

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

**In the Matter of:**

**CLAIMANT,**

**vs.**

**NORTH LOS ANGELES COUNTY REGIONAL CENTER,**

**Service Agency.**

**OAH No. 2022080602**

**DECISION**

Carmen D. Snuggs-Spraggins, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on May 9, 2023.

Claimant was represented by her mother (Mother). (Family titles are used to protect the privacy of Claimant and her family.) Spanish language interpretation services were provided to Mother pursuant to her request.

North Los Angeles County Regional Center (NLACRC or Service Agency) was represented by Dana Lawrence, NLACRC Fair Hearing and Administrative Procedures Manager.

Oral and documentary evidence was received. The record closed and the matter was submitted for decision on May 9, 2023.

## **ISSUE**

Is Claimant provisionally eligible for regional center services or eligible for regional services under the Lanterman Developmental Disabilities Services Act under a diagnosis of Autism Spectrum Disorder (ASD), Intellectual Disability (ID), or a condition found to be closely related to ID or require treatment similar to that required for individuals with ID?

## **EVIDENCE RELIED UPON**

Documentary: Service Agency exhibits 1 through 10, 12 through 19, and 22.

Testimonial: Heike Ballmaier, Psy.D., Supervisor of NLACRC Psychology/Intake Service Departments, and Mother.

## **Jurisdictional Matters**

1. Claimant is a three-year-old girl who lives with her parents and older brother. Claimant's brother, who is a minor, has been diagnosed with ASD.

2. On March 10, 2022, Mother requested regional center services to aid Claimant with speech and social deficits. Specifically, Mother reported Claimant has trouble articulating words, is shy, and has difficulty socializing. Mother also reported concerns that Claimant engages in behavior similar to Claimant's brother.

3. On July 14, 2022, NLARC determined that Claimant does not meet the criteria for eligibility for regional center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welfare and Institutions Code section 4500 et seq.) including the criteria for provisional eligibility.

4. Mother filed a Fair Hearing Request on August 3, 2022.

5. On August 19, 2022, Mother participated in an informal meeting with NLACRC representatives. On the same date, Dana Lawrence, NLACRC's Fair Hearing and Administrative Procedures Manager, sent Mother a letter notifying her of Ms. Lawrence's recommendation to defer an informal decision until NLACRC could review additional medical records and Claimant's Individualized Education Program (IEP).

6. On February 28, 2023, NLACRC sent a letter to Mother notifying her that NLACRC's Interdisciplinary Eligibility Determination Committee determined that Claimant is not eligible for regional center services because her condition does not meet the definition of a developmental disability.

7. All jurisdictional requirements have been met.

### **Claimant's Background**

8. Claimant was born at 38-weeks' gestation without complication. Her developmental milestones were reported to be within age norms. Claimant attends an Early Education Center within the Los Angeles Unified School District (LAUSD). She is eligible for special education services under the eligibility category of speech or language impairment.

## **Speech and Language Assessment**

9. On April 5, 2022, Claimant underwent a virtual speech and language evaluation at Maxima Therapy pursuant to NLACRC's referral. The evaluator obtained Claimant's history from Mother, made clinical observations, and administered the Rossetti Infant-Toddler Scale.

10. Claimant was alert and friendly toward the examiner. She established eye contact, waved at the examiner, and played with toys when they were given to her. Claimant looked at individuals when they stated her name, followed one-step commands, and engaged in meaningful two-way communication with others. Claimants' play and social skills were age appropriate.

11. Claimant's scores for receptive and expressive language skills fell within the 24 to 27-month age range, demonstrating a mild to moderate delay. The evaluator recommended speech therapy and early intervention and occupational therapy evaluations to rule out overall developmental delays and sensory processing issues. It was also recommended that Claimant's parents continue to provide Claimant with opportunities to socialize.

