

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

In the Matter of:

CLAIMANT

vs.

ALTA CALIFORNIA REGIONAL CENTER, Service Agency

DDS No. CS0003711

OAH No. 2023030698

DECISION

Administrative Law Judge Marcie Larson, Office of Administrative Hearings, State of California, heard this matter by video conference on April 18 and 25, and May 18, 2023, from Sacramento, California.

Alta California Regional Center (ACRC) was represented by Robin Black, Legal Services Manager.

Claimant's mother appeared at the hearing and represented claimant.

Evidence was received, the record closed, and the matter was submitted for decision on May 18, 2023.

ISSUE

Is claimant eligible for services from ACRC under the Lanterman Act because she has: (a) autism; (b) an intellectual disability; or (c) 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

1. Claimant was born in June 2017. Claimant is almost six years old. She lives with her mother in Sacramento, California. On or about June 2, 2022, claimant's mother requested that ACRC assess claimant to determine her eligibility for services under the Lanterman Act. After completing the assessment process, ACRC issued a Notice of Proposed Action (NOPA) effective December 12, 2022, which found claimant ineligible for services.

2. On or about March 6, 2023, claimant's mother signed and thereafter filed a Fair Hearing Request. The matter was set for a fair hearing before an ALJ of the OAH, an independent adjudicative agency of the State of California.

Intake Process

3. On or about July 6, 2022, claimant's mother spoke on the telephone to Nancy Carlson-Zapata, Service Coordinator for ACRC. Ms. Carlson-Zapata explained to claimant's mother the five qualifying conditions under the Lanterman Act, which includes autism, intellectual disability and the fifth category condition, as well as the services provided by ACRC. She also explained the intake process.

Claimant's mother shared claimant was diagnosed with a "specific learning disability, sensory processing disorder, auditory processing disorder, conductive hearing loss, ADHD [attention-deficit/hyperactivity disorder] and separation anxiety." She also stated that because of these combined diagnoses, she believed claimant qualified for services under the "fifth category." Claimant's mother explained that claimant was participating in occupational therapy and sees specialists, including a neurologist and neuropsychologist. Claimant's doctors also recommended she attend physical therapy.

Ms. Carlson-Zapata informed claimant's mother that claimant would not be assessed for eligibility for ACRC services because she provided no information that claimant met the Lanterman Act developmental disability criteria. Ms. Carlson-Zapata informed claimant's mother that she needed to submit documentation substantiating claimant's eligibility for services. The intake process was closed pending receipt of additional documentation.

Ms. Carlson-Zapata also informed claimant's mother that ACRC would review documentation submitted that may warrant ACRC assessing claimant for eligibility, including having providers complete and submit for review a form called a "Documentation of Concern." Ms. Carlson-Zapata told claimant's mother she would send her release forms to sign so that ACRC could obtain claimant's medical and educational records.

4. Between July 15 and September 1, 2022, claimant's medical providers submitted various documents to ACRC. The documents included a letter from Michael G. Chez, MD, stating that claimant had ADHD and a "central processing disorder." Kristin Brown, M.D., claimant's primary care provider with Sutter Elk Grove Pediatrics, Marla Wasinam, Occupational Therapist with Sutter Medical Foundation Pediatric

Rehab, and Jessica Jurkovich, a counselor with River Oak Center for Children, completed Documentation of Concerns forms.

Dr. Brown indicated that claimant had ADHD and a "sensory processing disorder." She also noted examples of claimant's behavior that could support a diagnosis of autism including limited eye contact, difficulty sitting still and following directions, and difficulty expressing needs. She also had sensory sensitivity and issues with fine motor skills. Dr. Brown provided examples of concerns related to intellectual disability, such as claimant's history of cognitive hearing loss and a "concern for auditory processing disorder."

Since May 2022, Ms. Wasinam has treated claimant two times per month for "Sensory processing difficulty." Ms. Wasinam provided examples of claimant's conduct that could support a diagnosis of autism, including difficulty maintaining conversations and social boundaries, sensory sensitivities, and "retained primitive [*sic*] reflexes." She also noted claimant struggled with motor skills. Ms. Wasinam also wrote that examples of concerns related to intellectual disability included difficulty following directions and, "due to sensory sensitivities, [claimant] struggles to participate with activities of daily living."

