

**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. 2022050233

DECISION

Naki Margolis, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on July 18, 2022.

Julie A. Ocheltree, Attorney at Law, represented South Central Los Angeles Regional Center (Regional Center or Service Agency).

Claimant's mother represented claimant. Family titles are used to protect claimant's privacy.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on July 18, 2022.

ISSUE

Is claimant eligible under the Lanterman Developmental Disabilities Services Act (Lanterman Act) to receive services and supports from the Service Agency?

EVIDENCE RELIED UPON

Documentary: Service Agency's Exhibits 1 through 4, 6 through 8.

Testimonial: Laurie McKnight Brown, PhD; claimant's mother and father.

SUMMARY

Claimant seeks to establish her eligibility under the Lanterman Act to receive services and supports from the Service Agency. Claimant failed to establish by a preponderance of the evidence that she has an eligible qualifying diagnosis under the Lanterman Act. Therefore, this appeal is denied.

FACTUAL FINDINGS

Jurisdiction

1. Claimant is a six-year-old girl.
2. By a Notice of Proposed Action (NOPA) letter dated April 7, 2022, Gricelda James, M.A., Program Manager, and Lisa Gonzalez, Psy.D., Service Coordinator (Dr. Gonzalez), at the Service Agency notified claimant's mother that the Service Agency's interdisciplinary team determined claimant is not eligible for regional center

services. They wrote she “is not substantially disabled as a result of having Autism Spectrum, Intellectual Disability, Seizures or Cerebral Palsy. . . [and] is not substantially disabled as a result of a condition closely related to Intellectual Disability nor does [claimant] require treatment similar to that required by individuals with Intellectual Disability.” (Ex. 1.) The Service Agency advised in the NOPA letter that claimant was diagnosed with Speech Sound Disorder and recommended speech and language therapy.

3. On May 5, 2022, claimant’s mother filed a fair hearing request to appeal the Service Agency’s determination regarding eligibility. This hearing ensued.

Claimant’s Background and Evaluations

4. Claimant lives at home with her mother and father.

SCHOOL EVALUATIONS

5. Claimant received from her school district on October 4, 2021, a comprehensive psychoeducational assessment, performed by D. Kozlowski, School Psychologist. In that report, Dr. Kozlowski assessed claimant’s cognitive ability through direct observation, information gathered from interviews and reports, review of records, academic performance, and the following assessment tests: Cognitive Assessment System – Second Edition (CAS-2); Southern California Ordinal Scales of Development (SCOSD) – Development Scale of Cognition; Test of Auditory Processing Skills, Fourth Edition (TAPS-4); Test of Visual Perceptual Skills Third Edition (TVPS-4); and the Berry-Buktenica Developmental Test of Visual-Motor Integration Sixth Edition (VMI-6).

6. The CAS-2 “measures cognitive processes that are deemed to be the basic building blocks of intellectual processing.” (Ex. 3, p. A15.) Dr. Kozlowski had difficulty completing certain subtests of CAS-2 because of claimant’s difficulties with reciprocal attention and claimant’s difficulty understanding the tasks or completing the tasks.

7. Based on the CAS-2 results, Dr. Kozlowski determined that claimant’s cognitive functioning would be better assessed using a test such as the SCOSD that limited reliance on reciprocal attention, verbal content, and language comprehension. The SCOSD is a cognitive functioning test with a flexible scoring system that is used to measure the quality of responses and allows for modification of test items to allow for communication difficulties of children with handicaps. In applying the SCOSD, Dr. Kozlowski noted that claimant was “beginning to use concepts regarding perceptual relationships involving object concept, part/whole relationships, beginning classification and emerging use of language labels.” (*Id.*, p. A16.) Claimant was able to discriminate size of objects, maintain spatial relationships, discriminate by quantity, and display classification skills. Claimant showed “emerging use of language labels”. (*Ibid.*) Claimant was able to identify body parts and everyday objects by pointing. Claimant was unable to show her understanding of directional concepts such as “under”, “next to”, etc.