## **Initial Developmental Evaluation**

12. On April 15, 2022, Claimant underwent an Initial Developmental Evaluation at Square One Diagnostics for purposes of determining her levels of developmental functioning. Mother expressed to the evaluator that Claimant had difficulty transitioning from self-directed activities, only sometimes participated in adult-directed or initiated play activities, had tantrums on a daily basis when denied wants, and was aggressive toward others while having a tantrum. Mother was also concerned that Claimant is autistic because Claimant does not socialize with her peers

or adults. Mother did not express concern about developmental delays or sensory difficulties.

13. The evaluator observed Claimant at home while Mother was present and administered the Bayley Scales of Infant Development, Third Edition. Claimant maintained eye contact and displayed appropriate social regard and awareness toward Mother and the evaluator. However, Claimant refused to actively participate in test tasks even when prompted by Mother. She “was completely non-enthusiastic toward test items, toward test tasks, and toward social interaction within test activities. She more readily explored known objects in the environment than novel objects in the environment, which she refused to explore or handle.” (Ex. 5, p. A33.) Mother reported Claimant’s behavior was typical of her reaction to people who are unfamiliar to her.

14. Claimant’s cognitive ability test results were in the 15-month-old range. She was able to find hidden objects and she did not have difficulty perceiving visual stimuli. However, she refused to participate in some test tasks. Claimant tested in the 20-month-old range in the area of gross motor skills. She walked and ran independently with proper balance and coordination, squatted without support, walked backwards unassisted, and maintained her balance on both feet, among other tasks. However, Claimant refused to participate in additional test tasks. Claimant achieved a score in the 16-month-old range in the area of fine motor skills. Mother reported Claimant can grasp small objects, but Claimant refused to do so during the session. Claimant scribbled while engaged in self-directed activity but refused to participate in additional test tasks in the area of gross motor skills.

15. Claimant’s expressive-language skills score was in the 24-month-old range. Among other things, she produced multiple word utterances, responded to an adult speaker’s attention, and correctly verbally responded “yes” or “no” in response to

questions within conversation. However, Claimant similarly refused to participate in additional test tasks. In the area of receptive language skills, Claimant's score was in the 20-month-old range. Claimant did not have any difficulty perceiving auditory stimuli and consistently responded to her name when and requests for social routines. Again, Claimant refused to participate in some test tasks in this area.

16. In the area of social/emotional skills, Claimant scored in the 24-month-old range. She maintained meaningful eye contact, consistently used words to relay her wants, consistently preferred being around others, and understood and reciprocated other's action. However, Mother reported Claimant is "highly apprehensive, angrily standoffish, and timid toward strangers outside the home; she remains clingy toward her parents in novel environments outside the home instead of being adventurous in these environments." (Ex. 5, pp. A35-A36.) In the area of adaptive/self-help skills, Claimant scored in the 25-month-old range. She can eat using utensils, she attempts to wash and dry her hands independently and brush her own hair, she is completely toilet trained, and she cooperated with dressing and undressing.

17. Claimant's overall developmental age was determined to be 20 months and 21 days. However, the evaluator noted Claimant's scores in cognitive, language and motor skills would have been higher if she had complied with testing. It was recommended that Claimant: a) be referred to an Early Head Start program for an eligibility determination, her local educational agency for an assessment to determine eligibility for preschool special education services at three-years-old, and NLARC for evaluation to rule-out any developmental disability; b) participate in one-on-one specialized developmental instruction; c) continue to be provided with opportunities for socialization; and d) participate in community-based counseling.

## **Individualized Family Service Plan**

18. On April 21, 2022, Mother participated in a telephonic Individualized Family Service Plan (IFSP) meeting with an NLACRC service coordinator. Claimant was determined to be eligible for early intervention services due to developmental delay based upon NLACRC's review of reports of Claimant's speech and language and initial developmental evaluations. During the IFSP meeting, Mother expressed concern that Claimant did not interact with other children at day care, did not like to share her toys, frequently engaged in tantrums, pinched other children while they slept, and did not speak clearly. Mother also reported that Claimant has difficulty self-regulating, cries when her hands are dirty, and constantly wants to hear the sound of water.

