

**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. 2022080833

DECISION

Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on October 21, 2022.

Claimant was represented by her mother (Mother). Claimant and her family members are identified by titles to protect their privacy.

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

Oral and documentary evidence was received. The record closed and the matter was submitted for decision on October 21, 2022.

ISSUE

Is claimant eligible for regional center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act)?

EVIDENCE RELIED UPON

Documentary: Service Agency's exhibits 1-41.

Testimonial: Margaret Swaine, M.D., NLACRC Supervisor of Medical Services; Heike Ballmaier, Psy.D., NLACRC Supervisor of Psychological and Intake Services; and Mother.

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is a five-year-old girl. In April 2020, Mother submitted an application to Service Agency requesting regional center services for claimant.
2. On July 26, 2022, Service Agency sent Mother a letter and a Notice of Proposed Action (NOPA) notifying her of its determination that claimant is not eligible for services. (Exh. 29.)
3. On August 12, 2022, Mother filed a fair hearing request, on claimant's behalf, to appeal Service Agency's decision. Mother indicated she was requesting a hearing because Service Agency "overlooked all diagnoses." (Exh. 1, p. A149.) All jurisdictional requirements were met. This hearing ensued.

Claimant's Background

4. Claimant lives at home with Mother and three (adopted) siblings, ages three years, 20 years, and 21 years.

5. Claimant was placed with Mother when she was six months old. Claimant was removed from her biological mother due to neglect and abuse. Claimant was also exposed to cocaine in utero. Claimant has since been adopted by Mother.

6. Claimant previously received services from Service Agency under the Early Start program, which is a program for eligible infants and toddlers up to age three. Claimant was found eligible for Early Start services in January 2018 due to global developmental delay. Under the Early Start program, claimant received occupational therapy, physical therapy, vision therapy, speech therapy, and child development services. Service Agency provided Early Start services to claimant until she turned three years old in 2020.

7. On March 25, 2020, Service Agency reviewed claimant's case and determined she was not eligible for regional center services under the Lanterman Act. A chart review of claimant's available medical records completed in October 2019 by Carlo DeAntonio, M.D., NLACRC's Director of Clinical Services, found the "[a]vailable information in the chart does not suggest the presence of a substantially handicapping cerebral palsy or epilepsy." (Exh. 12.) Claimant was noted to have a "history of skull fracture and use of AED [anti-epileptic drugs], however per available information the AED medications have been discontinued and no seizures are currently reported." (*Ibid.*) Additionally, a psychological evaluation of claimant completed on February 27, 2020, by NLARC Staff Psychologist Khanh Hoang, Ph.D., diagnosed claimant with language disorder, which is not a qualifying diagnosis for regional center services

under the Lanterman Act. (Exh. 14.) Service Agency recommended: "Follow up with the local educational agency" and "Return for re-evaluation 1 year after school exposure." (Exh. 15.)

8. Claimant currently receives special education services from her school district. She was initially found eligible for special education services on September 27, 2021, based on Speech or Language Impairment. (Exh. 31.) However, her eligibility category was changed on October 17, 2022, to Autism (primary) and Other Health Impairment (secondary). (Exh. 38.)

Social Assessment

9. On April 4, 2022, Service Agency received the Intake Application completed and signed by Mother requesting services for claimant. (Exh. 3.)

10. On May 26, 2022, Veronica Salinas, a contract vendor for NLACRC, conducted a social assessment interview with Mother by telephone. Ms. Salinas prepared a Social Assessment report that summarized the information provided during the interview and her recommendations. (Exh. 25.)

11. Claimant was referred for a social assessment due to concerns with autism. Claimant reportedly struggled with processing information, behavior, and language development. She had limited understanding of nonverbal communication. She engaged in throwing objects and hitting herself and others. Mother indicated claimant "has been diagnosed with Autism and Mild Intellectual Disability at CHLA [Children's Hospital Los Angeles]," but no records were made available during the interview. (Exh. 25, p. A263.)

12. Claimant has a history of seizures. However, during the social assessment interview, Mother indicated claimant had not had any seizures since she was placed in her care, and she was no longer taking any seizure medications. Mother reported she had recently observed claimant shaking in her sleep, and claimant had an upcoming appointment with a neurologist in August 2022. Mother also reported claimant recently had her first session of mental health services on May 25, 2022.

