BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

SOUTH CENTRAL LOS ANGELES REGIONAL CENTER,

Service Agency.

OAH No. 2023020640

DECISION

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter via telephone and video conference on May 23, 2023. Tami Summerville, Fair Hearings and Complaint Manager, represented South Central Los Angeles Regional Center (SCLARC or service agency). Foster Mother represented Claimant, who was not present at the hearing. To preserve privacy and confidentiality neither Foster Mother 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 letter dated December 9, 2022, SCLARC informed Foster Mother Claimant "is ineligible for regional center services. This is because an interdisciplinary team at the South Central Los Angeles Regional Center determined that [Claimant] does not have a 'developmental disability' as that term is defined by California Welfare and Institutions Code, Section 4512, subdivisions (a) and (l) and the California Code of Regulations, Title 17, Sections 54000 through 54002." (Exh. 1.)

2. On February 3, 2023, Foster Mother, acting on Claimant's behalf, filed a Fair Hearing Request stating, "Do not agree with the decision made by SCLARC. Child displays negative behaviors in the home & at school, easily elevated, very hard to calm down & aggression." (Exh. 1.) There were no objections to the timeliness of the fair hearing request.

3. All jurisdictional requirements are satisfied.

Claimant's Background

4. Claimant is a seven-year-old male. At age four, the Department of Child and Family Services (DCFS) detained Claimant due to abuse and neglect. Claimant was initially placed with a paternal aunt. Thereafter, Claimant was placed in a foster home before his eventual placement with Foster Mother in December 2021.

5. Claimant is enrolled in the second grade. His school district provides him with an Individual Education Plan (IEP). At school, Claimant receives unspecified services from a behavior specialist and a one-on-one assistant. Claimant's school records, including his IEP, were not offered in evidence.

6. The records of Claimant's most recent medical assessment, dated April 3, 2023, state he was "previously diagnosed with Attention-deficit hyperactivity disorder, combined type . . . and Disruptive mood dysregulation disorder . . . and r/o Autism Spectrum Disorder." (Claimant Exh. 4.) Claimant's medical records additionally identify treatments including administration of Risperidone, a psychotropic medication used for treating schizophrenia, bipolar disorder, and irritability, and Guanfacine, a non-stimulant medication used for treating attention deficit hyperactivity disorder.

7. According to his medical records, since January 2022, Claimant has had four psychiatric hospitalizations due to "hitting, impulsive behaviors (jumping out of a car), daily tantrums with aggressive behavior." (Claimant Exh 4.)

8. Claimant receives wraparound services, an intensive mental health program focused on the recipient's needs. The precise nature of Claimant's wraparound services was not established by the evidence.

9. Claimant's DCSF social worker requested SCLARC to evaluate and determine Claimant's eligibility for support and services under the Lanterman Act. On August 2, 2022, a SCLARC service coordinator conducted an intake interview. The resulting November 30, 2022 report titled *Lanterman Psycho-Social* documents Claimant's current functioning. As documented, there are no concerns with Claimant's fine or gross motor skills. Claimant performs his personal care activities with assistance when reminded to do so. Claimant exhibits emotional outbursts, displays aggressive behaviors, and intentionally destroys property. Although Claimant does not engage in self-injurious behaviors or elopement, he does require constant supervision. Claimant easily understands others when communicating and he uses and understands communicative signs and gestures. Claimant does not know the letters of the alphabet. He knows shapes and how to count to nine. He is capable of focusing on a preferred task or activity for 30 minutes. Claimant is disruptive in his second grade classroom. As documented, Claimant "is in the 'STEP program' [Specialized Transitional Education Program] as a regular special education could not accommodate his needs." (SCLARC Exh. 2.)

10. The SCLRC service coordinator recommended, among other things, a psychological evaluation "to evaluate for the presence of Autism/Intellectual Disability." (SCLARC Exh. 2.)

SCLARC's Determination of Ineligibility

11. Laurie McKnight Brown, Ph.D., is a lead psychologist consultant at SCLARC, and in that role oversees the work of other psychologists and serves as a member of SCLARC's multidisciplinary team conducting eligibility assessments, among other things. At the administrative hearing, Dr. Brown explained the eligibility categories and substantial disability requirement set forth in the Lanterman Act and its regulations. She explained the multidisciplinary team consults diagnostic criteria and identifying characteristics of Intellectual Disability, also referenced as Intellectual Developmental Disorder (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."

