Service Agency introduced as evidence and commented on them and on appropriate methods for determining eligibility for services.

## **Assessment for Special Education**

6. Over a few days in early March 2018, when Claimant was six years old, personnel of the Eastside Union School District (EUSD) performed a Psycho-Educational assessment. Mother expressed concern that Claimant's attention wandered and he behaved in ways that could interfere with his schoolwork. Claimant

had been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD). The Psycho-Educational assessment considered these and other matters to determine levels of functioning and whether Claimant qualified for special education under the eligibility criteria for Other Health Impairment (OHI).

7. An EUSD school psychologist, Stefanie Flores, administered the Cognitive Assessment System (CAS), a means to discern a student's thinking and reasoning abilities. EUSD considered observations by Claimant's teacher, who completed the Behavior Assessment System for Children, Third Edition (BASC-3), measuring social-emotional adjustment.

8. The teacher reported that Claimant experienced clinically elevated problems with Aggression, Conduct, and Withdrawal, similarly to Mother's observation that at home Claimant experienced clinically elevated problems with Hyperactivity, Aggression, Conduct, and Attention. EUSD found however that Claimant scored in the Average Range in Basic Reading Skills, Overall Math Skills, and Academic Skills in general.

9. Making use of the EUSD report on March 21, 2018, a team of educators at the Antelope Valley Special Education Local Plan Area (Antelope Valley SELPA) considered whether Claimant might benefit from special education services under an Individualized Education Program (IEP). The IEP team concluded Claimant did not qualify for special services and a general education setting was the Least Restrictive Environment (LRE) for him.

## **Intake Considerations**

10. The Service Agency's Intake Service Coordinator, Stacey L. Cole, prepared a September 28, 2022 Social Assessment. She noted Mother's information that since

first grade Claimant has been under a 504 Plan. Mother preferred an IEP. She reported that no other agencies were offering any assistance with Claimant's behavioral or possible mental health and other challenges.

11. Ms. Cole noted Claimant's problems with communication. Reportedly he would make inappropriate comments and statements to others, often with a sexualized content or the use of profanity. Mother reported outbursts and several tantrums daily, when Claimant will scream, cry, and generally be disruptive or destructive, sometimes with attempts at physically injuring others. Ms. Cole recommended obtaining school records and scheduling psychological examinations as needed to determine eligibility for services.

12. The Service Agency reviewed Claimant's medical records on October 11, 2022. They showed that Claimant was receiving treatment for ADHD. They did not show a substantially handicapping condition of cerebral palsy or epilepsy.

### **November 2022 Psychological Evaluation**

13. Myah Gittelson, Psy.D., assessed Claimant on November 4, 2022, the first of the Service Agency's psychological examinations as recommended by Ms. Cole. Dr. Gittelson sought to determine Claimant's levels of cognitive and adaptive functioning and to rule out Autism Spectrum Disorder (ASD).

14. Dr. Fischer noted that she, Dr. Gittelson, and the psychology profession in general diagnose or rule out ASD and many other recognized psychological disabilities by using the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision (DSM-5-TR). This treatise sets out in detail criteria for determining whether a patient may have a psychological condition.

15. Dr. Gattison interviewed Mother and reviewed a March 2018 Psychological Educational assessment available from the EUSD. She administered the Wechsler Abbreviated Scale of Intelligence, Second Edition (WASI-II). She made use of the Adaptive Behavior Assessment System, Third Edition (ABAS-3) Parent Form and the Social Responsiveness Scale, Second Edition (SRS-2). Dr. Gittelsohn also attempted to administer the Autism Diagnostic Observation Schedule, 2 (ADOS-2) Module 3.

16. Claimant was not very cooperative, hampering Dr. Gittelsohn's evaluation. Dr. Gittelsohn's attempt to assess Claimant's cognitive functioning is described in Exhibit 13, page A127:

The examiner attempted to formally assess [Claimant's] cognitive skills utilizing the . . . WASI-II. He remained mute and had limited compliance with the demands of the testing activities. The scores reported should be reviewed with caution, as the examiner is not clear if [Claimant] put forth his best effort. [Claimant] obtained a score within the Borderline range (SS=70) and at the 2nd percentile for the Perceptual Reasoning composite.