13. Based on the information provided by Mother, Ms. Salinas recommended that Service Agency secure medical and school records; schedule medical and psychological evaluations as needed; and upon receipt of reports, determine claimant's eligibility for regional center services. (Exh. 25, p. A266.)

Medical Records Review

14. Margaret Swaine, M.D., testified at the hearing. Dr. Swaine has been employed as NLACRC's Supervisor of Medical Services since 2007. Her education, training, and experience are summarized in her curriculum vitae (C.V.), admitted as Exhibit 40.

15. Dr. Swaine testified regarding Service Agency's determination that claimant is not eligible for regional center services based on epilepsy (seizure disorder). Eligibility for services under the Lanterman Act based on epilepsy requires, among other things, that the child have a diagnosis of epilepsy that is substantially handicapping. Service Agency will review all available records and information to determine whether the child has a qualifying diagnosis of epilepsy.

16. Dr. Swaine testified that a diagnosis of epilepsy is given when an individual has two or more unprovoked seizures. "Unprovoked" means the seizure is not due to infection or trauma and is not resolved. Seizure events are diagnosed

clinically, using an EEG to confirm the seizures. The treatment for epilepsy is varied because there are different types of seizures, which range from mild to severe. Some seizures can be treated through medication, such as daily anti-epileptic drugs. Some seizures are benign, meaning that, in and of themselves, the seizures are not harmful and may resolve as the child ages.

17. Dr. Swaine testified a child diagnosed with epilepsy that is substantially handicapping will have “very thorough” neurological records that contain details such as the nature and type of seizures, the duration and frequency of seizures, the child’s response to medications, the interventions needed, and the child’s prognosis. The child may also have other records relating to their epilepsy, such as school records or California Children’s Services (CCS) records if the child receives CCS services for epilepsy. School records for a child with substantially handicapping epilepsy typically include a plan to address seizures that occur at school. Also, school records will indicate if epilepsy is the basis for the child’s eligibility for special education services.

18. Dr. Swaine testified regarding the available documents and information that were the basis for Service Agency’s determination that claimant is not eligible for Lanterman Act services based on epilepsy.

19. On June 7, 2022, Dr. DeAntonio completed a chart review of claimant’s available medical records. His findings are documented in a Medical Summary report as follows:

Available information in the chart does not suggest the presence of a substantially handicapping cerebral palsy or epilepsy. She [claimant] was seen by CHLA neurology 2/23/22 for suspected seizures, history of non-accidental

trauma, abnl [abnormal] EEG, neurologist feels that events described are most consistent with sleep myoclonus but MRI evaluation and follow up neurology visit were scheduled. Per neurology, no indication for AED at this time.

(Exh. 26.)

20. Tena L. Rosser, M.D., is a neurologist at CHLA. Service Agency reviewed Dr. Rosser's Neurology OP MD Note dated February 23, 2022 (MD Note), pertaining to claimant's visit to Dr. Rosser's clinic on that date. (Exh. 21.) The MD Note included information regarding claimant's past medical history. Claimant had previously been seen in Dr. Rosser's clinic in 2017 and 2018. Claimant suffered a traumatic brain injury and a right humeral fracture after a supposed unwitnessed fall from the bed. Claimant was evaluated at CHLA and found to have a skull fracture but no abnormalities in the brain CT scan.

21. The MD Note indicated Dr. Rosser had previously seen claimant when she was two months old. At that time, there was a concern of seizures and claimant was on anti-epileptic drugs. Dr. Swaine noted the seizures appeared to have subsequently resolved. In the MD Note, Dr. Prosser indicated the last time she saw claimant in her clinic was on January 10, 2018, and claimant was "doing well off of anticonvulsants and was seizure free." (Exh. 21, p. A246.).

22. The MD Note indicated claimant underwent a routine EEG at CHLA on January 25, 2022, "which showed focal stereotype sharp and slow wave discharges in the right central region." (Exh. 21, p. A245.) The EEG report indicated the discharges "have characteristics typical for benign focal epileptiform discharges of childhood and

that the central location could be suggestive of the pediatric epilepsy syndrome termed benign epilepsy with centro-temporal spikes (BECTS)." (*Id.*, pp. A245-A246.) Dr. Swaine found it significant that claimant's condition was described as "benign" by the epileptologist interpreting claimant's EEG, because the key point with benign epileptic syndromes is that they resolve.