12. Relevant excerpts from the DSM-5 were admitted in evidence as SCLARC Exhibit 4 and SCLARC Exhibit 5. 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." (SCLARC Exh. 5.) 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.

(SCLARC Exh. 5.)

13. 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 SCLARC Exh. 5.)

14. The DMS-5 sets forth diagnostic criteria for ASD 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.

(SCLARC Exh. 4.)

15. 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).

16. The DSM-5 has no diagnostic criteria for the Lanterman Act's "fifth category," which is a category intended to capture disabling conditions closely related to ID or conditions requiring treatment similar to that required for individuals with ID. Dr. Brown explained the SCLARC multidisciplinary team is guided by the *Association of Regional Center Agencies Clinical Recommendations for Defining "Substantial Disability" for the California Regional Centers* (Approved by the ARCA Board of Directors on August 15, 2013) when determining whether an individual functions in a manner similar to that of a person with ID or requires treatment similar to that required by individuals with ID because of substantial limitations or impairments in several domains, including self-care, receptive and expressive language, learning, mobility, self-direction, independent living, and economic self-sufficiency. (See SCLARC Exh. 6.)

17. Dr. Brown explained Loren M. Hill, Ph.D., conducted the psychological evaluation of Claimant by telehealth on October 13, 2021, and in person on November 10, 2022. Dr. Hill prepared a Psychological Evaluation report, which was admitted in evidence as SCLARC Exhibit 3. In that Psychological Evaluation report, Dr. Hill acknowledges the COVID-19 pandemic emergency precluded her comprehensive psychodiagnostics evaluation of Claimant. Dr. Hill administered the following assessments to Claimant: the Adaptive Behavioral Assessment System, 3d Edition (ABAS-3) to evaluate his functioning in three general areas of adaptive behavior—conceptual, social, and practical; the Wechsler Nonverbal Scale of Ability (WNV) to evaluate his overall cognitive functioning; and the Autism Spectrum Rating Scales (6-

18 Years) Short Form (ASRS) to quantify any observations of symptoms associated with ASD.

18. Dr. Hill did not administer to Claimant any version of the Autism Diagnostic Observation Schedule (ADOS), a widely accepted activity-based assessment of communication skills and social interactions. Dr. Brown explained why testifying, "Our expectations for testing psychologists is that everyone is to use a tool to screen for autism. That might be the ASRS, which is what Dr. Hill used. After using that tool and meeting with the person, if the psychologist is concerned about autism because they see some autism-like behaviors, then our expectation is that they go a step further and bring the individual back in again to complete the ADOS or the ADIR [Autism Diagnostic Interview-Revised]. . . . The ADOS is one of the tools used to help diagnose autism. It is a tool we do require when the clinician is concerned about autism."

19. Dr. Hill's clinical impressions of Claimant are memorialized in the Psychological Evaluation report she prepared as follows:

> Per [Foster Mother's] report, [Claimant] can initiate and reciprocate greetings and farewells (i.e., waving). Additionally, [Claimant] uses conventional gestures and does not have difficulty communicating verbally or reciprocally, though he does not make consistent eye contact. [Claimant] reportedly has difficulty connection socially with her [*sic*] peers and with adults, and he does not seek interaction with others.

According to the results of caregiver measures, [Claimant's] cognitive functioning fell in the Average range. However, caregiver reports indicated substantial difficulties. School reports also indicate difficulty in cognitive and academic functioning. [Claimant's] overall adaptive functioning fell in the Low range. Hs practical scores fell in the Below Average range . . . ; this is due to his slightly lower than the typical ability to function in the community and to express knowledge of and interest in activities outside the home, scoring in the Average range. Other practical areas also fell in the Below Average range (i.e. functioning inside the home, health and safety skills, and ability to perform self-care activities). Her [*sic*] conceptual adaptive skills, such as communication, functional preacademics, and self-direction fell in the Low range, suggesting delays in learning, communication, attention, and concentration development. His social adaptive skills fell in the Low range, including substantial difficulties in his ability to interact socially with others.

Additionally, [w]hile [Claimant's] cognitive scores fell in the Average range, this score should be interpreted with caution. Although [Claimant] was participatory in testing, her [*sic*] abilities may have been impacted by the environmental stressors she [*sic*] has and continues to experience, therefore, not accurately reflective of her [sic]true cognitive abilities.

