

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

**In the Matter of:**

**CLAIMANT,**

**vs.,**

**WESTSIDE REGIONAL CENTER,**

**Service Agency.**

**OAH No. 2021070799**

**DECISION**

David B. Rosenman, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by telephone and video conference on September 21, 2021.

Candace Hein, Fair Hearing Manager, represented Westside Regional Center (Service Agency or WRC). Claimant was represented by his mother. Titles are used to protect confidentiality.

Testimony and documentary evidence was received. The record closed and the matter was submitted for decision on September 21, 2021.

## **ISSUE PRESENTED**

Is Claimant eligible to receive services from the Service Agency?

## **EVIDENCE RELIED UPON**

WRC's exhibits 1-9; testimony of Kaely Shilakes, Psy.D., WRC psychologist, and Claimant's mother.

## **FACTUAL FINDINGS**

1. Claimant is a 13-year-old male who has been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD). He lives at home with his parents and older brother. Claimant received mental health services from Masada Homes, which referred him to WRC to determine if he has Autism Spectrum Disorder (ASD) or Intellectual Disability (ID). If Claimant has an eligible condition, he may qualify to receive services under the Lanterman Developmental Disabilities Services Act (Welfare and Institutions Code section 4500 et. seq., referred to as the Lanterman Act).<sup>1</sup>

2. On May 5, 2021, the Service Agency sent a letter to inform mother of its determination that Claimant does not have a developmental disability that would

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

make him eligible for services under the Lanterman Act. Mother submitted a Fair Hearing Request, which resulted in the September 21, 2021 hearing.

3. WRC received records from Masada Homes and Claimant's school district. A WRC intake counselor interviewed mother and prepared a psychosocial report. WRC referred Claimant for a psychological evaluation by George Jesús Meza, L.C.S.W., Ph.D. Dr. Meza evaluated Claimant on March 16 and April 21, 2021. Dr. Meza was aware Claimant was being evaluated based on mother's concerns he may have ASD or ID. Among other things, Dr. Meza reviewed Claimant's records, administered several tests, gathered information from Claimant's mother, and observed Claimant. Dr. Meza wrote a report summarizing his observations and assessments. (Exhibit 4.)

4. Cognitive assessment of Claimant was accomplished by use of the Wechsler Intelligence Scale for Children - 5<sup>th</sup> Edition (WISC-V), which measures verbal comprehension, visual perception, working memory, and processing speed. Claimant had relative strengths and weaknesses. Verbal comprehension and spatial abilities were in the low average range (both scaled scores were 81), processing speed was also low average (scaled score, 86), and Claimant's fluid reasoning index and working memory index were in the borderline range (scaled scores of 72 and 76, respectively). The composite scaled score of 74 was in the borderline range.

5. Claimant's adaptive functioning was assessed using the Adaptive Behavior Assessment Scale - 3<sup>rd</sup> Edition (ABAS-3), which measures Claimant's communication, community use, functional pre-academics, home living, health and safety, leisure, self-care, self-direction, and social skills, based on information provided by mother's answers to a questionnaire. Dr. Meza reported Claimant's results as: General Adaptive Composite, low range (scaled score, 75); Conceptual Composite, extremely low range (scaled score, 68); Social Composite, below average range (scaled

score, 83), and Practical Composite, below average range (scaled score, 81). Claimant's adaptive questionnaire scores were consistent with Dr. Meza's impressions of his daily functioning from the assessment.

6. Dr. Meza reported on the two primary diagnostic criteria for ID as found in the Diagnostic and Statistical Manual – 5<sup>th</sup> Edition (DSM-5). More specifically, Dr. Meza found Claimant did not meet the criteria for clinically significant deficits in (1) clinically significant deficits in intellectual functions, such as reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning by experience, or (2) clinically significant deficits in adaptive functioning that result in failure to meet developmental and sociocultural standards for personal independence and social responsibility.