Ms. Jurkovich wrote that she has been working with claimant since April 15, 2022, for "unspecified ADHD." Ms. Jurkovich provided example of claimant's conduct that could support a diagnosis of autism, including that claimant "will often use a baby tone when speaking" and "likes to play with the same toys." Ms. Jurkovich did not provide any direct observations of claimant related to concerns of intellectual disability.

5. ACRC also requested claimant's mother submit a copy of a psychoeducational evaluation of claimant performed by the Elk Grove School District. The report is also referred to as the "Interdisciplinary Assessment Report" (Elk Grove report). Initially, claimant's mother did not agree to provide the Elk Grove report to ACRC because she did not agree with the conclusions. She also did not think it would be helpful to ACRC. However, on September 1, 2022, ACRC received the Elk Grove report.

Elk Grove School District Report

6. From November 1 through 4, 2021, the Elk Grove School District performed an "Interdisciplinary Assessment" on claimant and issued the Elk Grove report. Claimant was four years, four months old at the time of the assessment. She was in preschool three days per week at Merryhill School (Merryhill). Claimant was "referred for an interdisciplinary educational assessment" by her mother to "clarify her educational needs, eligibility for Special Education services, and to help inform decisions about goals and how they can be achieved in the least restrictive environment." Claimant's mother had indicated she was "concerned about delays in learning, expressive language, causation, impulse control, learning retention, motivation, sensory issues, and hearing."

Based on the concerns expressed by claimant's mother and a review of claimant's records, the interdisciplinary team decided that "assessment was needed in the following areas: psychoeducational, speech, language, academic, motor, social-emotional, adaptive behavior, and sensory."

7. The interdisciplinary team obtained claimant's relevant history, including family, medical and developmental, education, and intervention. As part of claimant's

history, it was noted that August 2021, claimant “received a diagnosis as part of her intake for services” at University of California (UC) Davis Medical Center of “Adjustment Disorder due to behavior challenges related to adjusting to preschool and family conflict.” However, claimant’s “therapist reports that these are no longer active concerns and the diagnosis of Adjustment Disorder likely shifting as concerns with noncompliance and ADHD-like behaviors reported.”

8. The assessment methods used by the interdisciplinary team included review of claimant’s medical records; behavioral observations during the assessment and in the classroom; and parent, teacher, and therapist interviews. Claimant also underwent several assessments to evaluate her cognitive functioning, speech and language functioning, motor and sensory processing, behavioral and emotional functioning, Autism Spectrum Disorder (ASD) behavior, and adaptive skills.

INTERVIEWS

9. Claimant’s mother reported that claimant “consistently uses sentences to communicate her needs/wants.” However, at times she has a “hard time expressing her needs despite being able to use language appropriately.” Claimant “consistently responds to name and provides eye contact during interactions.” She also “imitates sounds, words, body motions and uses a variety of gestures, such as pointing, reaching, waving, and nodding/shaking head.”

Claimant’s mother reported that claimant “sometimes has difficulties with peer interactions” and she can be “bossy.” However, she will “share and exchange toys with others.” Claimant’s mother expressed concerned about claimant’s “school motivation and learning since she does not enjoy letter and number identification and does not consistently retain this information.”

10. Claimant's Merryhill teacher has known claimant since she was an infant in the Merryhill infant program. She shared that claimant "is vocal and uses her words well to express herself." She has friends and "shares with her peers." Claimant also was "consistently and actively engaged during lessons and activities" and "likes to learn." Claimant's teacher also shared that claimant can be "bossy" with her peers at times. However, claimant "does not engage in maladaptive behaviors like yelling, throwing, or hitting and instead will express to adults that peers hurt her feelings." Also, claimant had no issues with "transitions," and she handled routine changes well. Claimant's teacher described claimant as a "typical 4-year-old still working through peer interactions and growing and developing as expected of her age."