23. The MD Note indicated Dr. Rosser performed a full neurological examination of claimant and found no abnormalities. Dr. Rosser concluded the recent episodes claimant was experiencing in sleep was "consistent with sleep myoclonus." (*Id.*, p. A247.) Dr. Swaine testified "sleep myoclonus" is a benign condition where muscles jerk as the person falls asleep.

24. In the MD Note, Dr. Rosser recommended an additional work up of claimant was warranted, given her complicated history and EEG findings. (*Id.*, p. A248.) Dr. Rosser ordered another EEG and a brain MRI. Dr. Rosser also noted: "There is no indication for treatment with an anticonvulsant at this time, but we will reassess after she has undergone further workup." (*Ibid.*)

25. A few days before this hearing, Mother provided Service Agency with additional documents, including a letter dated October 18, 2022, by Dr. Rosser. The one-page letter states in pertinent part: "[Claimant] . . . is followed at the Neurological Institute at Children's Hospital Los Angeles for a diagnosis of epilepsy." (Exh. 39.) Dr. Swaine testified this letter is not sufficient to establish a qualifying diagnosis for epilepsy. It contains no information establishing "a diagnosis of epilepsy" for claimant, such as the type of seizure disorder, the frequency of the seizures, medication management, claimant's response to medications, and her long-term prognosis.

26. Similarly, a medical record by Dr. Brian Gaw, dated May 9, 2022, describes claimant as a new patient with “autism features present,” asthma, ADHD, and “seizure disorder.” (Exh. 23.) However, it contains no detailed information regarding the “seizure disorder” or the other conditions referred to in the record. Dr. Swaine testified this record contains insufficient information for Service Agency to determine claimant’s status as of May 9, 2022.

27. Service Agency reviewed a Multi-Disciplinary Evaluation (MDE) Report dated October 6, 2022, by the Palmdale School District. (Exh. 32.) Dr. Swaine noted the MDE Report included a summary of claimant’s past medical history. It was noted that claimant reportedly “had seizures when she was born and was on medications until she was approximately 8 to 9 months. She has not had a seizure since then.” (Exh. 32, p. A40.) Dr. Swaine also noted the MDE Report identified autism as a health condition that may impact claimant’s access to the educational setting, but it does not mention seizures as impacting claimant in the school setting. (See Exh. 32, p. A42.)

28. At hearing, Dr. Swaine explained the information available to Service Agency indicates claimant has a “benign” syndrome, which her neurologist, Dr. Rosser, found to be consistent with sleep myoclonus. Dr. Swaine testified, at this point, Service Agency has insufficient information to support a finding of substantially handicapping epilepsy. Dr. Swaine testified Service Agency has “glimpses” of information but not enough to find that claimant is eligible for regional center services based on epilepsy.

DSM-5 Diagnostic Criteria

29. The Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), is a manual that lists the diagnostic criteria for various mental illnesses and developmental disabilities. Service Agency uses the DSM-5 diagnostic criteria in

determining whether a person has a qualifying diagnosis of intellectual disability or autism.

AUTISM SPECTRUM DISORDER

30. The DSM-5 criteria for a diagnosis of autism spectrum disorder are summarized as Criteria A through E, in pertinent part, as follows:

A. Persistent deficits in social communication and social interaction across multiple contexts, as manifested by the following: (1) Deficits in social-emotional reciprocity, (2) Deficits in nonverbal communicative behaviors used for social interaction, and (3) Deficits in developing, maintaining, and understanding relationships.

B. Restricted, repetitive patterns of behavior, interests, or activities, as manifested by at least two of the following: (1) Stereotyped or repetitive motor movements, use of objects, or speech; (2) Insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior; (3) Highly restricted, fixated interests that are abnormal in intensity or focus; and (4) Hyper- or hypoactivity to sensory input or unusual interest in sensory aspects of the environment.

C. Symptoms must be present in the early developmental period.

D. Symptoms cause clinically significant impairment in social, occupational, or other important areas of current functioning.