19. Mother consented to a referral to LAUSD for language and speech, psychological, and occupational therapy evaluations and a health screen. NLACRC agreed to fund speech therapy services for Claimant one hour per week, specialized instruction one hour twice per week, and child development services three hours twice per week. These Early Start services were to be provided beginning April 25, 2022, and terminate on Claimant's third birthday in June 2022.

## **NLACRC Medical Summary**

20. On May 12, 2022, Carlo DeAntonio, M.D., F.A.A.P., reviewed Claimant's medical records. The records did not demonstrate Claimant has cerebral palsy or epilepsy.

## **Occupational Therapy Sensory Integration (SI) Evaluation**

21. On May 12, 2022, Eunice Eugenio, OTR/L, conducted an SI occupational therapy assessment of Claimant due to concerns about Claimant's organizational skills

and sensory processing systems. Ms. Eugenio interviewed Mother, conducted clinical observations of Claimant, and administered the Hawaii Early Learning Profile (H.E.L.P.), Gesell Developmental Schedules, and Toddler Sensory Profile-2, which are assessments for children ages zero to three years of age.

22. Mother expressed concerns regarding Claimant's ability to pay attention, follow directions, transition from one activity to another, and navigate her environment, as well as Claimant's fear of socializing with other children, avoiding places that are loud and busy, and frequent tantrums.

23. Ms. Eugenio evaluated Claimant at home. Claimant initially avoided Ms. Eugenio but engaged in play with her by the end of the evaluation. Ms. Eugenio observed Claimant display some difficulty with organization and self-regulation. However, Claimant's joint attention skills were progressing toward an age-appropriate level, in that she was able to engage with Ms. Eugenio for two minutes during seated tasks.

24. In the area of sensory processing, Claimant responded to her name being called 50 percent of the time and listened to some verbal directions when regulated. Claimant covered her ears and ran away when she heard the vacuum cleaner, and verbalized wanting to go home or to the doctor when encountering a new environment. Claimant screamed and cried when she heard other children crying. Ms. Eugenio expressed concern regarding Claimant's auditory processing skills with respect to registering information and avoiding certain sounds. Claimant did not display any behavior that caused concern with her tactile processing skills. In the area of proprioceptive/vestibular functioning, Mother reported Claimant was not highly active as she only tolerated playing in the park for 15 to 20 minutes before wanting to go home. Mother also reported, among other things, that Claimant climbed on



couches, jumped on the sofa, and descended from furniture headfirst. Claimant also jumped on her brother and parents, even when told to stop. Ms. Eugenio expressed “a few concerns” with Claimant’s challenges with safety awareness that could affect her balance and coordination. (Ex. 8, p. A6.)

25. Claimant’s scores on the Toddler Sensory Profile-2 were in the “Just like the Majority of Others” range in the areas of Seeking/Seeker, Sensitivity/Sensory, Visual, Touch, Oral, and Behavior. Her scores were in the “More than Others” range in the areas of Avoiding/Avoider, Registration/Bystander, general, auditory, and movement. (Ex. 8, pp. A6-A7.)

26. Ms. Eugenio concluded that Claimant demonstrated “challenges in the areas of sensory-motor/motor planning/sensory-organizational/sensory-modulation skills, organizational/self-regulatory skills.” (Ex. 8, p. A7.) She recommended Claimant receive occupational therapy, and that home programs and family/caregiver education, training, and support be provided as necessary.

## **Psychological Assessment**

27. Service Agency referred Claimant to Larry E. Gaines, Ph.D., for a psychological assessment of Claimant's current levels of cognitive and adaptive functioning to determine whether Claimant presently meets the criteria for a developmental disability, such as ID and/or autism. Dr. Gaines conducted the evaluation on July 1, 2022, and prepared a Psychological Assessment report of his findings and conclusions, which was admitted as Exhibit 9.