11. Claimant's therapist shared that she has worked with claimant weekly or biweekly since August 2021. The sessions are through telehealth. Claimant was given an initial diagnosis of Adjustment Disorder "due to concerns around family conflict and adjustments to Preschool." However, claimant overcame some of those issues. Claimant's therapist reported "some concerns about difficulties with noncompliance and ADHD like behaviors" which she would continue to monitor.

BEHAVIORAL OBSERVATIONS

12. Behavioral observations of claimant were made by the interdisciplinary team when claimant "participated in a four-day assessment model." In the model, she "attended an integrated preschool classroom to facilitate observations and evaluations." Claimant's mother was also present. The interdisciplinary team of psychologists were able to gather information regarding claimant's "social interactions, language and communication, and behaviors." The interdisciplinary team also observed claimant at Merryhill.

13. The psychologists noted that claimant "required minimal degree of adult intervention in the general education setting." Claimant "attend[ed] to what that teacher said, followed basic directions, and shared information with the teacher." The psychologist also noted that "[t]hroughout the observation a variety of social skill[s] like eye contact, initiation of interaction with adults/peers, response to interaction of adults/peers with verbal language (sentences) and nonverbal behaviors (pointing, coordinated gaze shifts) were all observed."

COGNITIVE FUNCTIONING

14. Claimant's "Cognitive Functioning/Conceptual Development" was assessed using the Differential Ability Scales- Second Edition: Early Years form (DAS-2). The purpose of this assessment was to "obtain information about current problemsolving [*sic*] skills and conceptual development." The DAS-2 "measures a child's verbal, nonverbal reasoning, and spatial skills." The "[i]ndividual subtest scores contribute to the Cluster scores. Each subtest yields a Tscore, with a mean of 50 and a standard deviation of 10 (scores between 40 and 60 are in the average range), as well as an age equivalent."

15. Claimant's scores for verbal and nonverbal were in the average range. Her scores for "spatial" were "borderline," which is between low-average and low. A summary of the results of claimant's scores are as follows:

On the Verbal cluster, [claimant's] performance in this area was in the average range. She was able to follow simple directions and name a variety of pictures. On the Nonverbal Reasoning cluster, [claimant's] performance was also in the average range. She showed nice nonverbal reasoning by

matching pictures with common elements/concepts and finding relationships among abstract information. On the Spatial cluster, [claimant] demonstrated borderline performance indicating some relative weakness with visual-perceptual and spatial/fine motor coordination. At this time, no significant concerns with [claimant's] abilities to learn are observed.

SPEECH AND LANGUAGE FUNCTIONING

16. Claimant's speech and language functioning was assessed using the Preschool Language Scales-Fifth Edition (PLS-5). The assessment is "designed to evaluate receptive and expressive language skills of children from birth to seven years, eleven months of age." There are two subscales which are described as follows:

The Auditory Comprehension subscale evaluates a child's receptive language skills. This subscale measures the child's attention to and understanding of language (semantics, vocabulary, concepts, grammar, word order), play skills, and integrative thinking skills.

The Expressive Communication subscale evaluates a child's expressive language and social communication skills in the areas of vocal development, gesture use, play skills, early language development (emerging use of words/phrases to communicate for a variety of purposes), vocabulary, concepts, grammar, word order, sentence use, and integrative thinking skills.

Scores from the two subscales are used to calculate a Total Language Score, which gives an estimate of the child's global language abilities. For all three scales, scores of 85-115 are considered to be within the average range.

17. Claimant scored 108 for "Auditory Comprehension" and 90 for "Expressive Communication" for a total language score of 99. An explanation of the findings included the following:

On the Auditory Comprehension subscale, she demonstrated the following skills: understands analogies; understands negatives in sentences; understands spatial concepts, pronouns, and quantitative concepts; identifies colors, shapes, letters, and advanced body parts; understands complex sentences; orders pictures by qualitative concept; understands time/sequence concepts (first, last); recalls a story detail; makes an inference and a prediction about a story she has listened to.

On the Expressive Communication subscale, [claimant] demonstrated the following skills: uses present progressive verb + ing and plurals; answers What and Where questions; names a described object; answers questions logically and questions about hypothetical events; uses possessives, prepositions, and possessive pronouns; names categories.