E. These disturbances are not better explained by intellectual disability or global developmental delay.

(Exh. 34, pp. A102-A103.)

INTELLECTUAL DISABILITY

31. The DSM-5 criteria for a diagnosis of intellectual disability are summarized as Criteria A, B, and C, in pertinent part, as follows:

A. Deficits in intellectual functions, such as reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience, confirmed by both clinical assessment and individualized, standardized intelligence testing.

B. Deficits in adaptive functioning that result in failure to meet developmental and socio-cultural standards for personal independence and social responsibility. Without ongoing support, the adaptive deficits limit functioning in one or more activities of daily life, such as communication, social participation, and independent living, across multiple environments, such as home, school, work, and community.

C. Onset of intellectual and adaptive deficits during the developmental period.

(Exh. 35, p. A115.)

Psychological Evaluations

32. Heike Ballmaier, Psy.D., testified at the hearing. Dr. Ballmaier is a California licensed psychologist and a Board Certified Behavior Analyst (BCBA). Dr. Ballmaier is currently NLACRC's Supervisor of Psychological and Intake Services, a position she has held since 2011. Dr. Ballmaier's education, training, and experience are summarized in her C.V., admitted as Exhibit 2.

33. Dr. Ballmaier testified regarding Service Agency's determination that claimant is not eligible for regional center services on the basis of autism, intellectual disability, or what is commonly referred to as the "fifth category" (a condition similar to intellectual disability or requiring the same treatment as a person with intellectual disability). Dr. Ballmaier testified regarding the information and records available to Service Agency in making its determination claimant is not eligible for services.

EVALUATION BY DR. GOLIAN

34. Alan Golian, Psy. D., a licensed clinical psychologist, conducted a psychological evaluation of claimant on June 27, 2022. Claimant was referred to Dr. Golian for a psychological evaluation to assess for autism spectrum disorder and intellectual disability. Dr. Golian reviewed records, made behavioral observations of claimant, conducted a clinical interview with Mother, and administered the Wechsler Preschool and Primary Scale of Intelligence, Fourth Edition (WPPSI-4), the Autism Diagnostic Observation Schedule, Second Edition (ADOS-2) – Module 2, and the Vineland Scales of Adaptive Functioning, Third Edition (VABS-3). Dr. Golian prepared a written report of his findings and conclusions.

35. The records reviewed by Dr. Golian included claimant's Individual Family Service Plan (IFSP) dated July 29, 2019, regarding her services under the Early Start program. Dr. Golian noted the IFSP described claimant as a very busy toddler who enjoyed playing with her family members, adults, and other children; she enjoyed helping care for the new infant in the home and making her laugh; and she enjoyed playing with a variety of toys and played appropriately with the toys. (Exh. 27, p. A269.)

36. Dr. Golian also reviewed the Psychological Assessment report dated February 27, 2020, by Dr. Hoang. In this report, Dr. Golian noted that claimant stopped playing with a toy and walked over and hugged Dr. Hoang's leg upon meeting her. Claimant played with a variety of age-appropriate toys and frequently walked over to Mother to show and share her enjoyment. Claimant demonstrated age-appropriate functional and imaginative play, looked to her Mother for attention, and invited Mother to play. Dr. Golian noted a few of the WPPSI-4 subtests were administered successfully by Dr. Hoang, and claimant's scores for those subtests ranged from low average to average. The results of the ADOS-2 indicated a classification of "Non-Spectrum." Based on observations and test data, Dr. Hoang found a diagnosis of Language Disorder was indicated. (See Exh. 27, p. A270.)

37. Dr. Golian administered the VABS-3 to measure claimant's adaptive functioning. Claimant's overall adaptive behavior composite score was in the moderately low range. Her scores in the communication and socialization domains were in the moderately low range. Her score in the daily living skills domain was in the low range. Her score in the motor skills domain was in the average range.

38. (A) Based on his evaluation, Dr. Golian concluded claimant did not meet the criteria for autism spectrum disorder. Dr. Golian administered the ADOS-2 to assess claimant for possible characteristics of autism spectrum disorder. Claimant's

total score on the ADOS-2 indicated she was in the "Non-Spectrum" classification for autism. (Exh. 27, p. A276.)