28. The Psychological Assessment included a clinical interview of Mother; review of unspecified records; behavioral observation of Claimant; and the administration of the Wechsler Preschool and Primary Scale of Intelligence-IV (WPPSI-

IV); Beery-Buktenica Developmental Test of Visual-Motor Integration; Autistic Diagnostic Interview – Revised (ADI-R); Autistic Diagnostic Observation Scale-2 (ADOS-2) Module 1; and Vineland Adaptive Behavior Scale Third Edition (VABS III).

### **CLINICAL INTERVIEW**

29. Mother reported that Claimant may be copying her brother and expressed concern that Claimant may have autism, she displayed poor emotional regulation, had tantrums, and could be aggressive. Mother also reported Claimant does not pay attention to instruction, climbs on objects without sensing danger, and “always [has] to fidget with things in her hand. She cannot sit still.” (Ex. 9, p. A176.) Mother expressed concern that Claimant was not social with others. Mother denied Claimant suffered from seizures or cerebral palsy.

### **BEHAVIORAL OBSERVATIONS**

30. Dr. Gaines observed Claimant make good eye contact and she “presented as an angel” during the evaluation. She nodded yes when asked if she wanted to play and did not display any difficulties noted in previous developmental reports. Dr. Gaines noted that during down time, Claimant played and fidgeted with items, climbed on top of Mother and leaned over Mother’s back, and could not sit still. Claimant smiled in response to praise and was easily redirected to test activities. Dr. Gaines did not observe Claimant engage in any “Autistic-like behaviors.” (Ex. 9, p. A176.)

### **STANDARDIZED TESTS**

31. Dr. Gaines administered the WPPSI-IV to assess Claimant’s cognitive functioning. Her scores were in the low-average range of cognitive functioning. In the

area of language functioning, Claimant's VABS-III scores placed her in the low-average range. Claimant speaks in single words as well as phrases, and she can engage in simple conversation. She is able to understand and follow directions. Although Mother reported that Claimant stuttered, Claimant did not engage in idiosyncratic language associated with autism.

32. Based upon Claimant's performance on the VABS-III, her motor skills scaled score of 108 is in the average range. She was observed to be ambulatory. Mother reported Claimant can ride a tricycle, run well, and walk up and down stairs alternating her feet. Claimant's performance on the Beery-Buktenica Developmental Test of Visual-Motor Integration placed her at the three-year-old level of development in the areas of visual, motor, and perceptual skills, which is within the average range. She was able to copy vertical and horizontal lines.

33. In the area of adaptive behavior functioning, Claimant's scores on the VABS-III placed her in the average range. Claimant is able to feed herself with utensils and a cup, she is fully toilet trained, and she can wash, bathe, and dress herself. Claimant is aware of danger with respect to hot items, but she must be supervised while out in the community.

34. In the area of social functioning, Claimant scored within the borderline range of performance on the VABS-III. Dr. Gaines observed Claimant to be happy and content; however, Mother reported that Claimant's moods vary, and she becomes angry easily, tantrums, and is aggressive. Similarly, Mother reported that Claimant struggles to play with others, but Claimant played with Dr. Gaines without incident and demonstrated appropriate play activity. Dr. Gaines also described Claimant as extremely hyperactive.

35. In order to assess Claimant for autism, Dr. Gaines administered the ADOS-2 and the ADI-R.

36. Claimant's ADOS-2 classification was non-autistic. Claimant made good eye contact, greeted and played games with Dr. Gaines, displayed "excellent emotion expression," initiated attention and engaged in joint attention responses. Claimant did not demonstrate any restricted or repetitive behaviors associated with autism.

37. The ADI-R is a clinical interview of caregivers of children and adults in the areas of reciprocal social interaction; communication and language; restricted, repetitive, and stereotyped patterns of behavior; and abnormality evident at or before 36 months. An autism diagnosis is indicated when scores meet or exceed specified minimum cutoff scores. Based on Mother's responses, Claimant's scores in each of the specified areas were below the cutoff score and did not endorse significant autistic behaviors.

