

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

**In the Matter of:**

**CLAIMANT**

**v.**

**CENTRAL VALLEY REGIONAL CENTER**

**OAH Case No. 2022100815**

**DECISION**

Wim van Rooyen, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, conducted a fair hearing on December 1, 2022, by videoconference and telephone from Sacramento, California.

Shelley Celaya, Assistant Director of Case Management Services, represented Central Valley Regional Center (CVRC).

Claimant's mother and authorized representative (Mother) represented Claimant.

Evidence was received, the record closed, and the matter submitted for decision on December 1, 2022.

## **ISSUE**

Is Claimant eligible for services from CVRC under the Lanterman Act<sup>1</sup> because he has: (a) an intellectual disability; or (b) a disabling condition that is closely related to, or requires treatment similar to that required for individuals with, an intellectual disability (fifth category condition)?

## **FACTUAL FINDINGS**

### **Jurisdiction**

1. Mother requested that CVRC assess Claimant to determine eligibility for services under the Lanterman Act. After completing the assessment process, CVRC issued a Notice of Proposed Action (NOPA) effective October 14, 2022, which deemed Claimant ineligible for such services.

2. On October 24, 2022, Mother signed and thereafter filed a Fair Hearing Request. Consequently, the matter was set for a fair hearing before an ALJ of the OAH, an independent adjudicative agency of the State of California.

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<sup>1</sup> Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code section 4500 et seq. All further statutory references are to the Welfare and Institutions Code, unless otherwise specified.

## **CVRC's Evidence**

3. Claimant was born in March 2017 and is five years old. He was removed from his biological mother, a teenage runaway suffering from drug addiction, when he was only three months old. Subsequently, he was placed in several foster homes. Claimant presently resides with Mother in Fresno, California. Mother is his adoptive parent, and he first came to live with her when he was 12 months old. The adoption was finalized when he was four years old.

### **INTAKE ASSESSMENT**

4. On July 12, 2022, CVRC conducted an intake assessment of Claimant to determine potential eligibility for Lanterman Act services. Mother brought him to CVRC for assessment based on the recommendation of Exceptional Parents Unlimited Assessment Center for Children (EPU) in Fresno. EPU had assessed Claimant in March 2022 and diagnosed him with an unspecified trauma- and stressor-related disorder. It recommended participation in Child Parent Psychotherapy (CPP) as "an evidence based treatment for children who have experienced trauma" as well as continued monitoring for oppositional defiant disorder.

5. At the CVRC intake assessment, Mother reported that Claimant had largely normal daily activities: he walks normally; has full use of his extremities; writes with his right hand; eats with a spoon, with some spillage; drinks from a regular cup; is toilet trained; dresses himself, but sometimes puts his shirts on backwards; takes baths; and "does good" with oral hygiene, but has some difficulty spitting or rinsing his mouth. However, she expressed concerns about Claimant's behaviors, including being very emotional, frequent episodes of crying when redirected, refusal behavior, and aggressive behavior at daycare such as hitting, kicking, spitting, and biting. She

reported that he also has no interest in trying new things, refuses to learn how to ride a bicycle or scooter, and cries instead of using his words when asked to complete a new task.

6. CVRC staff noted that Claimant spoke in complete sentences and could answer basic questions; identify basic colors and numbers; specify his favorite food, drink, toy, and YouTube video; and follow a two-step direction. His speech at times had poor articulation.

7. Based on the intake assessment, CVRC referred Claimant for a psychological evaluation. The referral's purpose was to assist CVRC in determining whether Claimant had an intellectual disability or a fifth category condition that would qualify him for Lanterman Act services.

### **PSYCHOLOGICAL EVALUATION**

8. On August 16, 2022, Claimant underwent a psychological evaluation by clinical psychologist Nicholas Anderson, Ph.D. Dr. Anderson reviewed Claimant's prior records, interviewed Claimant and Mother, and performed psychological testing. Dr. Anderson drafted a detailed report of his psychological evaluation, which was admitted at hearing.

9. Upon administration of the Wechsler Preschool and Primary Scale of Intelligence – Fourth Edition (WPPSI-IV), Claimant achieved a full-scale Intelligence Quotient (IQ) score of 89, with a Verbal Comprehension Index score of 90. Those scores placed Claimant in the low average range of cognitive functioning, which Dr. Anderson believed to be an accurate representation of Claimant's ability. Dr. Anderson opined that "[g]iven that [Claimant's] cognitive functioning is generally in the expected

normative range, he does not meet the criteria for a diagnosis of intellectual disability.”

