

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

**In the Matter of:**

**CLAIMANT,**

**vs.**

**SAN GABRIEL/POMONA REGIONAL CENTER,**

**Service Agency.**

**OAH No. 2020060803**

**DECISION**

Nana Chin, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on January 5, 2022.

Claimant was represented by his mother (Mother). (Family titles are used to protect the privacy of Claimant and his family.) Daniel Ibarra, Fair Hearing Specialist, represented San Gabriel/Pomona Regional Center (SGPRC or Service Agency).

Testimony and documents were received into evidence. Claimant had an independent evaluation of Claimant conducted in early November. Matter was held open until January 26, 2022, for Mother to submit the evaluation report and Service Agency to submit a response, if any, to the evaluation. On January 21, 2022, Pacific

Clinics Advancing Behavioral Healthcare "Child/Adolescent Full Assessment" and psychotherapy session notes were received and marked as Exhibits C and D respectively. There was no objection or response from the Service Agency and the exhibits were admitted into evidence. The record was closed on January 26, 2022.

## **ISSUE**

Whether Claimant is eligible for regional center services based on the diagnosis of Autism Spectrum Disorder (ASD).

## **EVIDENCE RELIED UPON**

Documents: SGPRC's Exhibits 1-11; Claimant's exhibits A-D.

Witnesses: Deborah Lagenbacher, PhD, and Claimant's mother (Mother)

## **FACTUAL FINDINGS**

### **Claimant Background**

1. Claimant began receiving services from Service Agency under the California Early Intervention Services Act (Early Start) when he was 22 months old due to delays in communication. (Early Start is an early intervention program for infants and toddlers from birth through two years of age. (Gov. Code, § 95000 et seq.)) To be eligible for the program, an infant or toddler must have a significant developmental delay in one of the five following areas: cognitive development; physical and motor development, including vision and hearing communication development; social or

emotional development; or adaptive development. Eligibility for services under Early Start ends when the consumer turns three years of age. (Gov. Code, § 95014.)

2. Shortly before Early State services were scheduled to end, Service Agency referred Claimant for a psychological evaluation to evaluate whether Claimant was eligible for services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.) based on either an intellectual disability or ASD.

**THOMAS CARRILLO, PH.D.**

3. Thomas Carrillo, Ph.D. conducted an evaluation of Claimant on October 6, 2015, when Claimant was two years and 10 months old, and prepared a report of his findings. (Exh. 7.) According to Dr. Carrillo's report, he conducted clinical interviews of Claimant, Mother, and maternal Grandmother; performed a clinical observation of Claimant's behavior; reviewed available records; and administered (1) the Wechsler Preschool and Primary Scale of Intelligence, (4th ed.) (WPPSI-IV); (2) the Vineland Adaptive Behavior Scales (2d. ed.) (Vineland); (3) the Gilliam Autism Rating Scale (2d. ed.) (GARS-II); and (4) the Childhood Autism Rating Scale (2d. ed.) (CARS).

4. Dr. Carrillo noted from his clinical observations that Claimant "presented himself as a child with autistic-like characteristics." (Exh. 7, p. A60.) Dr. Carrillo specifically noted that Claimant would jump in place without meaning, displayed hand waving behavior, had inconsistent eye contact and was preoccupied with toys that twirled and toys with strings attached. By report, Claimant preferred solitary activities and was a fussy eater.

5. To assess Claimant's cognitive/intellectual functioning, Dr. Carrillo administered the WPPSI-IV. Claimant's overall performance on the WPPSI-IV yielded a

full-scale IQ (FSIQ) score of 98, which suggested that Claimant's cognitive abilities were within the normal range. (Exhibit 7, p. A61.)

6. To evaluate Claimant's adaptive functioning, Dr. Carrillo administered the Vineland to obtain information regarding Claimant's communication abilities, motor skills and adaptive/social skills.

A. On the communication portion of the Vineland, Claimant received a standard score of 64, which is within the mild range of delay. Claimant's receptive and expressive language age equivalent was 1 year and 2 months, demonstrating mild delays in both receptive and expressive language. Dr. Carrillo, however, noted that Claimant's communication delays were secondary to his autistic-like behaviors.