7. The diagnostic assessment for ASD was by use of the Autism Diagnostic Observation Schedule - 2 (ADOS-2), a semi-structured assessment of communication, social interaction, and imaginative use of materials that helps identify behaviors identified as important to the diagnosis of an ASD. Information from the ADOS-2 must be combined with other clinical information to determine a diagnosis of ASD, which may be appropriate if an individual's comparison score is equal to or greater than the Autism Spectrum cut-off. Claimant's comparison score of 1 indicated minimal to no evidence of clinically significant ASD-related symptoms.

8. Dr. Meza also accompanied Claimant and his mother during a community outing, leaving the office and walking to an outdoor café, ordering a meal, waiting in a nearby park, and walking back to mother's car. Dr. Meza engaged in discussion with Claimant and his mother, and he observed Claimant's behavior and actions.

9. Dr. Meza reported on the primary diagnostic criteria for ASD as found in the DSM-5. More specifically, Dr. Meza found Claimant did not meet any of the criteria for: (1) deficits in social-emotional reciprocity (criterion A.1); (2) deficits in nonverbal communication behaviors used for social interaction (criterion A.2); (3) deficits in developing, maintaining, or understanding relationships (criterion A.3); (4) stereotyped or repetitive motor movements, use of objects, or speech (criterion B.1); (5) insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior (criterion B.2); (6) highly restricted, fixated interests that are abnormal in intensity or focus (criterion B.3); or (7) hyper- or hypo-reactivity to sensory input or unusual interest in sensory aspects of the environment (criterion B.4).

10. Dr. Meza listed the following diagnostic impressions of Claimant: ADHD, combined presentation; Borderline Intellectual Functioning; Specific Learning Disorder, with impairment in mathematics; and Specific Learning Disorder, with impairment in written expression.

11. The five eligible developmental disabilities listed in the Lanterman Act are ID, cerebral palsy, epilepsy, autism, and disabling conditions found to be closely related to ID or to require treatment similar to that required for individuals with ID. (This last phrase is referred to as the fifth category of eligible conditions.) Excluded from these eligible conditions are handicapping conditions that are solely psychiatric disorders, solely learning disabilities, or solely physical in nature.

12. At the hearing, Dr. Kaely Shilakes, WRC's lead psychologist and Intake Manager, reviewed and interpreted Dr. Meza's report. Dr. Shilakes is familiar with the tests administered by Dr. Meza. Dr. Shilakes testified about the behaviors, actions, and assessment results that are evaluated to determine if someone is substantially disabled by a developmental disability.

13. Based on her review of Dr. Meza's report, Masada Homes records, the psychosocial report, as well as records gathered from Claimant's school, Dr. Shilakes testified credibly that the diagnoses made by Dr. Meza were supported by the information he had collected. Dr. Shilakes was on the WRC team that evaluated Claimant's request for eligibility. The team determined there was insufficient data to conclude Claimant suffered from ID or ASD. She added that the team also considered whether Claimant was eligible under the fifth category and determined there was insufficient data to conclude Claimant had a disabling condition closely related to ID or which required treatment similar to that required for individuals with ID. Dr. Shilakes added that Claimant's ADHD, a psychiatric condition, would not make him eligible for services under the Lanterman Act. Nor would his learning disabilities or borderline intellectual functioning make him eligible for services under the Lanterman Act.

14. In her testimony, Dr. Shilakes acknowledged that some behaviors of Claimant referred to by his mother could be indicative of a child with ASD, such as his sensitivity to loud noises, walking in circles, slapping his hands, and pattern walking from room to room. However, Dr. Shilakes explained that ASD is a pervasive developmental disorder, and it would be expected that behaviors typical of persons with ASD would be seen in most settings. The behaviors would then have clinical significance. Yet the observers and evaluators of Claimant's behaviors, that is the intake coordinator and Dr. Meza, did not note or comment upon the same types of behaviors that were observed by his mother.

