

**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. 2019110791**

**DECISION**

Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on January 7, 2020, in Los Angeles.

Claimant was present and represented by his mother and father.<sup>1</sup>

Karmell Walker, J.D., Fair Hearings & Complaint Manager, represented South Central Los Angeles Regional Center (Service Agency or SCLARC).

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<sup>1</sup> Claimant and his parents are identified by titles to protect their privacy.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on January 7, 2020.

## **ISSUE**

Is Claimant eligible for regional center services under the Lanterman Developmental Disabilities Services Act?

## **EVIDENCE RELIED UPON**

Documentary: Service Agency's exhibits 1-6; Claimant's exhibits A-F.

Testimonial: Laurie McKnight Brown, Ph.D., SCLARC Lead Psychologist Consultant; and Claimant's mother.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. Claimant is a 10-year-old boy. In September 2019, Claimant's parents requested regional center services for Claimant. On October 30, 2019, Service Agency sent Claimant's parents a letter notifying them of its decision that Claimant is not eligible for services.

2. On November 12, 2019, Claimant's mother (Mother) filed a fair hearing request, on Claimant's behalf, to appeal Service Agency's decision. In the fair hearing request, Mother wrote that she was requesting a fair hearing because Service Agency

assessed Claimant for autism based on the answers of Claimant's father (Father), and she wanted an opportunity to answer the questions herself.

## **Claimant's Background**

3. Claimant lives at home with his parents, older brother (age 16), older sister (age 14), and younger brother (age 3). Mother works outside the home as an administrative assistant with UCLA Health. Father was injured in an accident at work, and he has received workers' compensation benefits for almost two years.

4. Claimant is currently a fifth grader at a charter school, where he also attended third grade and fourth grade. Claimant attended another elementary school for kindergarten through second grade. Claimant attends regular education classes. He has not yet been evaluated by his school district for special education eligibility. Claimant's parents requested an evaluation by the school district in May 2019. According to the parents, their request is still pending.

## **Psycho-Social Assessment**

5. On September 4, 2019, SCLARC service coordinator Raquel Vargas, B.A., conducted an intake interview with Claimant and his parents. Ms. Vargas prepared a Psycho-Social report that summarized the information provided during the interview and her recommendations. (Exh. 3.) Claimant was referred to SCLARC for evaluation by Karla Castillo, who is a social worker with the Department of Children and Family Services (DCFS). Claimant's family has had an open case with DCFS since July 18, 2019.

6. During the intake interview, Ms. Vargas made behavioral observations of Claimant. She noted that Claimant initially sat quietly back in a small chair by a small table, but he moved his chair closer to his parents when directed and encouraged by

Ms. Vargas. When Ms. Vargas offered toys to Claimant, he politely responded, "No thank you." Ms. Vargas noted that Claimant was able to sustain eye contact and attempted to engage in conversation. Claimant appeared to do his best when answering Ms. Vargas' questions. When Ms. Vargas gave Claimant writing materials, he was able to complete a long sentence with some spelling errors, and he could complete two-digit subtraction problems. Claimant struggled with stating his multiplication tables from memory.

7. Ms. Vargas obtained information from Claimant and his parents regarding Claimant's current functioning. Claimant has full function of all his extremities. He is right hand dominant with a good pincer grip. He can climb stairs without assistance and can ride a bicycle and a scooter. Claimant can select his clothes and dress himself (including tying his shoes and using buttons and zippers), but he struggles with coordinating colors and selecting clothing appropriate for the weather. Claimant needs reminders to shower, brush his teeth, and pick up after himself. He can take care of his toileting needs independently. Claimant can prepare eggs with supervision and warm up food in the microwave. He helps with household chores, such as sweeping the yard and doing laundry. Claimant lacks safety awareness and needs constant supervision. He never leaves the house without permission.

8. Claimant reported that he has friends at school, but if they argue or have disagreements, then he prefers to stay by himself. Claimant currently participates in baseball in his community, which he enjoys. He also enjoys going outside to ride his bicycle. Claimant's parents reported Claimant is having a hard time in school because he gets bored and is easily distracted. His teacher has advised Claimant's parents that Claimant is constantly disrupting the classroom by getting up from his seat, tapping on the walls and other things with his hands, and making noise. Claimant also rushes

through his classwork, which causes him to make mistakes. Claimant's parents reported that Claimant's behaviors are starting to get worse at home. When Claimant is upset, he will rip things and throw things in the trash. He has also told his parents he hates them and wants a new family.