18. The interdisciplinary team also made additional observations regarding claimant's social interaction and use of language, including that claimant's

"spontaneous use of language during play and social interaction appears to be within the range expected for her age." She also "demonstrates social communication skills as expected for her age."

ACADEMIC LEARNING

19. Claimant's academic skills were assessed using the Brigance Inventory of Early Development III (BIED-III). The assessment included information obtained from claimant's mother and observations of claimant. Under language development claimant was able to follow one-step directions, point to pictures, expressively identify pictures, point to body parts, match colors, and receptively and expressively identify colors. Under the "Academic/Cognitive" portion, claimant was able to understand some number concepts, count up to seven, compare different amounts, match all five shapes, and receptively and expressively identify shapes.

20. Based on the information obtained during the academic assessment, the interdisciplinary team concluded that "when compared to same age peers, [claimant] demonstrates age-appropriate academic skills." Classroom observations related to claimant's social and emotional behavior also revealed that claimant "did not exhibit any excessive behaviors" and "demonstrated age-appropriate classroom readiness and play skills throughout the assessment week."

MOTOR AND SENSORY PROCESSING

21. Claimant's motor and sensory processing was evaluated by an occupational therapist, who administered the Peabody Developmental Motor Scales-2nd Edition (PDMS-2) to measure claimant's fine motor skills. The "subtest standard scores between 8-12 are considered within the average range of performance." Claimant's grasping and visual motor integration were 10, which is in the middle of the

average range. Additionally, "[t]hroughout the assessment week, there were no behaviors that appear to be sensory seeking nor avoiding."

SOCIAL EMOTIONAL AND BEHAVIORAL FUNCTIONING

22. Claimant's mother completed the Behavior Assessment System for Children, Third Edition (BASC-3) for ages two to five. Claimant's mother "did not report behavior patterns in the clinically significant range." She did report some "at-risk" behavior such as "aggression, hyperactivity, depression, attention problems, atypicality, and activities of daily living."

23. The Childhood Autism Rating Scale- 2ND Edition (CARS-2) was also used as an "observation rating scale focused on distinguishing children with autism from children with other developmental disabilities." Any "[d]ifficulties in the areas of social interaction, communication, and restricted/repetitive interests or behaviors are noted" during the assessment. "Scores between 30 and 36.5 suggest the presence of mild-moderate autistic-like behaviors." "Scores of 37 or higher indicate severe levels of autistic-like behavior." Claimant's score was 17, which indicates "Minimal-to-No Symptoms of Autism Spectrum Disorder." The interdisciplinary team explained:

Based on behaviors observed and reported, [claimant] presents with many nice social behaviors such as good eye contact, response to name, response to other's interaction, shared enjoyment with adults and peers and demonstrated joint attention skills. Claimant demonstrated consistent imitation skills during the classroom setting and during assessments. She adapted to changes and played appropriately with toys. At this time, no significant

behaviors related to Autism Spectrum Disorder were reported.

24. The Vineland Adaptive Behavior Scales-Third Edition (Vineland-3) was used to evaluate claimant's adaptive skills. The Vineland-3 "is a standardized measure of adaptive behavior—the things that people do to functioning in their everyday lives." It is an "instrument where the examinee's adaptive functioning is compared to that of other their same age." The findings were that claimant "demonstrate[d] skills in the Average range when considering over all adaptive behavior."

OVERALL FINDINGS

25. The interdisciplinary team determined that based on the assessments, claimant "displays average nonverbal and verbal abilities ... which [is] consistent with her adaptive behavior." Claimant also did not "have a severe discrepancy between her estimated ability (average) and her academic achievement." She also did not have a "significant discrepancy" due to a processing disorder in the areas of attention, visual processing, auditory processing, sensory-motor skills, cognitive abilities, or phonological processing.

26. Claimant also did not meet the education criteria for autism, because "she does not display significant verbal communication, nonverbal communication, and social interaction deficits that adversely affect educational performance." The interdisciplinary concluded claimant does not qualify for special education services.