### **INTELLECTUAL DISABILITY (ID)**

38. Dr. Gaines found Claimant did not appear to have deficits in general mental abilities because Claimant scored within the low-average range on the WPPSI-IV. Dr. Gaines also found that because Claimant's adaptive behavior skills fell within the average to borderline range on the VABS-III, Claimant does not have adaptive functioning deficits. Accordingly, Dr. Gaines found Claimant did not meet the diagnostic criteria for ID.

## **AUTISM SPECTRUM DISORDER**

39. Dr. Gaines noted in the Psychological Assessment report that a diagnosis of ASD requires the presence of deficits in social communication, social interaction and restricted repetitive behavior.

40. Claimant engaged in social-emotional reciprocity in that she greeted Dr. Gaines, she acknowledged and spoke to Mother, and she was responsive and engaged in the testing. Claimant also made good eye contact and mimicked and used emotion and gestures while interacting with Dr. Gaines and Mother. She therefore did not meet the criteria of demonstrating deficits in non-verbal communicative behaviors used for social interaction. Similarly, because Claimant engaged in game play with Dr. Gaines and engaged in social play during the evaluation, despite Mother's reports that Claimant is not typically social with others, Claimant did not meet the criteria of demonstrating deficits in developing, maintaining, and understanding relationships.

41. Dr. Gaines determined that while Claimant imitated her brother by hitting her head, she displayed no other unusual body mannerisms, nor did she use objects or language in an unusual way. Therefore, Claimant did not engage in stereotyped or repetitive motor movements. Dr. Gaines deferred providing an opinion about whether Claimant met the diagnostic criteria of adherence to routines/rituals and inflexibility. Although Mother reported Claimant turned the lights on and off, he was unsure whether Claimant's behavior was impulsive or an autistic ritual. Mother did not report that Claimant had any intense or unusual interests, but she did report that Claimant was bothered by the sound of music and sensitive to smells. Accordingly, Claimant partially met the autistic criteria for hyperactivity to sensory input.

42. Based on his observations, Dr. Gaines found Claimant did not meet the diagnosis criteria for autism or ASD.

## **DIAGNOSIS**

43. Dr. Gaines opined that Claimant meets the criteria for a diagnosis of Attention Deficit Hyperactivity Disorder (ADHD) (Provisional). He recommended Claimant participate in a pre-school program and receive behavioral support interventions. Dr. Gaines further recommended that Claimant be monitored and evaluated for ADHD.

## **IEP**

44. Claimant's initial IEP meeting was held with LAUSD on September 6, 2022. During the IEP meeting, it was noted Claimant functioned within the average to below average range based on her performance on the Mullen Scales of Early Learning (MSEL), and Claimant was able to perform tasks that Mother reported she could not do. Similarly, while Claimant's social-emotional skills were in the delayed range based upon Mother's report, it was noted that Claimant demonstrated strengths in naming a friend, communicating her need to use the toilet by asking or using gestures, demonstrating joint attention, engaging in reciprocal exchanges, transitioning from one activity to another, and she did not "struggle" with behavior. (Exh. 6, p. A71.)

45. Claimant did not present with needs in the areas of school occupational therapy or self-help/adaptive behaviors. However, Claimant demonstrated delays related to articulation skills, which impacted her ability to access and participate in the preschool curriculum, including speech intelligibility and the ability to be understood when communicating in the classroom.

## **Child Development Progress Report**

46. Claimant's Early Education Center (EEC) prepared a Child Development Progress Report for Claimant, which Claimant's father signed on October 22, 2022. According to the report, Claimant's strengths include physical play, self-control of feelings and behavior, and regulating her emotions and behaviors. (Ex. 14.) Claimant was learning to "focus attention on activities for short period of times, such as during read aloud. During social-emotional activities, [Claimant] is learning how to identify feelings and express her ideas about how we can solve a program." (*Ibid.*) The report does not identify any concerns regarding Claimant's cognitive or social-emotional abilities.

