

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

**In the Matter of:**

**CLAIMANT,**

**vs.**

**SAN GABRIEL PAMONA REGIONAL CENTER,**

**Service Agency.**

**OAH No. 2020020466**

**DECISION**

Irina Tentser, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference and teleconference on July 10, 2020.

David Ibarra, Fair Hearing Specialist, appeared and represented San Gabriel/Pomona Regional Center (SGPRC or Service Agency).

Claimant's mother (Mother) represented him at hearing.<sup>1</sup>

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<sup>1</sup> Party titles have been used to protect the privacy of Claimant and his family.

## **ISSUE**

Is Claimant eligible for Regional Center services by reason of a developmental disability within the meaning of the Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code<sup>2</sup> section 4500 et seq. (Lanterman Act)?

## **EVIDENCE**

Documentary: SGPRC's exhibits 1-15; Claimant's exhibits A-C.

Testimonial: Deborah Lagenbacher, Ph.D., Mother, and Claimant's father (Father).

## **FACTUAL FINDINGS**

### **Parties and Jurisdiction**

1. Claimant is a six-year-old boy who lives at home with his Mother, Father, and two brothers, ages ten and three. Claimant seeks eligibility for regional center services on the basis of Autism Spectrum Disorder (ASD) and intellectual disability.

2. SGPRC sent a Notice of Proposed Action (NOPA), dated December 9, 2019, to Mother and Father informing them of its determination that Claimant is not eligible for regional center services because he was not found to have a

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<sup>2</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise noted.

developmental disability that is substantially disability. A developmental disability was defined as intellectual disability, cerebral palsy, ASD, epilepsy, or conditions similar to intellectual disability that constitutes a substantial handicap for the individual. The NOPA explained that after assessment through Service Agency's Autism Clinic, the assessment team determined that while Claimant presents with some ASD traits, he does not meet the criteria for that diagnosis because overall test results do not support an ASD diagnosis. In addition, the NOPA referenced the lack of history of intellectual disability, epilepsy or cerebral palsy as a basis for finding Claimant ineligible for services. The NOPA included Service Agency's suggested diagnoses for Claimant, including Language Disorder, Speech Sound Disorder, and Anxiety Disorder. Service Agency recommended that Claimant 1) continue appropriate educational services through his school district; 2) speech therapy through his school district; 3) follow up with mental health services for anxiety treatment; and 4) continue acquisition of independent living skills. (Exhibit 1.)

3. Mother filed a Fair Hearing Request (FHR) on behalf of Claimant, dated February 11, 2020, appealing Service Agency's denial of services. In the FHR, Mother indicated that the reason for requesting a fair hearing was that she had been told that Claimant was functioning at a three-year-old level and showed some traits of ASD. In addition, she requested that Service Agency assess whether Claimant is eligible for services based on intellectual disability.

## **Background**

4. Claimant has a history of good health and normal motor development. No family history of developmental disability was reported by parents. Claimant attends Wing Lane Elementary and was most recently enrolled in Transitional Kindergarten during the 2019-2020 school year. Claimant is eligible for special

education due to speech and language, has twice weekly speech therapy, and is in regular education 98 percent of his school time.

## **Previous Evaluations**

5. Claimant had two prior evaluations conducted by his school district, Hacienda La Puente Unified School District (District). In June 2017, Claimant's nonverbal cognition was assessed in the average range. Deficits were noted in the area of language, particularly his expressive communication. Based on these results, he was determined to be eligible for special education due to speech and language.

6. In June 2019, Claimant had a psycho-educational evaluation. Class observations indicated that Claimant was easily distracted and had limited participation in his class. Claimant's nonverbal cognition was assessed in the average range. Academic skills were borderline to low average. Deficits were noted in language areas. Claimant did not meet criteria for autistic-like behaviors.

## **Service Agency Assessments**

### **SEPTEMBER 2019 SOCIAL ASSESSMENT**

7. In July 2019, when Claimant was five years old, his family contacted SGPRC to request services for Claimant based on the recommendation of his pediatrician and teacher due to concerns with ASD and intellectual disability. In a note dated April 2019, Claimant's teacher indicated that Claimant struggles with emotions and communicating his feelings and was upset by classroom changes, resulting in tantrums. Based on teacher report, Claimant had speech delays, did not make eye contact and had difficulty with social skills. In addition, Claimant was reported to hide

under tables and desks and did not like to play with peers unless they approached him first.

8. On August 28, 2019, SGPRC conducted an initial face-to-face assessment at regional center conducted by a Service Agency Intake Service Coordinator with Claimant and Mother present. A phone interview was also completed by phone on September 11, 2019.

9. In the assessment, Service Agency's Intake Service Coordinator described Claimant's inconsistent eye contact, and reported tantrum behavior, hard to understand speech, picky eating habits, and special education services under Speech/Language Impairment (SLI). She also noted that Claimant's academic skills are in the low range and his cognitive ability is in the average range. During the assessment, Claimant could name body parts and recognize primary colors, count to 20, identify numbers, recite the alphabet and identify letters, print his name when prompted, recognize his written name, match and recognize shapes, and copy lines and circles from a sample.