17. Dr. Gittelsohn had two diagnoses: Rule Out ASD; and ADHD per history. To explore ASD further, Dr. Gittelsohn recommended observing Claimant at school and interviewing his teacher.

18. The Service Agency was unable to carry out all of Dr. Gittelsohn's recommendations because, as Dr. Fischer noted, Claimant's teacher did not return the Service Agency's telephone calls regarding the plan to observe Claimant at school. As Dr. Fischer also noted, the Service Agency learned that, even if the teacher had

responded, Claimant's school would allow observation for no more than 15 minutes, insufficient time for a reliable assessment.

## **December 2022 Determination of Non-Eligibility**

19. On December 19, 2022, the Service Agency determined Claimant was ineligible for services because it found no evidence of any of the five categories of developmental disability listed in the Lanterman Act. As more specifically set out in Welfare and Institutions Code section 4512, subdivision (a)(1): "'Developmental disability' means . . . intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include [the fifth category of] disabling conditions found to be closely related to intellectual disability or to require treatment" like that for intellectual disability.

## **Medical Records**

20. The Service Agency reviewed medical records prepared by Claimant's pediatrician, Brian Gaw, M.D.

21. In September 2020, Dr. Gaw noted that Claimant had a history of ADHD, was playing with fire at home, and was affected by conduct disorder. Dr. Gaw does not specialize in psychiatry, but he prepared some psychiatric notes, stating that Claimant's speech was clear, his thought processes were coherent, his insight was good, and he had no obsessive, compulsive, phobic, or delusional thoughts.

22. In November 2021, Dr. Gaw's psychiatric notes stated that Claimant could not pay attention and was hyperactive. The two diagnoses were: ADHD, Combined Type; and Conduct Disorder, Childhood Onset Type, coded F902 and F911 respectively, under the International Classification of Diseases, Tenth Revision (ICD-10), a system

used by physicians to classify and code diagnoses, symptoms, and procedures for claims processing.

23. In May 2022, Dr. Gaw noted Claimant's ADHD, but also, because of a concern regarding ASD, decided to refer Claimant to a psychologist. Dr. Gaw made a similar note on ADHD and referral to a psychologist in August 2022.

24. Claimant was hospitalized on April 11, 2023, when his school reported to a Psychiatric Mobile Response Team (PMRT), Los Angeles County Department of Mental Health, that Claimant was threatening to shoot others at school. The PMRT noted that Claimant lies excessively, is aggressive, initiates fights, is always anxious, does not get along with peers, is unable to express emotions, and has set multiple fires. The PMRT diagnosed Conduct Disorder, Unspecified, F91.9, and Pyromania, F63.1.

### **May 2023 Psychological Evaluation**

25. Alan Golian, Psy.D., wrote his Psychological Evaluation of Claimant after observation and testing on May 25, 2023. Dr. Golian reviewed Dr. Gittelsohn's evaluation and noted that Claimant had been uncooperative with her attempts at testing. Dr. Golian also reviewed the March 2018 Psycho-Educational Evaluation conducted by EUSD, summarizing, Exhibit 18, page A3:

The assessment findings reported [Claimant] demonstrating Average academic performance and scores on the Cognitive Assessment System (CAS), which varied from Poor to Above Average. The IEP team considered the eligibility of OHI and did not find evidence to support an IEP; instead, they

recommended developing a 504 Plan to support [Claimant's] needs.

26. Dr. Golian describes Claimant during their session, Exhibit 18, page A4:

He presented with euthymic [normal or tranquil] mood and congruent affect . . . [Claimant] spoke in complete sentences with no apparent speech abnormalities associated with [ASD]. Receptive language appeared to be intact, as [Claimant] did not have difficulty understanding instructions, following directions, or answering questions. . . . [Claimant's] eye contact and facial expressions appeared to be within normal limits. . . . The examiner was able to build and sustain rapport with [Claimant], as he was participative and interactive throughout the session.