B. On the motor portion of the Vineland, Claimant received a standard score of 90, which is within the normal range. Claimant received a gross motor age equivalent of one year and 11 months and a fine motor age equivalent of three years. Based on these findings, Dr. Carrillo noted that Claimant's gross and fine motor skills were in the normal range.

C. In the area of daily living skills, Claimant received a standard score of 73, which was within the borderline range of delay, and in the area of socialization, Claimant received a standard score of 61, which was in the mild range of delay.

D. Dr. Carrillo noted that Claimant's socialization skills were his lowest area of adaptive functioning and his profile on the Vineland is a profile that is typically seen in autism. When comparing the four areas of adaptive functioning (i.e., communication, daily living skills, socialization skills, and motor skills), Claimant's overall adaptive abilities were within the mild range of delay with an adaptive behavior composite score of 69.

7. Due to concerns regarding the existence of autism, Dr. Carrillo screened Claimant for ASD with the GARS-II. Claimant received an autism index score of 83, which is within the possible probability range of ASD. Dr. Thomas Carrillo also screened Claimant with the CARS, in which Claimant received a total score of 32.5, which was within the mild to moderate symptoms range for ASD.

8. Dr. Carrillo applied the diagnostic criteria for autism spectrum disorder from the Diagnostic and Statistical Manual of Mental Disorders (5th Edition) (DSM-5). Dr. Carrillo noted that in order to meet the criteria for ASD under DSM-5, Claimant had to demonstrate symptomatology in two specific domains: (1) social communication and social interaction; and (2) restricted, repetitive, patterns of behavior, interests or activities.

9. Dr. Carrillo noted that Claimant exhibited (1) deficits in social-emotional reciprocity in that Claimant had "an inability to engage in back-and-forth conversation," using a one-word vocabulary and two signs to communicate (Exh. 7, p. A63.); (2) deficits in nonverbal communicative behaviors used for social interaction, in that Claimant had a diminished capacity for meaningful eye contact and a diminished range of facial expressions; and (3) deficits in developing, maintaining and understanding relationship, in that Claimant preferred solitary play activity and had a historic difficulty interacting with others.

10. Dr. Carrillo stated that in the area of restricted, repetitive patterns of behavior, interest or activities, Claimant exhibited: (1) stereotyped or repetitive motor movements in that Claimant would jump in place without meaning, exhibits hand waving behavior, and would run in circles; (2) insistence on sameness, inflexible adherence to routines or ritualized patterns of verbal or nonverbal behavior in that Claimant had difficulty transitioning from one activity to another during the training

session; (3) highly restricted, fixated interests that are abnormal in intensity or focus in that Claimant displayed an abnormal interest in objects that twisted or had strings attached; and (4) hyper or hypo-reactivity to sensory input or unusual interest in sensory aspects of the environment in that Claimant was a very active child with a hypersensitivity to sound and touch.

11. Dr. Carrillo's DSM-5 diagnostic impression of Claimant was:

299.0 (F84.0) Autism Spectrum Disorder.

Social Communication: Severity 2. Requiring support  
Restrictive, Repetitive Behaviors: Severity 2. Requiring support.

Repeated mild delays in communication skills, related mild delays in adaptive skills and cognitive abilities within the normal range.

(Exh. 7, p. A64.)

12. Following Dr. Carrillo's evaluation, Service Agency found Claimant to be eligible for regional center services under the Lanterman Act based on a diagnosis of ASD.

### **SCHOOL DISTRICT'S PSYCHOEDUCATIONAL REPORT AND INDIVIDUALIZED EDUCATION PROGRAM**

13. Service Agency referred Claimant for special education preschool services. After the initial Individualized Education Program (IEP) meeting on November 18, 2015, Claimant was found to meet the eligibility criteria for special education under

the primary eligibility of autism and secondary eligibility of speech or language impairment.

14. On September 26, 2018, Manna Lin, M.S., school psychologist with the School District conducted a triennial evaluation of Claimant and prepared a Psychoeducational Report (School District Report). At the time of the evaluation, Claimant was receiving special education and related services under the primary eligibility of autism.