10. The Adaptive Behavior Assessment System, Third Edition (ABAS-3) completed by Mother during the evaluation rendered a General Adaptive Composite score of 58, which falls within the extremely low range of adaptive functioning. However, Dr. Anderson opined that “this is likely somewhat of an underestimation of his current adaptive abilities based on observations made of [Claimant].” Dr. Anderson explained:

During the interview, [Claimant] demonstrated adequate social skills, made good eye contact, and carried appropriate conversation with the examiner. Whereas his adoptive mother reports that [Claimant] has a limited vocabulary, he did not appear to have any difficulty using expressive language, and there did not appear to be any notable problems with speech articulation. [Claimant] was very polite and did not express any emotion dysregulation during today’s appointment. [Claimant] was very pleasant, friendly, and enjoyable to work with. He would generally sit quietly or would play with toys in the evaluation room when the evaluator or his adoptive mother was not engaging him.

11. Finally, Dr. Anderson observed:

It is unclear the amount of neglect or trauma that [Claimant] experienced prior to being adopted. [Claimant] has previously been diagnosed with unspecified trauma and

stressor-related disorder, which currently appears to be the most appropriate diagnosis for the overall set of behaviors being reported.

### **ELIGIBILITY TEAM REVIEW**

12. At an October 14, 2022 meeting, CVRC's eligibility team reviewed Claimant's records, including Dr. Anderson's psychological evaluation. The eligibility team determined that there was no evidence that Claimant had a qualifying developmental disability. As such, it directed issuance of the NOPA.

### **TESTIMONY OF KAO YANG, PH.D.**

13. Dr. Yang is a California-licensed clinical psychologist. She has been employed by CVRC as a psychologist for 16 years. As part of her position, she routinely performs assessments and consultations to determine eligibility for Lanterman Act services.

14. Dr. Yang explained that an individual must have a developmental disability to qualify for Lanterman Act services. Developmental disabilities include intellectual disability, cerebral palsy, epilepsy, autism, and a fifth category condition, which is a disabling condition found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability. In this case, CVRC specifically evaluated Claimant for eligibility based on an intellectual disability and a fifth category condition because there was no evidence that he had cerebral palsy, epilepsy, or autism.

15. Dr. Yang agreed with Dr. Anderson's conclusion that Claimant did not have an intellectual disability. Under the Diagnostic and Statistical Manual of Mental

Disorders, Fifth Edition (DSM-V), a diagnosis of intellectual disability must meet all three of the following criteria: (A) deficits in intellectual functioning as demonstrated by intelligence testing; (B) deficits in adaptive functioning; and (C) onset of intellectual and adaptive deficits during the developmental period. To meet criterion A, the DSM-V notes:

Individuals with intellectual disability have scores of approximately two standard deviations or more below the population mean, including a margin for measurement error (generally +5 points). On tests with a standard deviation of 15 and a mean of 100, this involves a score of 65-75 (70 plus or minus 5).

Dr. Yang noted that Claimant's full-scale IQ score of 89 on such testing definitively ruled out an intellectual disability diagnosis.

16. Dr. Yang further opined that Claimant did not meet the criteria for a fifth category condition. She explained that an individual may have a fifth category condition if the individual has low borderline intellectual functioning with an IQ score of up to 79, especially if there are substantial adaptive deficits related to cognitive limitations. However, a much higher IQ score of 89 is plainly inconsistent with functioning in a manner similar to a person with intellectual disability or requiring similar treatment.

17. Finally, Dr. Yang opined that Claimant's adaptive deficits appeared to stem from his previously-diagnosed trauma- and stressor-related disorder. That is a psychiatric disorder and not a developmental disability that would qualify Claimant for Lanterman Act services.

## **Claimant's Evidence**

18. Mother testified at hearing. She is the sixth adult to care for Claimant since his birth, and she has only limited knowledge of the circumstances and trauma Claimant was potentially exposed to by his birth mother and/or prior foster parents. She is aware that one foster parent would never pick up Claimant. When Claimant first arrived in Mother's home, he showed no emotion and "kept his distance." It was hard to make him laugh. He did not want to be hugged, be held, or "receive any love."

19. Since Claimant came to live with Mother, she has taken Claimant for mental health evaluation and treatment at several facilities, including EPU, Fresno County Department of Social Services, Lighthouse For Children Child Development Center and the California Psychological Institute (CPI). Claimant saw a psychiatrist at CPI for seven months and made some progress. However, the psychiatrist then indicated that further therapy was unnecessary and terminated services. Since then, Claimant's behavior has regressed.

20. Mother believes Claimant has significant social-emotional issues. Claimant has received well over 100 write-ups and been "kicked out of" daycare on numerous occasions due to his aggressive behavior. Consequently, Mother also has a difficult time finding babysitters for Claimant. He does not know how to control his emotions and cries "at the drop of a dime."