8. Claimant also had difficulty expressing what was going on in various pictures shown to her. In terms of intuitive thought, Dr. Kozlowski found that claimant showed some early emerging skills at her age-appropriate level in terms of classifying objects by their properties. Dr. Kozlowski noted that claimant is learning to make judgments but “is not yet able to understand concrete logic or mentally manipulate information as expected for her age.” (*Id.*, p. A18.) Dr. Kozlowski found claimant’s

performance to be at the pre-operational preconception thought level (two to four years) with some early emerging skills at her age-appropriate level for pre-operational intuitive thought (four to seven years). However, Dr. Kozlowski found that claimant's "cognitive skills appear to be affected by delays in speech/communication and atypical play development." (*Ibid.*)

9. Next, Dr. Kozlowski attempted to administer the TAPS-4, an auditory processing skills test, but most of the tasks associated with the test could not be completed due to claimant's limited attention and language deficits. Dr. Kozlowski administered TVPS-4, a test of visual perceptual skills, and found claimant's score was in the low average range. Dr. Kozlowski concluded that "there is no evidence of a deficit in the area of visual processing skills. . . . Visual processing appears to be an area of relative strength." (*Id.*, p. A19.) Dr. Kozlowski noted that claimant's "performance suggests that she is able to learn or process details, especially when tasks are visual and do not require verbal output for success." (*Ibid.*) Next, Dr. Kozlowski administered a visual-motor integration test, the VMI-6. She concluded that claimant demonstrated visual-motor integration skills in the low average range.

10. In assessing cognitive ability, Dr. Kozlowski concluded that claimant's: general cognitive ability is estimated to be within the below average to average range with strengths in nonverbal/visual domain and concrete thinking ability. Specifically, low average to average range results are noted on tests measuring simultaneous non-verbal processing, overall visual processing and visual-motor coordination skills. When developmental individual assessment is considered, [claimant] functions at the Pre-Operational: Preconceptual

Thought stage of cognitive development overall. She is beginning to use concepts regarding perceptual relationships (those involving object concept, part/whole relationships, beginning classification, and emerging use of language labels). She has the ability to think and manipulate information, especially visual. Also, [claimant] is able to adequately process and remember visual detail and reason with nonverbal/visually-based information. She is more likely to understand and process nonverbal detail than verbal, at this time

(*Id.*, pp. A19, A20, original italics omitted.) Dr. Kozlowski noted that claimant's "verbal cognitive ability is significantly lower than her non-verbal ability." (*Id.*, p. A20.)

11. With regard to assessing autism, as that condition is defined in education-related statutes and regulations, Dr. Kozlowski administered the Autism Spectrum Rating Scales (ASRS) on August 30, September 10, and September 14, 2021. The ASRS score "indicates the extent to which the child's behavioral characteristics are similar to the behaviors of children identified with autism spectrum." (*Id.*, p. A26.) Dr. Kozlowski found that claimant's "behaviors consistent with autistic characteristics are observed across settings, although to varying degrees." (*Id.*, p. A27.) Dr. Kozlowski reported that claimant's total ASRS scores based on input from claimant's mother and teacher fell in the elevated to very elevated range based on characteristics consistent with autism spectrum disorder (ASD). Claimant's total T-score based on teacher input was 85, falling in the very elevated range which suggests many more concerns for ASD than typically rated. Claimant's total T-score based on her mother's input was 64, within the elevated range, suggesting more concerns than typically reported.

12. Dr. Kozlowski noted that claimant has difficulty using appropriate communication for social contact and does not understand social cues. Claimant has difficulty managing transitions. She shows a preference for lining up objects and repeating certain actions without apparent purpose. She has unusual responses to sensory experiences such as her desire to touch other students.

13. Dr. Kozlowski concluded that claimant “meets the educational eligibility criteria for Autism (AUT) and she is in need of special education services. Her disability impacts her educational progress and requires specially designed instruction to meet her needs.” (*Id.*, p. A32, emphasis omitted.) In so doing, Dr. Kozlowski applied the definition of autism in an eligibility regulation, adopted under the authority of the Education Code, which provides:

Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, and *adversely affecting a child's educational performance*. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

(Cal. Code Regs., tit. 5, § 3030, subd. (b)(1), italics added.) The Education Code provides that the definition of autism in the Education Code “shall not apply for purposes of the determination of eligibility for services pursuant to the Lanterman Developmental Disabilities Services Act . . . ”(Educ. Code, § 56846.2, subd. (b).)

14. Claimant received an Individualized Education Program (IEP), dated October 4, 2021, under which she is receiving special education services as a pupil with autism.