(B) Dr. Golian found claimant demonstrated appropriate social and emotional reciprocity, nonverbal communicative behaviors, and play skills. Claimant exhibited appropriate social responsiveness, shared her enjoyment on many occasions, and made attempts to reciprocate social communication. Claimant directed appropriate eye contact and used basic and descriptive gestures. She played with toys in a representational manner and participated and spontaneously contributed to pretend activities. Dr. Golian found claimant did not have difficulty transitioning from one activity to another, and there was no evidence of stereotyped, repetitive, or sensory-related behaviors during the evaluation.

39. (A) Based on his evaluation, Dr. Golian concluded claimant did not meet the diagnostic criteria for intellectual disability, measured by her performance on the WPPSI-4. Dr. Golian administered the WPPSI-4 to assess claimant's cognitive functioning. Claimant's scores on the WPPSI-4 indicated she had a full-scale IQ score of 81, which is in the low average range.

(B) Dr. Golian found claimant's performance on the WPPSI-4 was inconsistent across the five composite measures (verbal comprehension, visual-spatial, fluid reasoning, working memory, and processing speed), which Dr. Golian opined might be indicative of attention- or communication-related deficits. Claimant performed at age-expected level on both measures of visual-spatial processing, but she struggled on both processing speed tasks. Claimant also showed inconsistency in performance across the three remaining composites that assessed verbal comprehension, logical reasoning, problem-solving, and working memory, which Dr.

Golian opined might further suggest attention-related issues and may be attributed to prenatal exposure to cocaine.

40. Based on the evaluation, Dr. Golian concluded the most appropriate diagnosis for claimant was phonological disorder, with a recommendation for further assessment to rule out Attention Deficit Hyperactivity Disorder (ADHD). Dr. Golian recommended claimant would benefit from outpatient mental health services to address her range of hyperactive, aggressive, and defiant behaviors.

OTHER EVALUATIONS AND ASSESSMENTS

41. (A) Dr. Ballmaier testified regarding the Psychological Assessment completed by Dr. Hoang on February 27, 2020. (Exh. 14.) Dr. Hoang administered the ADOS-2, Module 1, which is a direct autism diagnostic test that allows the clinician to engage in social exchange with the child. Tasks were set up to elicit communicative and social behaviors. Claimant's score on the ADOS-2, Module 1, fell below the autism cutoff and resulted in a "Non-Spectrum" classification for autism. Dr. Ballmaier testified the ADOS-2 is the "gold standard" for assessing a child for autism. Both Dr. Hoang and Dr. Golian used the ADOS-2 in their evaluations of claimant, which resulted in a "Non-Spectrum" classification for both evaluations.

(B) Dr. Ballmaier also noted that Dr. Hoang administered the WPPSI-4 to measure claimant's cognitive abilities. A full-scale IQ score could not be obtained because claimant completed only two subtests and refused the rest. However, claimant scored in the average range on receptive vocabulary, and the low average range on block design. Dr. Hoang concluded claimant's scores on the two subtests did not indicate a cognitive delay. Dr. Ballmaier testified Dr. Hoang's findings also did not establish a qualifying diagnosis under the "fifth category."

42. Dr. Ballmaier testified regarding a letter dated May 25, 2022 by Dr. Richelle Bautista-Azores. The letter states: “[Claimant] meets criteria for Autism Spectrum Disorder. She demonstrates persistent deficits in each of the three areas of social communication and interaction, and demonstrates restricted, repetitive behaviors.” (Exh. 4.) Dr. Bautista-Azores opined that claimant’s behaviors “significantly interfere with her ability to function in the home and school,” and she would “greatly benefit from services and therapies to address her difficulties with communication, social interaction and sensory difficulties.” (Exh. 4, pp. A174-A175.)

43. (A) Dr. Ballmaier testified that Dr. Bautista-Azores’s May 25, 2022 letter is not sufficient to establish a qualifying diagnosis of autism. The letter lists Criteria A and Criteria B from the DSM-5 diagnostic criteria for autism. (See Finding 30 above.) The letter includes descriptors of how claimant meets Criteria A(1) and (A)(3), but gives no descriptor for Criteria A(2). Dr. Ballmaier testified all three items listed for Criteria A must be met for a diagnosis of autism.