21. Mother's account of Claimant's behavior is corroborated by a November 30, 2022 e-mail from Claimant's current Kindergarten teacher, Jessica Simonetti.<sup>2</sup> Ms. Simonetti confirmed incidents where Claimant punched and pushed classmates. She

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<sup>2</sup> The e-mail was read into the record at hearing, with no objection by CVRC.



indicated that he only displays such behavior when provoked or feeling threatened, "reacting with his hands and feet instead of words." She believes he needs better tools to calm himself and cope with his emotions.

22. Notwithstanding Claimant's social-emotional issues, Mother also strongly believes he has intellectual issues. Although he does well academically, Mother has to frequently repeat basic routines with him, such as putting on his shoes and getting dressed properly. According to Mother, Claimant lacks common sense, and it is sometimes hard for him to "figure stuff out." Mother believes Dr. Anderson and other mental health providers did not always accurately assess Claimant because they only spent about an hour with him at a time. They do not witness his daily behavior at home or school.

23. Claimant was previously denied Lanterman Act services at the age of three. At that time, Mother was advised to wait until Claimant was of school age to reassess him. She reapplied to CVRC now that he started Kindergarten upon EPU's recommendation.

24. Mother is thankful for Claimant's presence in her life. She is pleased to offer him a stable home, and she gives him "lots of love." However, his behavior can be very overwhelming at times and she also needs help. She only wants him to receive the best available treatment, and she truly believes he could benefit from Lanterman Act services.

## **Analysis**

25. Mother's testimony regarding Claimant's history and behaviors was sincere, heartfelt, and fully credible. It is obvious that Claimant has significant

behavioral issues, that Mother has his best interests at heart, and that she only seeks to obtain the best treatment and supportive services for Claimant.

26. However, under the Lanterman Act, the Legislature has authorized regional centers to provide services *only* to those individuals who have developmental disabilities that fall into one of the five distinct categories: (1) intellectual disability; (2) cerebral palsy; (3) epilepsy; (4) autism; or (5) a disabling condition that is closely related to or requires treatment similar to that required for individuals with an intellectual disability (fifth category condition). Here, Dr. Anderson's report and Dr. Yang's testimony persuasively explain why Claimant does not have an intellectual disability or a fifth category condition.

27. Mother believes that Dr. Anderson did not spend sufficient time with Claimant to assess him. However, licensed psychologists routinely conduct evaluations in a single session and are specially trained to render accurate assessments. In any event, both Dr. Anderson and Dr. Yang's opinions are substantially based on Claimant's IQ scores, which are objectively inconsistent with diagnoses of intellectual disability or a fifth category condition. Moreover, neither Dr. Anderson nor Dr. Yang discounted Claimant's adaptive deficits. Instead, they felt that such adaptive deficits most likely result from his previously-diagnosed trauma- and stressor-related disorder, a non-qualifying psychiatric condition. That opinion is consistent with the record, which shows that Claimant may have suffered significant trauma in the early months of his life.

28. Although the result may seem harsh, the Legislature did not grant regional centers the authority to provide services to individuals whose conditions fall outside the five specified categories of developmental disabilities. Mother is strongly encouraged to continue to pursue appropriate treatment and services for Claimant

through other available resources, such as the school system or other government programs.

## **LEGAL CONCLUSIONS**

1. Pursuant to the Lanterman Act, regional centers are responsible for providing or coordinating services for persons with developmental disabilities. A developmental disability is defined 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. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this 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.

(Welf. & Inst. Code, § 4512, subd. (a)(1).) A developmental disability does not include handicapping conditions that are:

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. Such psychiatric disorders include psycho-social deprivation and/or psychosis, severe neurosis or personality disorders even where social and intellectual functioning have become seriously impaired as an integral manifestation of the disorder.

(Cal. Code Regs., tit. 17, § 54000, subd. (c)(1).)

2. As the applicant, Mother bears the burden of proving by a preponderance of the evidence that Claimant is eligible for Lanterman Act services from CVRC. (See Evid. Code, §§ 500 ["Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting"] & 115 ["Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence."].) A preponderance of the evidence means "evidence that has more convincing force than that opposed to it." (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

3. Based on the Factual Findings as a whole, and specifically, Factual Findings 25 through 28, Mother has not established that Claimant has: (a) an intellectual disability; or (b) a disabling condition that is closely related to, or requires treatment similar to that required for individuals with, an intellectual disability (fifth category condition). Nor has she established the existence of any other qualifying developmental disability for Claimant to receive Lanterman Act services from CVRC. Thus, her appeal must be denied.

## **ORDER**

Mother's appeal of Central Valley Regional Center's denial of Lanterman Act services to Claimant is DENIED. The non-eligibility determination is AFFIRMED.

DATE: December 9, 2022

WIM VAN ROOYEN

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.