10. As a result of the assessment, Claimant was recommended for a Service Agency psychological evaluation, a review of medical and school records, and a subsequent evaluation by a Service Agency interdisciplinary team of records and assessments to determine eligibility for regional center services.

### **SGPRC AUTISTIC CLINIC NOVEMBER 2019 ASSESSMENT**

11. On November 7, 2019, Claimant was assessed at SGPRC's Autistic Clinic by Service Agency Staff Psychologist Deborah Lagenbacher, PhD, and Judith Aguilera, MA, CCC-SLP (Assessment Team). The assessment process included: parent interview; play observation; administration of the Autistic Diagnostic Observation Schedule – 2,

Module 2 (ADOS-2), Childhood Autism Rating Scale – 2ST (CARS-2ST), and Adaptive Behavior Assessment System – 3 (ABAS-3); and a review of records.

12. Based on Claimant's test scores on the ADOS-2 and on the CARS-2ST, the Assessment Team ruled out Autism and ASD. On the ABAS-3, Claimant's percentile scores in communication, self-direction, leisure, social, health and safety, self-care were below average. In the areas of functional academics and home living, Claimant scored in the low percentile. Claimant's community use percentile score was average.

13. The Assessment Team generated an Assessment Report based on their findings. (Exhibit 11.) In summary, the Assessment Team reported that Claimant demonstrated the capacity to engage with others and engage in reciprocal play. However, Claimant's deficits in communication were found to interfere with his social interactions. As a toddler, Claimant was reported to have responded to his name and to have pointed to indicate his wants and needs. Claimant's eye contact was described as "variable" and appeared to depend on how comfortable he was with another person. (*Id.*) Claimant did not demonstrate repetitive behaviors, tended to be rigid in his way of doing things, and was reported to be sensitive to some sensory experiences. While the Assessment Team determined that Claimant presented with some traits of ASD, they concluded that he did not meet the criteria for that diagnosis.

14. Claimant's history of delays in speech development, current deficits in expressive communication, verbal comprehension, and pragmatic use of language were determined to interfere with his academic and social functioning. In addition, Claimant's poor articulation and reduced intelligibility of speech were found to meet the criteria for diagnoses of Language Disorder (315.39/F80.9) and Speech Sound Disorder (315.39/F80.0).

15. The Assessment Team described that Claimant presented with a number of traits of anxiety that suggested the diagnosis of an Unspecified Anxiety Disorder (300.00/F41.9). The diagnosis was based on Claimant being fearful of new people, new situations, fear of unexpected loud noises, and anxiety in crowded environments. They opined that some of Claimant's rigidity may reflect his attempt to control his anxiety, noting that Claimant had difficulty falling asleep without Mother's presence, and difficulty adjusting to attending school.

16. Assessment recommendations included: continued support through Claimant's educational program, including instruction in socialization with peers, as well as pre-academic skills and continued speech therapy services; continued speech therapy to address Claimant's verbal comprehension through District; further mental health evaluation for anxiety; continued instruction in practical skills such as self-care, safety awareness, simple household chores, and community use. The Assessment Team noted that Claimant is at risk of developing future learning disability and recommended close monitoring of his progress as he enters elementary school, with further evaluation and intervention as needed.

## **Hearing Evidence**

### **SERVICE AGENCY**

17. Dr. Lagenbacher testified at hearing regarding Claimant's finding of ineligibility by Service Agency. Dr. Lagenbacher has been employed as a Staff Psychologist by Service Agency for 23 years and conducts an average of 25 eligibility assessments per week for SGPRC. In addition to being part of the Assessment Team that evaluated Claimant and one of the authors of the resulting Assessment Report,

she was a member of the Service Agency's team that found Claimant ineligible for services.

18. Dr. Lagenbacher's testimony expounded on and was consistent with the findings of the Assessment Team's Report that, while Claimant did exhibit some traits that were consistent with ASD, they were not sufficiently severe or pervasive enough to justify an ASD diagnosis, as defined by the Diagnostic and Statistical Manual of Mental Disorder, 5th Edition (DSM 5). With regards to intellectual disability, Dr. Lagenbacher ruled out intellectual disability, noting that Claimant's prior 2017 and 2019 District assessments non-verbal scores of 95 and 99, respectively, were well over the 70 or less score necessary to indicate intellectual disability.

### **Claimant's Hearing Evidence**

19. Mother and Father both testified in support of Claimant. According to Mother, it is not "fair" that Claimant was found ineligible for services by SGPRC because his traits are not severe enough to warrant an ASD diagnosis. Father testified that Claimant needs help based on his language delays and believes that Claimant should receive Service Agency services. According to Father, Claimant is not receiving SLI services through the District during summer 2020 because school is not in session.