15. The evaluation consisted of a classroom observation, review of records, interview of Mother and Claimant's teacher, and administration of: (1) Kaufman Survey of Early Academic and Language Skills (K-SEALS); (2) the Wechsler Nonverbal Scale of Ability (WNV); (3) Adaptive Behavior Assessment System, Third Edition (ABAS-3); and (4) the Gilliam Autism Rating Scale (4d. ed.) (GARS-3).

16. Claimant was assessed as having average general cognitive ability (WNV FSIQ 101) and good early academic skills (K-SEALS). On the adaptive scales (ABAS-3), both Mother and Claimant's teacher rated Claimant's adaptive skills to be within the low average to average range and his social skills to be in the low average range. On the GARS-3, Mother reported Claimant's probability of having autism to be "very likely" with a rating of 118, while his teacher reported his probability of having autism to be "probable" with a rating of 62. It was determined Claimant continued to meet the eligibility criteria for special education and related services.

### **INDIVIDUAL PROGRAM PLAN AND ANNUAL REVIEWS**

17. On November 21, 2018, an Individual Program Plan (IPP) meeting was held with Claimant, Mother and Claimant's SCPRC service coordinator (SC) Elisa Ugalde. During the meeting, Mother reported Claimant was helpful in completing

personal care activities but needed assistance. In the area of communication, Claimant was reported to have a broad vocabulary of words to communicate his needs and wants but that he would not always respond during a conversation. Mother also noted Claimant continues to have difficulties maintaining eye contact, transitioning from one activity to another and exhibited (unspecified) repetitive behaviors.

18. During each of the annual reviews on November 26, 2019, and December 1, 2020, Claimant was reported to have made additional advances in completing personal care activities but that he continued to have difficulties in communicating and interacting with others.

### **Notice of Proposed Action and Fair Hearing Request**

19. On August 27, 2019, Claimant was referred to the SGPRC Autism Clinic for an evaluation to clarify his diagnosis and determine his continued eligibility for regional center services.

20. Following the evaluation, the SGPRC's Eligibility Team, consisting of Dr, Lagenbacher, Judith Aguilera, MA, CCC-SLP, Gabby Castillo, Client Services Manager and Mother met on May 7, 2020, to review Claimant's records and the re-assessment. Following the review, the Eligibility Team concluded that the original decision that made Claimant eligible for regional center services was clearly erroneous.

21. On May 11, 2020, the Service Agency issued a Notice of Proposed Action (NOPA) notifying Claimant's mother of its determination that Claimant is not eligible for services because Claimant does not have a developmental disability as defined by law based on his most recent evaluation.

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22. Mother filed a fair hearing request, resulting in this hearing.

### **Diagnostic Criteria for Autism Spectrum Disorder**

23. The DSM-5 contains criteria for the diagnosis of autism. The diagnostic criteria include persistent deficits in social communication and social interaction across multiple contexts; restricted repetitive and stereotyped patterns of behavior, interests, or activities; symptoms that are present in the early developmental period; symptoms that cause clinically significant impairment in social, occupational, or other important areas of function; and disturbances that are not better explained by intellectual disability or global developmental delay. An individual must have a DSM-5 diagnosis of ASD to qualify for regional center services under autism.

### **Service Agency's Autism Clinic Assessment**

24. On August 27, 2019, SGPRC staff psychologist Deborah Langenbacher, Ph.D., reviewed Claimant's records and referred Claimant to SGPRC's Autism Clinic for comprehensive reassessment.

25. On April 9, 2020, Claimant was assessed at SGPRC's Autism Clinic by Dr. Deborah Langenbacher and Aguilera (Assessment Team), and the Assessment Team prepared a report of its findings (Assessment Report). The assessment process included: parent interview; play observation; administration of the Autistic Diagnostic Observation Schedule (2d. Ed.) Module 3 (ADOS-2), Childhood Autism Rating Scale 2HF (CARS-2HF), and Adaptive Behavior Assessment System (3d Ed.) (ABAS-3); and a review of records.

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26. At the time of the assessment, Claimant had transitioned from kindergarten, where he was enrolled in a special day class (SDP), with 24 percent of the time in regular education, to a regular first grade class with twice weekly speech therapy.