> The current test results, coupled with a review of the records reported symptomology and direct observation, warrant a diagnosis of Unspecified Neurodevelopmental Disorder, as [Claimant] presents with symptoms characteristic of a neurodevelopmental disorder that causes impairment in social, language, practical and other areas of functioning.

(SCLARC Exh. 3.)

20. Dr. Hill did not testify at the hearing. Consequently, Dr. Brown interpreted Dr. Hill's Psychological Evaluation report at the hearing.

21. Dr. Brown acknowledged Foster Mother had "big concerns about maladaptive behaviors." She noted Claimant's multiple foster placements. She noted Dr. Hill's recognition of past traumatic events that "probably likely impacted the presentation of Claimant." "All these would impact a person's presentation," Dr. Brown opined.

22. Dr. Brown explained Claimant's assessment results "showed some borderline functioning" in conceptual, social, and practical domains. She opined Claimant's functioning in the borderline range "is not quite average but not quite what we would see if it were intellectual disability. It tells us certainly there are some deficits there."

23. Addressing whether Claimant presents with ASD, Dr. Brown drew a distinction between "trauma response" and autism. She testified, "Everyone responds to trauma differently. But young children in particular have difficulty coping with, and expressing their response to, that. We are likely to see difficulty with behavior and

emotional regulation, whether that is aggression or withdrawing. There are a variety of symptoms."

24. Dr. Brown continued, "An individual who is exposed to trauma is likely going to have those symptoms as opposed to autism where the symptoms or types of behaviors are going to be like restrictive, repetitive behaviors and interests. We are going to see difficulties with understanding social rules and difficulties with social communication. With trauma an individual might have some difficulties socially because other people may not want to establish friendship with them because of the big behaviors. But that is different from difficulty with social communication and not understanding social rules due to autism."

25. Based on all the information and reports included in the Psychological Evaluation report Dr. Hill prepared, Dr. Brown concluded Claimant does not meet any eligibility criteria qualifying him for services and supports under the Lanterman Act. Because Dr. Brown acknowledges "difficulties the Claimant is having," she recommends the following for Claimant: trauma-informed therapy, continued medication management, behavioral therapy with parent behavior training, and fetal alcohol syndrome disorder assessment if there is any suspicion of in utero exposure to alcohol and drug use.

Foster Mother's Testimony

26. Foster Mother's testimony established Claimant's "behaviors at home are off the top, very challenging." At school, his violent behaviors toward teachers and other students risked his expulsions. Foster Mother elaborated, "He doesn't respect boundaries and other people's possessions. I have to keep my room locked. . . . He

doesn't respect what I say. . . . He was out of control [at school]. . . . He is all over the place. I can't take him into the public without him having a meltdown."

27. The day prior to the hearing, Claimant started taking a new medication. Foster Mother was looking forward to a change in Claimant's behavior. She testified, "I need resources to help me and him. I don't know what to do. . . . I need [respite] breaks so I don't get burned out caring for him."

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 psycho-social 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 (*l*), 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. Assessment of Claimant's cognitive functioning yielded scores within the Average range. Assessment of his conceptual adaptive skills yielded scores in communication, functional preacademics, and self-direction within the Low range. Claimant has delays in learning, communication, attention, and concentration development rather than deficits related to an intellectual impairment. As Dr. Hill concludes in the Psychological Evaluation report she prepared, a preponderance of the persuasive evidence establishes Claimant's delays are related to a history of trauma endured prior to his placement with Foster Mother rather than to intellectual deficits.

7. Claimant has not proven by a preponderance of evidence he presents with ASD. Claimant does not present with social communication and social interaction skill deficits indicating autism. While he may not maintain consistent eye contact, Claimant does initiate and reciprocate greetings. Claimant uses conventional gestures

during communication. There is no evidence Claimant engages in idiosyncratic speech, repetitive movements, rigid thought pattens, or restricted patterns of behavior. Claimant's challenges with self-regulation and his disruptive, harmful, and non-compliant behaviors are better understood in relation to his history of neglect and trauma.

8. 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 cognitive functioning. The challenges confronting Claimant in his educational setting are attributable to and best explained by neglect and associated trauma.

9. 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 aid 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 diagnoses for 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.

10. By reason of Factual Findings 4 through 27 and Legal Conclusions 1 through 9, 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. South Central Los Angeles 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. 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.