20. Mother testified that she had sought services for Claimant with the family's private insurance carrier, but the request was denied. Mother has not appealed the insurance denial because she was not aware of her right to appeal.

21. Claimant submitted three documents in support of a finding of Service Agency service eligibility. Nancy Ruiz-Barnes, LCSW, Heredia Therapy Group, Inc. submitted a February 20, 2018 letter. (Exhibit A.) According to Ms. Ruiz-Barnes, Claimant is attending therapy at Heredia Therapy Group and is currently



demonstrating symptoms of anxiety. Based on the results of the Social Communication Questionnaire (SCQ), used to evaluate possible symptoms of ASD, administered to Claimant, she opined that Claimant “does not meet any ASD symptoms.” (*Id.*) Claimant’s speech delay was noted by Ms. Nancy Ruiz-Barnes.

22. Tabitha Blanton, Principal, Wing Lane Elementary, February 28, 2020 letter described second-hand accounts of Claimant’s behavior provided by Wing Lane teachers. (Exhibit B.) Claimant’s described behaviors included problems with social interactions with others; need for the same routine and tantrums when something is different; an overreaction to sounds; mild repeated actions or body movements; unusual emotional reactions expressions, especially when asked to do something out of routine; and lack of eye contact.

23. A partial medical record was also submitted from The Neurology Group – Pomona, dated March 4, 2020, presumably from Claimant’s pediatrician. (Exhibit C.) The medical record impressions and recommendations portion included speech delay and ASD as Claimant’s “problems.” (*Id.*)

## **LEGAL CONCLUSIONS**

1. An administrative hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Act to appeal a contrary service agency decision. (Welf. & Inst. Code, §§ 4700-4716.) Mother requested a hearing, on Claimant’s behalf, to contest Service Agency’s proposed denial of Claimant’s eligibility for services under the Lanterman Act and therefore jurisdiction for this appeal was established. (Factual Findings 1-3.)

2. Generally, when an applicant seeks to establish eligibility for government benefits or services, the burden of proof is on him or her to prove by a preponderance of the evidence that he or she meets the criteria for eligibility. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161; Evid. Code, §§ 115, 500.)

"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 Co.* (1990) 226 Cal.App.3d 314, 324-325.)

3. In order to be eligible for regional center services, a claimant 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. To prove the existence of a qualifying developmental disability within the meaning of Welfare and Institutions Code section 4512, a claimant must show that he has a "substantial disability." Pursuant to Welfare and Institutions Code section 4512, subdivision (h)(1):

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

- (A) Self-care.
- (B) Receptive and expressive language.
- (C) Learning.
- (D) Mobility.
- (E) Self-direction.
- (F) Capacity for independent living.
- (G) Economic self-sufficiency.

5. Additionally, California Code of Regulations, title 17, section 54001 states, in pertinent part:

- (a) “Substantial disability” means:
  - (1) A condition which results in major impairment of cognitive and/or social functioning, representing sufficient impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential; and
  - (2) The existence of significant functional limitations, as determined by the regional center, in three or more of the

following areas of major life activity, as appropriate to the person's age:

(A) Receptive and expressive language;

(B) Learning;

(C) Self-care;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living;

(G) Economic self-sufficiency.

6. In addition to proving that he suffers from a "substantial disability," a claimant 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, epilepsy, autism, and cerebral palsy. The fifth and last category of eligibility is listed as, "Disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with intellectual disability." (Welf. & Inst. Code, § 4512.)

7. In this case, no evidence was presented to establish that Claimant has cerebral palsy or epilepsy, and there is no contention that he has either condition. The evidence of cognitive functioning indicates that Claimant does not have intellectual disability, or a condition closely related to intellectual disability or requiring treatment similar to that required by individuals with mental retardation. While Claimant has

some adaptive skills deficits in daily living skills and in socialization, these are insufficient to establish the presence of a developmental disability.

8. It is acknowledged by SGPRC that Claimant exhibits some behaviors consistent with ASD, but these were not deemed sufficient by Dr. Lagenbacher to lead to a diagnosis of ASD as established by the DSM 5. Service Agency's assessment that Claimant does not meet the ASD diagnosis is supported by the letter of Ms. Nancy Ruiz-Barnes, LCWS, from Heredia Therapy Group, Claimant's treating therapist facility, submitted by Claimant, which unequivocally states that Claimant does not meet any ASD symptoms based on the results of his SCQ assessment. (Factual Finding 21.) The diagnosis of ASD in Claimant's medical records is unpersuasive because it is not clear what, if any, assessments such a determination is based upon. (Factual Finding 23.)

9. In this case, Claimant has not established through a preponderance of the evidence that he is eligible to receive regional center services. (Factual Findings 1-23; Legal Conclusion 1-8.)

## **ORDER**

Claimant's appeal is denied. Service Agency's determination that Claimant is not eligible for services under the Lanterman Act is upheld.

DATE:

IRINA TENTSER

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.