27. To evaluate Claimant for autism, Claimant was administered the ADOS-2. The Assessment Team also considered Mother's interview, clinical observations, review of records and the CARS-2HF.

28. During the behavioral observation, Claimant was noted to be able to speak in full sentences, use a variety of appropriate gestures, made appropriate, though inconsistent eye contact, and make smooth transitions from one activity to the next. It was also noted Claimant had a tendency to speak too fast, which reduced his intelligibility, but did not demonstrate any echolalia or stereotypic language, apart from reciting the days of the week during the story book Tuesday. According to Mother, Claimant demonstrated his usual behavior during the observation.

29. Though Claimant had a history of flapping his hands and aligning his toy cars, those behaviors were reported to be very infrequent at the time of the assessment. Mother also indicated that Claimant continued to have difficulty with transitions when "things do not go his way." (Exh. 10, p. A96.)

30. Based on Claimant's results from scores on the ADOS-2 and on the CARS-2HF, the Assessment Team ruled out Autism and ASD. On the ABAS-3, Claimant's adaptive skills ranged from average to low, with social skills being an area of relative strength. Claimant's percentile scores in communication, self-direction, leisure, social, health and safe, 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.

31. Claimant has a history of delayed speech development. That history coupled with Claimant's continued difficulties in verbal communication, particularly in his rate of speech and poor intelligibility, were found to meet the criteria for diagnosis of Language Disorder (315.39/F80.9). The Assessment Team also noted that Claimant presented with some traits of anxiety disorder and Attention Deficit Hyperactivity Disorder (ADHD).

### **Pacific Clinics Advancing Behavioral Healthcare Full Assessment**

32. In early November 2021, Mother had an independent assessment of Claimant completed by Pacific Clinics Advancing Behavioral Healthcare (Pacific Clinics). Michael Mikulski, Licensed Marriage and Family Therapist, conducted the assessment and report of his findings was prepared. (The report does not indicate the date of the assessment.)

33. The "Current Symptoms and Behaviors" as set out in the report were somewhat confused and, at times, unintelligible, but Mother apparently reported Claimant would disengage and avoid contact with other children in social settings and avoid conversations and eye contact with others when outside the home. Claimant shared that "this because he has a fear of being bullied but really instead [*sic*] prefers to be alone and not interact with other children." (Exh. C, p. B7.) Mother also reported that Claimant will become fixated with topics of conversation, had difficulty with changes in his schedule, and maintaining healthy relationships. According to the report, Claimant exhibits these behaviors throughout the day and each occurrence will last approximately two hours.

34. Under "Developmental Milestones," Mother shared that Claimant had troubles with separation since he was an infant. In his early years (age 4 to 6), Claimant was delayed in being potty trained and did not interact with children his age. Currently, Mother reported that though Claimant has healthy conversational exchanges and interpersonal relationships with adults, he does not socialize or communicate with children his own age.

35. With respect to his family relationships, Claimant lives with his younger Brother, Mother, and maternal Grandmother. Great-grandmother also lived in the home until she passed away in July 2021. Father does not live in the home and has been in and out of Claimant's life in the last few years. Claimant does not show any interest in interacting with Father. Claimant will often fight with Brother but knows that he needs to behave and be kind to Brother or Mother will take his electronics away. Claimant also experiences anxiety when Mother walks away from him, even if it is to go to the kitchen or go outside. Claimant has expressed that he is afraid Mother will leave him or something bad will happen to her. Claimant

36. Based on the assessment, Mikulski determined that Claimant meets the criteria for Separation Anxiety Disorder and ASD. Mikulski states that the basis for the ASD diagnosis is the following symptoms and behaviors being present in the last seven years: difficulty in maintaining and understanding relationships; repetitive motor movements; inflexible adherence to routines; fixation and abnormal intensity or focus.

37. The Pacific Clinics Full Assessment was afforded very little weight as none of the narrative details in the report indicate how Mikulski determined Claimant has the behaviors and symptoms upon which the ASD diagnosis was made.