## **Medical Records**

47. Progress notes were prepared by El Proyecto del Barrio, Inc., for Claimant's assessments on January 15, 2021, March 8, 2021, July 8, 2021, and September 8, 2022. The January 15, 2021 progress note indicates autism as a concern and that Mother was provided with the Ages and States Questionnaire (ASQ) (a developmental screening tool) and the Modified Checklist for Autism in Toddlers (MCHAT) (a 20-question screening tool regarding behavior) forms to complete and return. The March 8, 2021 progress notes state Claimant "passed" the ASQ, implying that pursuant to Mother's responses, Claimant met developmental markers. (Ex. 13, p. A138.) No mention is made of the MCHAT.

48. Claimant's July 8, 2021 progress note indicates that the "ASQ passed all areas," and that Claimant was to follow-up as needed. (Ex. 13, p. A136.)

49. Claimant was seen on September 8, 2022, for her three-year physical. There is no mention in the progress notes of developmental or cognitive deficits, and Claimant was advised to follow-up in one year or as needed.

### **Dr. Ballmaier's Testimony**

50. Heike Ballmaier, Psy.D, NLACRC's supervising psychologist, testified on behalf of Service Agency. Dr. Ballmaier's duties at NLACRC include supervising the Service Agency's intake department and its vendor clinicians who perform psychological and psycho-social assessments, and participating on the interdisciplinary eligibility team (eligibility team).

51. Dr. Ballmaier explained that when making a determination on eligibility, Service Agency does not rely solely on a psychological assessment. The eligibility team also reviews any other available records, including the psycho-social assessment and any medical and educational records.

52. In order to be eligible for regional center services, one must have a substantially disabling developmental disability that originates prior to the age of 18 and continues indefinitely. Conditions that are solely physical, psychiatric, or the result of a learning disorder are not developmental disabilities as defined in the Lanterman Act. Depression, anxiety and ADHD are solely psychiatric conditions.

53. Service Agency relies on the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5), a generally accepted manual listing the diagnostic criteria and identifying factors of most known mental disorders.



54. According to the DSM-5, the essential features of ID include: (1) deficits in general mental abilities; (2) deficits in everyday adaptive functioning that are directly related to deficits in general mental abilities; and (3) an onset of the deficits during the developmental period. (Exh. 18, p. A226.) (The text revision of the DSM-5 (DSM-5 TR), which was published in 2022, has replaced the term ID with the term intellectual developmental disorder. The description of its essential features, however, remain unchanged.) In general, an average IQ is between 90 and 110. A diagnosis of ID requires an IQ that is equal to or less than 70.

55. According to the DSM-5, "the essential features of [autism] include persistent deficits in social communication and social interaction across multiple contexts, in addition to restricted, repetitive patterns of behavior, interests, or activities." (Exh. 17, p. A193.) Dr. Ballmaier explained that an individual with autism must demonstrate deficits in social-emotional reciprocity, nonverbal communication, and developing, maintaining, and understanding relationships. With respect to restricted, repetitive patterns of behavior, interests, or activities, two of the four following behaviors must be present: 1) repetitive motor movements or speech; 2) insistence on sameness and inflexible adherence to routine; 3) highly fixated interests that are abnormal; and 4) hyperreactivity to sensory input. (Ex. 17, P. A194.)

56. The Association of Regional Center Agencies Proposed Guidelines for Determining "5th Category" Eligibility for the California Regional Centers (Guidelines) were approved in March 2002. In determining Fifth Category eligibility, regional centers look for an IQ of 70 to 74, the level of adaptive functioning, and whether there is a need for training or intervention similar to a person who has global or cognitive deficits.

57. After reviewing Claimant's Speech and Language Assessment, Occupational Therapy SI Evaluation, Psychological Assessment, Initial Developmental Evaluation, IEP, and medical records, the eligibility team determined Claimant did not meet the diagnostic criteria for autism, ID, or a condition found to be closely related to ID or require treatment similar to that required for individuals with ID.