15. In the Fair Hearing Request (Exhibit 2), mother wrote that, in the assessment process, she felt she was unable to provide more information regarding Claimant's day-to-day activities; he needs help in school and in his daily life, and she wanted him to be re-evaluated.

16. At the hearing, mother expressed legitimate concerns about Claimant's challenging behaviors and his need for services. She gave further examples of Claimant's unusual behaviors, such as Claimant does not understand the value of money or wait for change from a simple purchase, or when she asks him to shower, he doesn't know what to do and mother needs to give him shampoo and instruct him on the steps because he forgets. Claimant cannot say his mother's name completely and does not know their house number or street address. Mother needs to remind Claimant to do his homework and must sit with him because he does not know what to do.

17. When Claimant was in elementary school his mother asked for a special education assessment but was told Claimant was doing well in some subjects. Currently, Claimant receives accommodations from his school district under a 504 Plan based on his ADHD. Mother forwarded Dr. Meza's report to the school district and has asked again for an evaluation to see if Claimant qualifies for special education services. She has not received a reply.

## **LEGAL CONCLUSIONS**

1. Under the Lanterman Act, an administrative "fair hearing" is available to determine the rights and obligations of the parties. (Code, § 4710.5.) Claimant requested a fair hearing to appeal the Service Agency's denial of eligibility. Jurisdiction in this case was thus established. (Factual Findings 1, 2.)

2. The standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) The party asserting a claim 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.) In this case, Claimant bears the burden of proof regarding his request for eligibility.

3. Under the Lanterman Act, the State of California accepts responsibility for persons with developmental disabilities. The Lanterman Act mandates that an "array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream life of the community." (Code, § 4501.) These services and supports are provided by the state's regional centers. (Code, § 4620, subd. (a).)

4. In order to be eligible for regional center services, a person must have a qualifying developmental disability. Code section 4512, subdivision (a), defines "developmental disability" as "a disability which originates before an individual attains age 18, 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 [and] disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability . . . ."

5. The language used in the DSM-5 section on ASD requires some of the factors listed to be "persistent," "pervasive and sustained," "clearly evident," or "excessive." (DSM-5, pp. 51-59.) The behavior must be of clinical importance. Therefore, behaviors must be evaluated by those who, by their training and experience, are qualified to determine whether those behaviors are clinically significant and would or would not support an ASD diagnosis.

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6. The task of the evaluator is to assess the patient globally—the entire presentation of the child—based upon the information presented and the observations made. If a behavior found positive by one evaluator is either not present or is not significant when the patient is observed a second time, that behavior may not have been found to be clinically significant and may be of less importance to the second evaluator. The behavior may not meet the requirement of a qualitative or marked impairment if it is not evident in multiple settings or assessments. (See, generally, DSM-5, “Introduction” and “Use of the Manual,” pp. 5-25.)

7. A further consideration is found in California Code of Regulations, title 17, section 54000, which defines “developmental disability” as a disability attributable to an eligible condition that originates before age 18, is likely to continue indefinitely, and constitutes a substantial disability. Excluded are handicapping conditions that are solely psychiatric disorders, solely learning disabilities, or solely physical in nature. As noted by Dr. Shilakes, Claimant’s ADHD is a psychiatric disorder. This is excluded from the definition of an eligible developmental disability. Similarly, Claimant’s learning disorders as diagnosed by Dr. Meza are also excluded from the definition of an eligible developmental disability.

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8. Claimant has several challenging behaviors and other symptoms of his ADHD and other diagnoses. However, as set forth in Dr. Meza's report and the test results, and as explained by Dr. Shilakes, Claimant has not met the legal requirements to establish that he has a developmental disability that makes him eligible for services from WRC under the Lanterman Act. (Factual Findings 1-17.)

## **ORDER**

Claimant's appeal of the Service Agency's decision to deny his eligibility for services is denied.

DATE:

DAVID B. ROSENMAN  
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.