9. Claimant communicates using complete sentences but "struggles in stating what he really wants to say most of the time." (Exh. 3, p. 4.) Claimant also has a hard time understanding directives. Mother will ask Claimant to repeat what she has said to him in order to confirm that he understood her. Mother reported Claimant will give a confused look at times, and he has a hard time following through with directives. She reported that Claimant needs "constant reminders and promptings." (*Id.*)

10. At the time of the intake interview, Claimant was reportedly performing below grade level in academics. Claimant knows his basic body parts and his age, and he can write sentences with some mistakes in spelling. He knows some multiplication problems but not from memory. Claimant stated that he "struggles with reading at times and understanding what he reads." (Exh. 3, p. 4.)

11. Based on the intake interview, Ms. Vargas recommended, among other things, that Claimant complete a psychological evaluation with Dr. Mathess (discussed below), and that Claimant's parents request a thorough evaluation by their local school district, including an occupational therapy assessment and language assessment.

## **Psychological Evaluation**

12. Jennie M. Mathess, Psy.D., a licensed clinical psychologist, performed a psychological evaluation of Claimant on September 23, 2019. Claimant was referred to Dr. Mathess for evaluation to determine his current level of functioning and to assist in

the determination of his eligibility for regional center services. The scope of the evaluation was limited to assessing for possible diagnoses of Intellectual Disability and/or Autism Spectrum Disorder. Claimant was accompanied to the evaluation by Father and one of Claimant's brothers.

13. Dr. Mathess prepared a written report of her findings and conclusions. Dr. Mathess interviewed Father, made behavioral observations, reviewed medical records, and administered the Autism Diagnostic Interview – Revised (ADI-R), the Vineland Adaptive Behavior Scales, 3rd Edition, Domain-Level Parent/Caregiver Form (VABS-3), and the Wechsler Intelligence Scale for Children – 5th Edition (WISC-5).

14. Dr. Mathess made behavioral observations of Claimant. She observed that Claimant presented with a typical gait and made appropriate eye contact. He was cooperative throughout the session and displayed good attention and concentration. He was easily engaged and communicated using sentences. Dr. Mathess did not observe any articulation difficulties, echolalia, or stereotyped and repetitive behaviors.

15. Dr. Mathess administered the WISC-5 to assess Claimant's cognitive functioning. The WISC-5 is a standardized intelligence test that measures cognitive functioning across verbal and non-verbal domains. Claimant's performance on the WISC-5 subtests indicated verbal comprehension in the low average range; visual-spatial abilities in the low average range; fluid reasoning in the borderline range; working memory in the low average range; and processing speed in the average range. The results of the WISC-5 indicated Claimant's full scale IQ was in the borderline range.

16. Dr. Mathess assessed Claimant for Autism Spectrum Disorder using the ADI-R, with Father as the informant. Dr. Mathess found that Father's responses in one

area (abnormality of development prior to 36 months) was above the necessary cutoff score, but his responses in all other areas, including reciprocal social interaction, communication, and restricted, repetitive and stereotyped patterns of behavior, "resulted in scores below the necessary cutoff scores" for Autism Spectrum Disorder. (Exh. 4, p. 3.) Dr. Mathess concluded such a response pattern indicated a diagnosis of Autism Spectrum Disorder was "not likely." (*Id.*)

17. (A) Dr. Mathess assessed Claimant's level of adaptive functioning using the VABS-3, with Father as the informant. Claimant's scores in the Communication, Daily Living Skills, and Socialization domains were all in the low range.

(B) In the Communication domain, Father's responses indicated Claimant can say his first and last name when asked, he uses adjectives to describe things, answers questions that ask why, copies his own first name without mistakes, and reads and understands material at a second grade level. However, Claimant does not give complex directions to others, does not understand sarcasm, does not understand alphabetical order, does not remember to do something he is asked to do later in the day, and does not read and understand material of at least a sixth grade level.

(C) In the Daily Living Skills domain, Father's responses indicated Claimant makes telephone calls to others, makes a simple snack or meal, puts on pullover clothing, wipes or cleans his hands and face when eating something messy, and washes dishes at times. He is toilet trained during the day and night. However, Claimant does not brush his teeth independently, he is not careful when using sharp objects, he does not wipe up his own spills, and he does not put clean clothes away where they belong.