(B) Further, Dr. Ballmaier found the explanation for Criteria B(3) was insufficient. Criteria B requires restricted, repetitive patterns of behavior or interests. For Criteria B(3), Dr. Bautista-Azore explained that claimant “has an interest in a certain video game that she ‘can play for hours’ and has a ‘tantrum’ when asked to transition from it.” (Exh. 4, p. A174.) Dr. Ballmaier opined that a person having an interest in a video game they can play for hours is a widespread characteristic among children and adults, not just those who are autistic. Dr. Ballmaier also noted Dr. Bautista-Azores’s letter does not indicate the bases for her findings and conclusions, such as, for example, whether they are based on testing, interviews, or observations.

44. Dr. Ballmaier testified regarding another letter by Dr. Bautista-Azores, which was dated August 22, 2022. (Exh. 30.) The letter states that claimant’s score on

the Childhood Autism Rating Scale (CARS) was in the mildly/moderately autistic range. The letter noted claimant was previously evaluated by two psychologists (i.e., Dr. Hoang and Dr. Golian), who both reported claimant was in the Non-Spectrum classification. The letter noted: "Children with autism can have 'appropriate' social interactions and play 'appropriately' at times, as [claimant] did during both her psychological evaluations." (Exh. 30, p. A1.)

45. Dr. Ballmaier, in testimony, explained the CARS is a screening tool that involves minimal observation and is based primarily on reports. CARS used by itself is not considered a "gold standard" for assessing for autism, like the ADOS-2. Dr. Ballmaier also disagrees with Dr. Bautista-Azores' statement that children with autism can have appropriate interactions and play appropriately at times, as claimant did during the psychological evaluations by Drs. Hoang and Golian. Dr. Ballmaier's opinion is that Dr. Hoang and Dr. Golian used best practices in conducting their respective evaluations of claimant, in that multiple instruments were used, along with behavioral observations, parent interview, and records review. Under those circumstances, claimant should have demonstrated significant symptoms of autism spectrum disorder, but she did not. Dr. Ballmaier disagrees with Dr. Bautista-Azores dismissing the evaluations of Drs. Hoang and Golian, and instead relying on the CARS as the basis to diagnose claimant with autism.

46. The August 22, 2022 letter by Dr. Bautista-Azores described claimant's challenging behaviors as follows: "Some of her [claimant's] difficulties include challenges with appropriate interaction with other students and her teachers (hitting peers with her hair, defiant behaviors to teachers, laughing inappropriately at peers), transitioning (temper tantrums when changing from one activity to another), self soothing (putting inedible objects in her mouth, picking her skin, biting her nails down

until they bleed, laughing and talking to herself)." (Exh. 30, p. A2.) Dr. Ballmaier's opinion is that the behavior challenges identified by Dr. Bautista-Azores are not indicative of autism only, but can be indicative of other conditions such as, for example, anxiety or ADHD.

47. Dr. Ballmaier reviewed the October 6, 2022 MDE Report by claimant's school district. (Exh. 32.) The MDE Report indicates claimant's primary eligibility category for special education is autism. Dr. Ballmaier testified that the special education eligibility criteria for autism, which are set forth in the Education Code, are not as stringent as the DSM-5 diagnostic criteria for autism. Education Code section 56846.0 defines a "pupil with autism" as one who exhibits "autistic-like" behaviors. (See Exh. 32, p. 40.)

48. Dr. Ballmaier testified that, based on currently available records and information, Service Agency cannot, at this time, make a finding that claimant has a qualifying diagnosis of autism, intellectual disability, or a "fifth category" condition for regional center services under the Lanterman Act.

Mother's Testimony

49. Mother testified she is fighting for claimant's future. Mother testified claimant was found not eligible for regional center services when she turned three years old. Mother contends things have changed since claimant turned three. Claimant was assessed by the school district and found eligible for special education services. Claimant now attends a special day class. Mother believes claimant needs Applied Behavior Analysis (ABA) services. Mother testified she requested ABA services through Medi-Cal but was told the school should provide ABA services during the school day. Mother would like Service Agency to provide claimant with all the services she needs.