58. Dr. Ballmaier explained the evidence does not indicate Claimant has a developmental disability that would make her eligible for regional center services. The results of the tests administered by Dr. Gaines during the Psychological Assessment do not support either an autism or ID diagnosis. All testing by Dr. Gaines indicated Claimant's cognitive abilities are in the average to low average range as her scaled score on the WPPSI-IV was 86, and there is no evidence to suggest the assessment instruments used to measure Claimant's cognitive abilities are invalid.

59. Further, as Claimant's deficits are not due to any cognitive impairment, Claimant requires treatment different from an individual with ID to address those deficits. Specifically, an individual with ID would require treatment that is long-term, with tasks broken down into small steps, repetitive, and closely supervised. Because Claimant's IQ is in the average to low-average range, she does not require that type of treatment.

60. Dr. Ballmaier noted Mother may request that Claimant be reassessed if she continues to have concerns regarding Claimant's deficits.

## **Mother's Testimony**

61. Mother disagrees with NLACRC's determination that Claimant is not eligible for regional center services because she believes Claimant exhibits signs of autism. In her testimony, Mother described Claimant's behaviors which she believes

indicate autism: Claimant exhibits inappropriate responses to social situations, in that she does not want to be around other people and instead indicates a desire to stay home; she only wants to play with Mother when they go to the park; she cries for her parents when they go out and she is left with other people; she does not like noise; she engages in repetitive behavior, in that she likes the same colors, toys, movies, and songs; she is sensitive to tight things and does not want to wear a helmet when riding her bicycle and becomes overwhelmed by wearing a seat belt and tries to take it off; she has no concern for her own safety and does not understand the consequences of her actions, in that she jumps from high places like the sofa, jumps on stairs, and on one occasion she jumped into a pool and ended up swallowing a lot of water; she lines up her shoes and closes doors when she sees they are open; she becomes frustrated when Mother takes away her toys; she does not like to share with other kids; she does not like the texture of certain foods and only wants to eat soup and chicken nuggets; she is fascinated by the sound of running water; and she constantly washes her hands.

62. Mother stated her biggest concern is that she does not understand Claimant's language and her vocalizations

63. Mother's testimony was credible and compelling, and it did not appear she was exaggerating Claimant's symptoms or misstating her deficits.

## **LEGAL CONCLUSIONS**

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 requested a hearing to contest NLACRC's denial of Claimant's eligibility for

services and supports under the Lanterman Act. Jurisdiction for this appeal was established. (Factual Findings 1-7.)

## **Standard and Burden of Proof**

2. When a person seeks to establish eligibility for government benefits or services, the burden of proof is on her. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) As no other law specifically applies to the Lanterman Act, the standard of proof in this case is preponderance of the evidence. (See Evid. Code, §§ 115, 500.) Therefore, the burden is on Claimant to demonstrate that Service Agency's decision is incorrect by a preponderance of the evidence. "Preponderance of the evidence" means evidence that has more convincing force than that opposed to it. If the evidence is so evenly balanced that one is unable to say that the evidence on either side of an issue preponderates, the finding on that issue must be against the party who had the burden of proving it. (*People v. Mabini* (2000) 92 Cal.App.4th 654, 663.)

## **Lanterman Act and Regulations**

3. In order to be eligible to receive services from a regional center, an individual must have a qualifying developmental disability. Welfare and Institutions Code section 4512, subdivision (a), defines a "developmental disability" 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.

4. California Code of Regulations, title 17 (CCR), section 54000 similarly defines "developmental disability" as a disability attributable to intellectual disability, cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for intellectually disabled individuals. The disability must originate before age 18, be likely to continue indefinitely, and constitute a substantial handicap.

5. Developmental disabilities do not include conditions that are:

(1) Solely psychiatric disorders where there is impaired intellectual or social functioning which originated as a result of the psychiatric disorder or treatment given for such a disorder . . .

(2) Solely learning disabilities. A learning disability is a condition which manifests as a significant discrepancy between estimated cognitive potential and actual level of educational performance and which is not a result of generalized mental retardation, educational or psycho-social deprivation, psychiatric disorder, or sensory loss.