(D) In the Socialization domain, Father's responses indicated Claimant has a best friend or a few good friends, and he uses words to express his own emotions. At times, he plays interactively with one or more children for at least 30 minutes, tries to make friends, shows good sportsmanship, takes turns without being asked during games or sports, is willing to compromise to get along with others, and picks up on hints or indirect cues in conversation. However, Claimant does not control angry or hurt feelings when he does not get his way, does not respect other people's time, does not think through the consequences of his actions before doing something, does not change easily from one activity to the next, and does not follow time limits.

18. Based on her evaluation, Dr. Mathess concluded that Claimant did not meet the diagnostic criteria for Intellectual Disability or Autism Spectrum Disorder, but he did meet the criteria for Borderline Intellectual Functioning. In her written report, Dr. Mathess explained:

[Claimant] is a 10-year-old boy whose cognitive functioning is in the borderline range and whose adaptive functioning was rated in the low range in all areas. The diagnosis of Intellectual Disability requires significant deficits in intellectual functioning with concurrent deficits in adaptive functioning. Onset of such deficits must have occurred during the developmental period. Based upon his level of cognitive functioning, a diagnosis of Intellectual Disability is not indicated. While that is the case, he does meet criteria for Borderline Intellectual Functioning.

In regards to Autism Spectrum Disorder, diagnosis requires persistent deficits in social communication and social



interaction, as well as the presence of restricted, repetitive patterns of behavior, interests and activities. Based upon his father's report, test data, and the examiner's observations, [Claimant] does not meet criteria for Autism Spectrum Disorder. Mental health services are recommended to rule out any additional mental health diagnoses, as parent report indicated some concerns in this regard.

(Exh. 4, p. 4.)

### **Service Agency's Evidence**

19. Service Agency's decision that Claimant is not eligible for regional center services is summarized in its October 30, 2019 letter to Claimant's parents. (Exh. 2.) The decision was made by SCLARC's interdisciplinary core staff team on October 29, 2019, based on the team's consideration of Dr. Mathess' psychological evaluation, the psycho-social assessment completed by Ms. Vargas, and medical records from Kaiser Permanente and Eisner Pediatric & Family Health Center. The team found Claimant "ineligible for regional center services" because he does not have a "developmental disability" as defined by applicable provisions of the Lanterman Act and Title 17 regulations.<sup>2</sup> The letter explained:

More specifically, [Claimant] is not substantially disabled as a result of having an Intellectual Disability, Autistic Spectrum Disorder, Seizures or Cerebral Palsy. The interdisciplinary team also concluded that [Claimant] is not

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<sup>2</sup> See Legal Conclusions 3-7.

substantially disabled as a result of a condition closely related to Intellectual Disability nor do you [*sic*] require treatment similar to that required by individuals with intellectual disability. [¶] [Claimant] is diagnosed with Borderline Intellectual Functioning.

(Exh. 2.)

20. Laurie McKnight Brown, Ph.D., is SCLARC's Lead Psychologist Consultant. Her duties include reviewing cases for eligibility as part of SCLARC's interdisciplinary team. Dr. Brown testified regarding Service Agency's decision that Claimant is not eligible for regional center services. Her testimony was consistent with and supplemented the explanations given in Service Agency's October 30, 2019 letter.

21. The DSM-5<sup>3</sup> is a manual that lists the diagnostic criteria for various mental illnesses and developmental disabilities. Dr. Brown testified that Service Agency uses the DSM-5 diagnostic criteria in determining whether a person has a qualifying diagnosis of, for example, Intellectual Disability or Autism.

22. Under the DSM-5, the following three criteria (A, B, and C) must be met for a diagnosis of Intellectual Disability:

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<sup>3</sup> DSM-5 stands for the "Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition," published by the American Psychiatric Association. Service Agency presented excerpts from the DSM-5 pertaining to autism and intellectual disability. (Exhs. 5, 6.)

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.

(Exh. 6.)

23. The DSM-5 diagnostic criteria for Autism Spectrum Disorder require, among other things, (1) persistent deficits in social communication and social interaction across multiple contexts, as manifested by, for example, deficits in social-emotional reciprocity, deficits in nonverbal communicative behaviors used for social interaction, and deficits in developing, maintaining, and understanding relationships; (2) restricted, repetitive patterns of behavior, interests, or activities, as manifested by, for example, stereotyped or repetitive motor movements, use of objects, or speech; insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior; highly restricted, fixated interests that are abnormal in intensity

or focus; and hyper- or hyperactivity to sensory input or unusual interest in sensory aspects of the environment; and (3) these disturbances are not better explained by intellectual disability or global developmental delay. (Exh. 5.)