27. To test Claimant's cognitive functioning, Dr. Golian administered the Wechsler Scale of Intelligence for Children, Fifth Edition (WISC-V). He found Claimant's Full Scale IQ (FSIQ) was in the Low Average range, but should be interpreted with caution considering a 19-point discrepancy between [Claimant's] highest and lowest scores. Dr. Golian concluded that Claimant did not meet the criteria for Intellectual Disability (ID).

28. After administering the ADOS-2, Module 3, Dr. Golian found that Claimant's overall classification was Non-Spectrum.

29. Using the Vineland Adaptive Behavior Scales, Third Edition (VABS-III) Dr. Golian found that Claimant's overall Socialization skills might be below the level of his peers and his overall communication skills fell in the Low range, but he spoke in

complete sentences with no apparent abnormalities associated with ASD. The VABS-III measured Claimant's Adaptive functioning in the Low range.

30. Dr. Golian had two diagnoses: ADHD, Combined Type, and Conduct Disorder, Unspecified, coded respectively F90.2 and F91.9 under the ICD-10.

### **June 2023 Determination of Non-Eligibility**

31. On June 5, 2023, the Service Agency determined for the second time that Claimant was not eligible for services.

### **Mother's Evidence**

32. Mother wished it on record that she believes her son, the Claimant, is in need of help. She has been reaching out for that help for six years. Over the years there have been different matters to consider regarding Claimant. He has gotten worse. She sought a fair hearing because as a mother she is trying to support Claimant and if, for instance, his starting fires gets worse, she wants it known she continues to try to obtain help. So far, in mother's view, she has not gotten the support she has looked for and instead she has been "shut down." She hopes that help will be offered before too long, or before it is too late.

## **LEGAL CONCLUSIONS**

### **LEGAL PRINCIPLES**

1. The party that asserts a claim or seeks to change the status quo generally has the burden of proof in administrative proceedings. (Cal. Administrative Hearing

Practice (Cont. Ed. Bar 2d ed. 1997) § 7.50, p. 365.) In these proceedings, then, Claimant bears the burden of proof.

2. Under Evidence Code sections 115 and 500, the evidentiary standard Claimant must meet is proof by a preponderance of the evidence, meaning Claimant must show that the evidence makes it more likely than not that he should prevail on his claim of eligibility.

### **Substantive Law**

3. Welfare and Institutions Code section 4507 provides that “persons with developmental disabilities shall receive services pursuant to” the Lanterman Act.

4. There was no evidence that Claimant has or has had cerebral palsy or epilepsy. This matter concerns ASD, ID, and the fifth of the Lanterman Act’s five categories of eligibility set out in Welfare and Institutions Code section 4512, subdivision (a)(1). The fifth category encompasses “disabling conditions found to be closely related to [ID] or to require treatment similar to that required for individuals with” ID.

5. Regulation 54000 states that eligibility depends not only on whether a person’s disability comes within one of the Lanterman Act’s five categories, but also on characteristics such as whether the disability is likely to last indefinitely and is substantially disabling. Subdivision (c) of the regulation states that not included in disabilities that qualify a person for services are: (1) solely psychiatric disorders; (2) solely learning disabilities; and (3) disabilities that are solely physical. The regulation’s provisions parallel provisions in Welfare and Institutions Code section 4512.

6. Regulation 54001, subdivision (a)(1), states that to be substantial, a disability must result in major impairment of cognitive or social functioning. Subdivision (a)(2) of the regulation lists significant functional limitations that a person's disability must impose to be eligible, including for instance limitations in receptive and expressive language. The regulation's provisions, like those in the previous regulation, parallel provisions in Welfare and Institutions Code section 4512.

7. Regulation 54010 describes procedures for a Service Agency's decision on eligibility following intake and assessment, and how the decision may be appealed.

## **DSM-5-TR**

8. The DSM-5-TR description of ASD, Exhibit 20, pages A15 through A27, begins: "Persistent deficits in social communication and social interaction across multiple contexts . . ." Contexts include failure to interact with others, such as in conversation, poor verbal and nonverbal communication, and deficits in developing, maintaining, and understanding relationships, such as friendships.