(3) Solely physical in nature . . . .

(CCR § 54000, subd. (c).)

6. For an individual with a developmental disability to qualify for regional center services, the developmental disability must also function as a "substantial disability." A "substantial disability" means there are "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." (Welf. & Inst., § 4512, subd. (1)(1); see also CCR, § 54001, subd. (a)(2).)

7. A child who is three or four-years old who is not eligible for regional center services as a result of a developmental disability as specified in Welfare and Institutions Code section 4512, subdivision (a)(1), shall be provisionally eligible for regional center services if she has a disability that is not solely physical in nature and has significant functional limitations in at least two of the following areas of major life activity as determined by a regional center: 1) self-care; 2) receptive and expressive language; 3) learning; 4) mobility; and 5) self-direction.

## **Analysis**

### **INTELLECTUAL DISABILITY**

8. Claimant failed to present evidence that would establish she is eligible for regional center services based on ID. Claimant did not present any evidence indicating she has been diagnosed with ID.

9. The only psychological assessment of Claimant was performed by Dr. Gaines and indicates Claimant does not have deficits in her cognitive abilities. (Factual Finding 38.) This conclusion is bolstered by Claimant's IEP which also found Claimant to have an average to below average range of cognitive ability. (Factual Finding 44.)

## **FIFTH CATEGORY**

10. Claimant failed to present evidence that would establish she is eligible for regional center services based on a Fifth Category condition.

11. Fifth Category eligibility requires that the qualifying condition be “closely related to intellectual disability” or “to require treatment similar to that required for individuals with an intellectual disability.” (Welf. & Inst., § 4512.) The definitive characteristics of ID include a significant degree of cognitive and adaptive deficits. Thus, to be “closely related” or “similar” to ID, there must be a manifestation of cognitive and/or adaptive deficits which render the individual’s disability like that of a person with ID.

12. Claimant has not demonstrated that she has a condition similar to ID. Specifically, there is no evidence Claimant has any impairments to her cognitive functioning. Claimant also did not provide any evidence that she has ever been found to need treatment similar to individuals with ID. Instead, the evidence suggests the deficits reported by Mother may be due to ADHD. ADHD, however, is not a covered developmental disability under the Lanterman Act. (Legal Conclusion 5.)

## **AUTISM**

13. Claimant failed to present evidence that she is eligible for regional center services based on autism. Claimant did not present any evidence she has ever been diagnosed with autism or ASD. While Claimant’s January 15, 2021, progress notes from El Proyecto del Barrio reference autism, subsequent progress notes indicate Claimant passed the ASQ and met developmental markers. In addition, after conducting psychological testing, Dr. Gaines found Claimant did not exhibit persistent deficits in

social communication or interaction, or any restricted, repetitive patterns of behavior, interests or activities to warrant an autism diagnosis.

### **PROVISIONAL ELIGIBILITY**

14. Claimant failed to present evidence that she is provisionally eligible for regional center services. While her eligibility category for special education services of speech or language impairment, and her provisional diagnosis of ADHD are not solely physical in nature, Service Agency has not determined Claimant has significant functional limitations in self-care, receptive and expressive language, learning, mobility, or self-direction.

15. Mother may request that Claimant be reassessed if Mother continues to have concerns regarding Claimant's cognitive, adaptive, and social-emotional functioning.

### **ORDER**

Claimant's appeal from North Los Angeles County Regional Center's determination that Claimant is not eligible for services because she does have a developmental disability as defined by the Lanterman Act, is denied.

DATE:

CARMEN D. SNUGGS-SPRAGGINS  
Administrative Law Judge  
Office of Administrative Hearings



## **NOTICE**

This is the final administrative decision. Each party is bound by this decision. Either party may request a reconsideration pursuant to subdivision (b) of Welfare and Institutions Code section 4713 within 15 days of receiving the decision, or appeal the decision to a court of competent jurisdiction within 180 days of receiving the final decision.