24. Dr. Brown testified Claimant did not meet the DSM-5 diagnostic criteria for intellectual disability, given his cognitive abilities in the borderline range and his adaptive functioning in the low range. Dr. Brown explained that a diagnosis of Borderline Intellectual Functioning is a level of cognitive ability that is “a little higher” than the level of cognitive ability needed for a diagnosis of intellectual disability.

25. Dr. Brown testified Claimant did not meet the DSM-5 diagnostic criteria for autism. Dr. Mathess, in her evaluation, concluded that a diagnosis of Autism Spectrum Disorder for Claimant was “not likely.” (Exh. 4, p. 3.) Dr. Mathess and Ms. Vargas, in their respective evaluations, did not observe Claimant having difficulties typically associated with autistic persons, such as difficulty sustaining eye contact or difficulty engaging in reciprocal conversation.

26. Dr. Brown testified the interdisciplinary team concluded that Claimant did not have a “fifth category” condition, as his condition is not similar to, nor requires the same treatment as, intellectual disability. Further, Claimant’s level of adaptive functioning did not establish he has a “substantial disability” in at least three of seven areas of major life activity (specified in the Lanterman Act and regulations)<sup>4</sup> appropriate to his age.

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<sup>4</sup> See Welfare and Institutions Code section 4512, subdivision (j), and California Code of Regulations, title 17, section 54001.

27. Dr. Brown testified she is aware of Mother's concern that, because Claimant was evaluated based on Father's answers to questions, Dr. Mathess' diagnosis and Service Agency's decision are not reliable. Dr. Brown explained that when a psychological assessment is completed, the psychologist considers information from various sources. Here, Dr. Mathess relied on her clinical observations of Claimant, information provided by Father, information provided during the psycho-social assessment where both parents were present, and testing data. All of this information, not just Father's answers, was considered in the assessment process.

28. Dr. Brown reviewed documents provided by Mother at the hearing. One document was a "Visit Summary" from Kaiser Permanent regarding Claimant's medical visit on December 9, 2019, for a review of his vital signs and health problems. The document does not indicate Claimant was diagnosed with Autism Spectrum Disorder. Dr. Brown testified Service Agency has not received any records from Kaiser Permanente diagnosing Claimant with, or assessing him for, Autism Spectrum Disorder.

29. The remaining documents Mother presented at the hearing, and which Dr. Brown reviewed, were Claimant's school progress reports for kindergarten through fourth grade. (Exhs. B-F.) Dr. Brown noted the progress reports showed Claimant's grades in various subjects were generally higher at the end of school year than at the start of the school year. Claimant's grades generally reflected that he was proficient/meets standards or was partially proficient/approaches standards in academic subject areas, work and study habits, and social skills and behavior. Dr. Brown noted that comments from Claimant's teachers included, for example, that he completes most of his work, he works well independently and in groups, he completes

assignments in a timely manner, and he enjoys learning new subjects and asks creative questions. (Exh. D, p. 2.)

30. Dr. Brown noted that Claimant's progress report for fourth grade showed his grades for reading, writing, language and math were mostly "2" (approaches the standard, beginning to develop) and "3" (meets the standard, developing appropriately) (Exhibit F, pages 1-2), but he showed some lower grades, i.e., "2" and "1" (does not yet meet the standard, needs to develop), in some areas of math (Exhibit F, page 3). Dr. Brown asserted that the lower grades in math did not contradict the interdisciplinary team's finding that Claimant's cognitive abilities were above the standard required for intellectual disability. Dr. Brown explained that academic achievement is not same as cognitive ability, which speaks to a person's capacity to learn, reason, and problem solve. A person with a diagnosis of intellectual disability is expected to have deficits across the board, not just in one area (i.e., math).

### **Claimant's Evidence**

31. Mother testified at the hearing. Her main concerns with Claimant are in the areas of academics and daily living skills. Mother disagrees with the description of Claimant's levels of functioning contained in the respective reports by Dr. Mathess and Ms. Vargas.

32. Mother believes Claimant's progress reports show a pattern of the schools giving better grades at the end of the school year than at the beginning so that students can pass and be advanced to the next grade. Mother's concern is that Claimant is receiving passing grades and promoted to the next grade level but he is not really understanding the material. Mother testified that, during the intake interview, Claimant was able to write three- and four-word sentences and he

completed one-digit math problems because she and Father helped him to do so. Claimant was unable to do multiplication, which is concerning to Mother because she feels a child of Claimant's age should be able to do multiplication. Mother testified that Claimant's fourth grade teacher advised her Claimant's performance is "lower than where he should be" and recommended she seek an evaluation for special education services. Mother testified that the fourth grade teacher also reported that Claimant relies on other students for answers on classwork, but then breaks down in tears when the teacher catches him copying answers from other students. Mother testified that Claimant has told her he does not want to be in school.