## **Dr. Lagenbacher's Testimony**

38. Dr. Lagenbacher testified at hearing regarding Service Agency's finding that Claimant was no longer eligible for regional center services. Dr. Lagenbacher has been employed as a staff psychologist by Service Agency for almost 25 years. In her role, she reviews all new intake cases, makes recommendations for further assessments, 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 being one of the authors of the resulting Assessment Report, she was a member of the Eligibility Team that found Claimant ineligible for services.

39. According to Dr. Lagenbacher, SGPRC re-evaluates all children who have been diagnosed with either ASD or intellectual disability at age three when they become six years old. These reason for this is that some children will make wonderful progress such that the early diagnosis changes. This change can be attributed to a variety of different factors and include brain growth and development, and educational opportunities and experiences.

40. Dr. Lagenbacher reviewed Claimant's School District Report and noted: (1) Claimant was assessed at having non-verbal cognition; (2) Claimant was at having average adaptive skills; and (3) on GARS3, Mother reported Claimant having high characteristics of autism which Claimant's teacher reported Claimant having very low characteristics of autism. Given these findings, Dr. Lagenbacher felt Claimant should be re-evaluated and referred to Autism Clinic.

41. The Assessment Team's observations and findings were documented in the Assessment Report and formed the basis for Service Agency's determination that Claimant was no longer eligible for regional center services.

## **Mother's Testimony**

42. Mother testified that Claimant still has autism. Mother acknowledges that though Claimant's behavior in school is "great," he does not engage with other children and has only one "best friend." At home, Claimant talks back, is mean to Brother and does not want to do anything. Mother also reported that Claimant paces when he is upset, talks to himself and has outbursts.

43. Mother feels that the evaluation, which was conducted at the beginning of the COVID-19 pandemic was done too quickly and she would like another evaluation performed.

## **LEGAL CONCLUSIONS**

### **Jurisdiction**

1. The Lanterman Act governs this case. An administrative hearing to determine the rights and obligations of the parties is available under the Lanterman Act to appeal a contrary regional center decision. (Welf. & Inst., §§ 4700-4716.) Claimant timely requested a hearing, so jurisdiction for this appeal was established.

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

2. Pursuant to Welfare and Institutions Code section 4643.5, subdivision (b), a person who is determined by a regional center to have a developmental disability "shall remain eligible for services from regional centers unless a regional center, following a comprehensive assessment, concludes that the original determination that the individual has a developmental disability is clearly erroneous."

3. As Service Agency is seeking to terminate services provided to Claimant, it bears the burden to demonstrate its decision is correct, because the party asserting a claim or making changes generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.)

## **Evaluation**

4. In order to be eligible to receive services from a regional center, an individual must have a developmental disability, which is specifically defined as “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., § 4512, subd. (a).)

5. To prove the existence of a developmental disability within the meaning of Welfare & Institutions Code section 4512, the disability must constitute a “substantial disability.”

6. A “substantial disability” is one which constitutes “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. [¶] Receptive and expressive language. [¶] (C) Learning. [¶] (D) Mobility. [¶] (E) Self-direction. [¶] (F) Capacity for independent living. [¶] (G) Economic self-sufficiency.” (Welf. & Inst., § 4512, subd. (j)(1).)

7. Pursuant to Welfare and Institutions Code section 4512, subdivision (1)(2), “[a] reassessment of substantial disability for purposes of continuing eligibility shall utilize the same criteria under which the individual was originally made eligible.”

8. California Code of Regulations, title 17, section 54001, subdivision (a), also defines “substantial disability” as:

(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.

## **Evaluation**

9. Although Claimant has a history of an autism diagnosis under the DSM-5, as Claimant progressed in age, he did not exhibit symptoms and characteristics of a person with autism. Claimant has been diagnosed Language Disorder, anxiety disorder and may potentially suffer ADHD. These conditions do not qualify a person for regional center services.

10. Accordingly, SGPRC met its burden. The original determination by SGPRC finding Claimant eligible for regional center services under a diagnosis of autism is clearly erroneous in light of SGPRC's comprehensive reassessment.

## **ORDER**

Service Agency has established that Claimant is no longer eligible for regional center services. Service Agency's determination that Claimant is not eligible for regional center services is sustained. Claimant's appeal of that determination is denied.

DATE:

NANA CHIN

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.