9. The DSM-5-TR, Exhibit 21, pages A31 through A40, description of ID, also called Intellectual Developmental Disorder, begins "a disorder . . . that includes both intellectual and adaptive functioning deficits . . ." Three criteria must be met: A. Intellectual deficits, such as in reasoning and academic learning, confirmed by both clinical assessment and 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." Such deficits limit functioning in daily life. C. Onset of intellectual and adaptive deficits during the developmental period.

## **ANALYSIS**

10. After extensive testing, Claimant has not been diagnosed with ASD. The testing has been focused at times on ASD and whether Claimant might be on the spectrum. But consistently he has been found not to have the condition.

11. Claimant has difficulties with communication. But not because he is unable to express himself, often the case with those afflicted with ASD. Claimant's difficulties may be described as social, rather than related to development of his cognitive functioning. Thus Claimant does not get along with his peers.

12. The difficulty is not because Claimant cannot speak to other children or is hindered from conscious interaction with people, but because of his manner, so to speak. He may alienate others by the use of profanity or by being aggressive. If he is not friends with others, it is not because ASD prevents him from developing an understanding of friendship. Claimant is not developmentally disabled in this way.

13. Claimant is not eligible for services because he does not have ASD, one of the five categories of developmental disabilities within the meaning of the Lanterman Act.

14. Claimant's intellect or cognitive abilities have been tested over the years and found to be in the Average Range, or in some respects in the Low Range, though when found to be in this range, it is uncertain whether the testing was valid, because Claimant did not always put forth his best effort. In any case, Claimant has learning difficulties, and such difficulties are at times caused by or associated with ID. But these difficulties, in Claimant's case, are not so severe as to qualify him for services based on ID.

15. Claimant is able to learn. His learning ability is not so weak as to qualify him for special education services. Claimant has accommodations under a 504 Plan not because he is unable to learn, but because he must be reminded to pay attention and focus.

16. To the extent Claimant has a learning disability, it is not attributable to diagnosed ID. Claimant's difficulties with learning are not related to his development. The difficulties are no more than a learning disability unaccompanied by other characteristics of ID under the DSM-5-TR. Under Regulation 54000, subdivision (c), a disability that is solely a learning disability does not qualify a person for services.

17. Learning difficulties, alone or with other difficulties, may be so disabling as to cause a condition closely related to ID or to require treatment like that for ID. On the basis of such a condition, Claimant would qualify for services under the fifth category of disability under subdivision (a)(1) of section 4512 of the Welfare and Institutions Code.

18. Claimant's condition calls for help, as Mother testified with conviction and convincing urgency. But it is not like conditions in the Lanterman Act's fifth category. As stated above, Claimant has social difficulties and more specifically school-related difficulties, but they are related to traits like aggression and a predilection for inappropriate, sometimes sexualized, language. Claimant is not prevented from learning and adopting social norms and behavior by delayed intellectual development. Claimant has instead developed traits that put him at odds with society and lead to his neglect of school obligations and learning.

19. A prominent example of a problematic trait of Claimant's is that he sets fires. At least one medical professional has therefore diagnosed him with pyromania.

Such a condition may cause great concern, of the kind that Mother expressed at the hearing. This trait of Claimant's may call for urgent attention and treatment and Mother is no doubt thoroughly justified in saying so. But the condition is not the kind that the Lanterman Act addresses or mandates treatment for.

20. Mother is in the right to seek assistance for her son, and has succeeded at school, such as with the 504 Plan in place. It is likewise entirely understandable that Mother is not satisfied with the assistance she has been able to garner. She was right to insist that Claimant be tested thoroughly, including by professional personnel of the Service Agency, in case they should find that Claimant has a condition qualifying him for services under the Lanterman Act. But in the end, the testing and other evidence of Claimant's development and status does not show that he qualifies for Lanterman Act services. Under the law and its implementing regulations, NLACRC may not provide Claimant its services.

## **ORDER**

Claimant's appeal is denied.

DATE:

THOMAS LUCERO  
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.