33. Mother testified Claimant's teachers have reported to her that they need to give constant and repeated instructions to Claimant. She notes, for example, that Claimant's progress report for second grade includes teacher comments that Claimant struggles with measurement and geometry, he needs repeated instruction, and he had trouble finishing his project due to distraction from others. (Exh. D, p. 2.) Mother also testified that Claimant is a "risk taker" but does not understand there are consequences to his actions. He has come home from school with bruises on his body but, when asked by his parents, he does not know how he got the bruises.

34. Mother disagrees with Dr. Mathess' findings regarding Claimant's adaptive functioning, which are based, in part, on Father's responses on the ADI-R and VABS-3. Mother testified that Claimant "tends to pretend" that he likes to be in a group setting. She claims he has told her he does not like to be in a group. Mother testified that during family gatherings, Claimant does not hug his relatives and he stays by himself. Mother also testified that Claimant has told her that he pretends to know what he is doing because he "does not want to look dumb."

35. Mother feels that Claimant is not developing in the same manner as her older son and daughter. She feels Claimant needs more help, supervision, and repeated instructions than his older siblings did at his age. Mother believes Claimant would benefit from regional center services.

## **LEGAL CONCLUSIONS**

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, § 4500 et seq.) A state level fair hearing to determine the rights and obligations of the parties, if any, is referred to as an appeal of the service agency's decision. Claimant properly and timely requested a fair hearing, and therefore jurisdiction for this case was established. (Factual Findings 1-2.)

2. When a person seeks to establish eligibility for government benefits or services, the burden of proof is on him. (*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].) The standard of proof in this case is preponderance of the evidence. (Evid. Code, § 115.) Thus, Claimant has the burden of proving his eligibility for services under the Lanterman Act by a preponderance of the evidence.

3. In order to be eligible for regional center services, a person must have a qualifying developmental disability. Welfare and Institutions Code section 4512, subdivision (a), defines "developmental disability" as:

a disability that originates before an individual attains 18 years of age; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for that



individual. . . [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 an intellectual disability, but shall not include other handicapping conditions that are solely physical in nature.

4. Welfare and Institutions Code section 4643, subdivision (b), provides: "In determining if an individual meets the definition of developmental disability contained in subdivision (a) of Section 4512, the regional center may consider evaluations and tests, including but not limited to, intelligence tests, adaptive functioning tests, neurological and neuropsychological tests, diagnostic tests performed by a physician, psychiatric tests, and other tests or evaluations that have been performed by, and are available from, other sources."

5. To prove the existence of a developmental disability within the meaning of Welfare and Institutions Code section 4512, the individual must show that he has a "substantial disability." California Code of Regulations, title 17, section 54001 defines "substantial disability" as follows:

"Substantial disability" means:

(a) 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

(b) 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.

6. California Code of Regulations, title 17, section 54002 defines the term "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."

7. In addition to proving a "substantial disability," a person must show that his disability fits into one of the five categories of eligibility set forth in Welfare and Institutions Code section 4512. The first four categories are specified as: intellectual disability, cerebral palsy, epilepsy, and autism. The fifth and last category of eligibility is specified as "disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability." (Welf. & Inst. Code, § 4512, subd. (a).)

8. It was not established by a preponderance of the evidence that Claimant has a "developmental disability" as defined under Welfare and Institutions Code section 4512. Claimant is not substantially disabled as a result of intellectual disability, autism, or a "fifth category" condition. He does not have significant functional limitations in three of seven areas of major life activity, as appropriate to his age. His cognitive functioning is in the borderline range and his adaptive functioning is in the low range. He does not meet the DSM-5 diagnostic criteria for either intellectual disability or autism, based on the psychological evaluation completed by Dr. Mathess.

Mother's anecdotal testimony was not sufficient to refute Dr. Mathess' opinions. Mother's concerns regarding Claimant's performance in school should be addressed through the family's pending request for a special education evaluation by their local school district.

9. Based on the foregoing, Claimant's evidence was not sufficient to establish eligibility for regional center services. His appeal shall be denied. (Factual Findings 1-35; Legal Conclusions 1-8.)

### **ORDER**

Claimant's appeal is denied. Service Agency's determination that Claimant is not eligible for regional center services is affirmed.

DATE:

ERLINDA G. SHRENGER  
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.