REGIONAL CENTER EVALUATIONS

15. Dr. Gonzalez conducted a psychosocial assessment of claimant on November 9, 2021. She recommended that a psychological assessment be performed and that the Service Agency determine whether claimant is eligible for regional center services and supports. Dr. Gonzalez noted claimant's mother's reporting that claimant has a speech delay, has difficulty communicating verbally, and gets frustrated easily when she is not able to express herself. Mother reported that claimant has been receiving speech therapy and academic support for reading and writing in a special classroom through her IEP, and is no longer hitting other children at school, walking around the classroom, and not doing her work, or locking herself in the school bathroom.

16. Loren M. Hill, Ph.D., a licensed clinical psychologist, performed a psychological evaluation of claimant for the Service Agency on December 3, 2021, and January 18, 2022, which was limited to assessing "the presence or absence of developmental delays attributed to intellectual disability or autism spectrum disorder." (Ex. 8, p. A132.) Dr. Hill reported conducting two clinical interviews with claimant and her mother, observing claimant's behavior, gathering claimant's background history, and administering the following tests: Adaptive Behavioral Assessment System, Third Edition (ABAS-3); Autism Diagnostic Interview-Revised (ADI-R); Autism Spectrum Rating Scale-Short Form (6-18 years) (ASRS); Childhood Autism Rating Scale, Second Edition (CARS-2); and Developmental Profile 4 Cognitive Subtest (DP-4).

17. Dr. Hill attempted to directly assess claimant's cognitive ability by administering the Stanford-Binet Intelligence Scales, Fifth Edition (SB-5), but claimant did not appear to understand the instructions, so Dr. Hill utilized the DP-4 instead. The DP-4 uses information from parents and caregivers to evaluate a child's level of cognitive ability relative to her peers. Dr. Hill obtained information from claimant's mother to conduct the DP-4 assessment. Dr. Hill determined that claimant's cognitive score ranked in the average range, as high as or higher than 30 percent of individuals of the same age as claimant. Dr. Hill found that claimant is "relatively average in her overall cognitive functioning, especially in the domains of cognition impacted by speech and communication functioning." (Ex. 8, p. 135.) However, Dr. Hill noted that the assessment should be interpreted with caution because claimant was not directly assessed, and thus the results may not accurately reflect her cognitive abilities.

18. In analyzing whether claimant has ASD, Dr. Hill applied the ASRS, the ADI-R, and the CARS-2. Dr. Hill explained the ASRS's total score ratings indicate the extent to which a child's behavioral characteristics are like those of children diagnosed with ASD. Claimant's total score was 58 (in the 79th percentile rank) indicating that her symptoms fall within the average range. According to Dr. Hill, this score indicates that claimant "has symptoms minimally related to the DSM-5 diagnostic criteria and is exhibiting few of the associated features characteristic of Autism Spectrum Disorder." (*Id.*, p. A137.)

19. Next, Dr. Hill completed the ADI-R using claimant's mother as the respondent. Dr. Hill noted that claimant engages in some direct gaze and social smiling and uses facial expressions. Claimant nods and shakes her head appropriately. Claimant does not have unusual preoccupations and compulsions, but she does have stereotyped and repetitive motor mannerisms. Dr. Hill reported that claimant's score of

one was below the cutoff score for ASD of 10 for qualitative impairments in social interaction, seven for communication (nonverbal), and three for repetitive behaviors and stereotyped patterns. Claimant's score of one was at the cutoff score of one for abnormality of development evident at or before 36 months.

20. Finally, Dr. Hill used CARS2, a rating scale for the 15 areas most identified in studies of autism. An overall raw score of 29.5 and below indicates a minimal-to-no symptom of ASD severity group. Claimant's raw score was 27.

21. Applying these three autism tests, Dr. Hill found that claimant's scores did not indicate a diagnosis of ASD. Dr. Hill also found that claimant:

does not meet ASD criteria because she displayed typical social functioning during the behavioral observation and no restrictive, repetitive or self-stimulatory behaviors were observed. . . .

(*Id.*, p. A138.) Dr. Hill noted that claimant engaged in social interaction in the interview by waving, smiling, and making eye contact with Dr. Hill and by pointing out certain pictures in a picture book to Dr. Hill.