Mother notes that claimant's doctors and her school have said that claimant has autism, but Service Agency says she does not. If Service Agency needs to conduct more assessments, Mother would like the assessments to be done. Mother testified she has provided Service Agency with all the records and information she could obtain. Mother feels claimant should receive services from Service Agency.

LEGAL CONCLUSIONS

1. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 et seq.) A state level fair hearing to determine the rights and obligations of the parties, if any, is referred to as an appeal of the service agency's decision. Claimant properly and timely requested a fair hearing, and therefore jurisdiction for this case was established. (Factual Findings 1-3.)

2. When a person seeks to establish eligibility for government benefits or services, the burden of proof is on him or her. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits]; *Greator v. Board of Admin.* (1979) 91 Cal.App.3d 54, 57 [retirement benefits].) The standard of proof in this case is preponderance of the evidence. (Evid. Code, § 115.) Thus, claimant has the burden of proving her eligibility for services under the Lanterman Act by a preponderance of the evidence.

3. In order to be eligible for regional center services, a person must have a qualifying developmental disability. Welfare and Institutions Code section 4512, subdivision (a), defines "developmental disability" as:

a disability that originates before an individual attains 18 years of age; continues, or can be expected to continue,

indefinitely; and constitutes a substantial disability for that individual. . . . [T]his term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability, but shall not include other handicapping conditions that are solely physical in nature.

4. Welfare and Institutions Code section 4643, subdivision (b), provides: "In determining if an individual meets the definition of developmental disability contained in subdivision (a) of Section 4512, the regional center may consider evaluations and tests, including but not limited to, intelligence tests, adaptive functioning tests, neurological and neuropsychological tests, diagnostic tests performed by a physician, psychiatric tests, and other tests or evaluations that have been performed by, and are available from, other sources."

5. To prove the existence of a developmental disability within the meaning of Welfare and Institutions Code section 4512, the individual must show that he or she has a "substantial disability." California Code of Regulations, title 17, section 54001 defines "substantial disability" as follows:

"Substantial disability" means:

(a) 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

(b) The existence of significant functional limitations, as determined by the regional center, in three or more of the following areas of major life activity, as appropriate to the person's age: (A) Receptive and expressive language; (B) Learning; (C) Self-care; (D) Mobility; (E) Self-direction; (F) Capacity for independent living; (G) Economic self-sufficiency.

6. California Code of Regulations, title 17, section 54002 defines the term "cognitive" as "the ability of an individual to solve problems with insight, to adapt to new situations, to think abstractly, and to profit from experience."

7. Excluded from eligibility are handicapping conditions that are solely psychiatric disorders, learning disabilities and/or disorders solely physical in nature. (Cal. Code Regs., tit. 17, § 54000, subd. (c).) If a person's condition is *solely* caused by one or more of these three "handicapping conditions," the person is not entitled to eligibility.

8. In addition to proving a "substantial disability," a person must show that his disability fits into one of the five categories of eligibility set forth in Welfare and Institutions Code section 4512. The first four categories are specified as: intellectual disability, cerebral palsy, epilepsy, and autism. The fifth and last category of eligibility is specified as "disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability." (Welf. & Inst. Code, § 4512, subd. (a).)

9. It was not established by a preponderance of the evidence that claimant has a "developmental disability" as defined under Welfare and Institutions Code section 4512. Claimant is not substantially disabled as a result of epilepsy or cerebral palsy. Although claimant had seizures and was treated with anti-epileptic drugs when she was two months of age, she is no longer taking those drugs and has not had any seizures since being placed in Mother's care. The recent events involving her shaking during sleep were found by her doctor to be consistent with sleep myoclonus, which is a benign syndrome. Additionally, claimant is not substantially disabled as a result of intellectual disability, autism, or a "fifth category" condition. She does not meet the DSM-5 diagnostic criteria for either intellectual disability or autism, based on the psychological evaluations completed by Dr. Golian and Dr. Hoang, respectively.

10. Based on the foregoing, it was not established by a preponderance of the evidence that claimant is eligible for regional center services at this time. Claimant's appeal shall be denied. (Factual Findings 4-49; Legal Conclusions 1-9.)

ORDER

Claimant's appeal is denied. Service Agency's determination that claimant is not eligible for regional center services is affirmed.

DATE:

ERLINDA G. SHRENGER

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.