22. Dr. Hill applied the criteria for ASD under the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), and concluded that claimant's symptoms did not satisfy the criteria for ASD under the DSM-5. The Lanterman Act provides that individuals should be evaluated for intellectual disability and ASD by use of such instrumentalities as intelligence tests, adaptive functioning tests, neurological and neuropsychological tests, and diagnostic tests performed by a physician, psychiatric tests, and others. (Welf. & Inst. Code, § 4643, subd. (b).) The authoritative resource for mental health professionals diagnosing these developmental disabilities is

the DSM-5. The criteria for ASD in the DSM-5 is different from the criteria for autism under the Education Code. The criteria for autism in the educational context do not apply to determine eligibility under the Lanterman Act. (See Factual Finding 13.)

23. Ultimately, Dr. Hill diagnosed claimant with Speech Sound Disorder. Dr. Hill noted that claimant has difficulty with sound production that interferes with her verbal communication. Dr. Hill recommended speech therapy and a speech and language assessment by a licensed speech and language pathologist.

24. Laurie McKnight Brown, Ph.D., a psychologist who contracts with the Service Agency to perform eligibility assessments and sit on the eligibility team, reviewed Dr. Hills' report, the psychosocial assessment dated November 9, 2021, the school district's psychoeducational assessment dated October 4, 2021, and claimant's IEP. In addition to being a psychologist, Dr. Brown was a classroom teacher for 17 years.

25. Dr. Brown testified that the Service Agency's interdisciplinary team concluded claimant did not have an intellectual disability. The team based its conclusion in large part on Dr. Hills' findings that claimant had average cognitive ability and Dr. Kozlowski's findings that claimant's cognitive ability was in the below average to average range. (Factual Findings 5 through 10, and 17.)

26. The Service Agency's interdisciplinary team concluded that claimant did not have ASD. In the psychoeducational assessment, the school psychologist used one screening tool for autism, the ASRS, to determine that claimant met the criteria of autism for the purpose of determining if claimant was qualified to receive educational support in a school setting. However, to diagnose ASD, a licensed clinical psychologist must perform a clinical assessment, which involves conducting a clinical interview,

observing the individual, gathering information from a parent or caregiver, reviewing background history, using standardized tools such as autism screeners to determine if there is a need to conduct further standardized testing, and then making a DSM-5 diagnosis or ruling out a diagnosis.

27. Dr. Brown testified that Dr. Hill performed all of these aspects of a clinical assessment and concluded that claimant did not have ASD under the DSM-5. Dr. Brown noted that Dr. Hill used two autism screening tools (ASRS and CARS-2), as well as the ADI-R, none of which yielded scores consistent with an ASD diagnosis.

28. Dr. Brown testified that there is no indication that claimant has an intellectual disability or ASD, or that claimant has a disabling condition closely related to intellectual disability or requiring treatment similar to that required for individuals with intellectual disability. Dr. Brown testified that nothing in claimant's medical records shows a history of seizures or cerebral palsy.

29. In light of Dr. Hill's diagnosis of Speech Sound Disorder, Dr. Brown recommended that claimant undertake speech therapy and undergo a mental health evaluation.

30. Claimant's mother and father both testified that claimant is smart. She has trouble communicating with words, but tries to communicate by drawing pictures.

LEGAL CONCLUSIONS

1. Cause does not exist to grant claimant's request for regional center services and supports, as set forth in Factual Findings 1 through 30, and Legal Conclusions 2 through 4.

2. The burden of proof is on the person seeking government benefits or services. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) 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.) Preponderance of the evidence means evidence that has more convincing force than that opposed to it. (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 324.)

3. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 et seq.) To establish eligibility for regional center services under the Lanterman Act, claimant must show that she has at least one of the following five categories of developmental disability: intellectual disability, autism, cerebral palsy, epilepsy, or a fifth category defined as “a disabling condition closely related to intellectual disability or that requires treatment similar to that required by an individual with an intellectual disability . . .” (Welf. & Inst. Code, § 4512, subd. (a).) The disability must originate prior to age 18, continue or be expected to continue indefinitely, and constitute a substantial disability for that individual. (*Ibid.*)

4. Claimant did not establish by a preponderance of the evidence that she is eligible for regional center services under the Lanterman Act based on a diagnosis of intellectual disability, ASD, or any other category of eligibility. (Factual Findings 5 through 30.) Her diagnosis of Speech Sound Disorder does not satisfy the requirement of an eligible diagnosis under section 4512, subdivision (a).

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ORDER

Claimant's appeal is denied.

DATE:

NAKI MARGOLIS

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.