ACRC Assessment and Referral for Evaluation

27. On or about September 2, 2022, Jyoti Sharma, Program Manager for ACRC, informed claimant's mother that ACRC would assess claimant for eligibility

based upon the new documentation received. She explained that ACRC proposed that claimant be evaluated by a psychologist from the UC Davis Mind Institute because some of claimant's providers expressed concerns that she may have autism. Ms. Sharma also explained that the psychologist at the Mind Institute would evaluate claimant for autism, intellectual disability, as well as for any fifth category condition.

28. Claimant's mother informed Ms. Sharma that she did not believe the evaluation would be helpful. She told Ms. Sharma that ACRC needed to speak with claimant's doctors to make a determination on eligibility. Ms. Sharma told claimant's mother that an intake specialist would be assigned to claimant and the "first step will be a social assessment." Determinations regarding eligibility would be made after the social assessment.

SOCIAL ASSESSMENT

29. Rebekka Moreno, Intake Specialist for ACRC was assigned to conduct claimant's social assessment. Ms. Moreno prepared a report of her assessment and testified at hearing. On September 13, 2022, Ms. Moreno contacted claimant's mother and scheduled time on September 27, 2022, to conduct a social assessment of claimant by video conference. The initial meeting on September 27, 2022, was by telephone because claimant's mother could not connect to video. On October 11, 2022, Ms. Moreno completed the social assessment through video conference.

30. Claimant's mother shared that claimant was born in Sacramento. She lives with her mother and has no siblings. Claimant's mother has a bachelor's degree and works full-time as a sales manager. Claimant's mother stated she has a family history of autism, developmental delay, speech and language delay, learning

disabilities, and ADHD. Claimant's mother explained she experienced emotional issues and domestic violence when she was pregnant with claimant.

31. Claimant's mother described claimant as a "happy baby," who also screamed for "many hours." Claimant sat up without support at approximately five months and was pulling herself up at six months. She did not crawl. She walked at 12 months. She spoke her first words at eight months and spoke in sentences at 18 months. She was toilet trained at two years. Claimant had a virus when she was two years old. Thereafter, she had her tonsils and adenoids removed. Claimant has conductive hearing loss.

32. Claimant attends Merryhill, a private school. Claimant's mother explained that there were "behavioral concerns when in pre-school because [claimant] would not listen to instruction and was mean to the other children." Claimant mother explained claimant "becomes upset with breaks in her routine." Claimant will "shout, grunt, stomp, scream, flap, spin and rub [her feet]."

Claimant's mother reported that claimant had a history of "wandering." Claimant also "will also hit others if she does not get what she wants, plus, she will pick" at herself. Claimant also "mouths 'everything' and has a very low attention span, along with a low pain tolerance." Claimant's "energy level is very high." Claimant is "affectionate" on "her terms only." Claimant is "sensitive to loud noises but likes lights." She is also "sensitive to smells, detecting these easily."

Claimant's mother also reported that claimant "has a fixation with her iPad and the television, where she will watch the same videos on repeat." She described "several repetitive behaviors such as rubbing her feet on things and the wall. She will also lay on the floor then rub her feet on whatever is around and lay on her side, then sit up."

Claimant's mother also reported the claimant needs help with self-care and is a messy eater. She needs simple instructions and does not like to use eye contact. She described claimant as a "hands-on" learner who needs a lot of repetition to remember what she has been taught or told.

33. Ms. Moreno interacted with claimant on the telephone and through video. Ms. Moreno described claimant as "happy, chatty" and freely sharing information. Ms. Moreno noted that claimant "shared information with little prompting." During both meetings, claimant greeted Ms. Moreno and reported that she was five years old. She shared information about her interests and demonstrated various activities. She laughed and smiled throughout the interview, "at times looking at herself in the camera while sticking her tongue out." Ms. Moreno noted that, at times, claimant's speech was unclear. She responded to most of Ms. Moreno's questions, but "at times she talked about unrelated topics."

34. Ms. Moreno completed the social assessment report. She then submitted a referral for a psychological evaluation to assist in the determination of whether claimant was eligible for ACRC services.

REFERRAL FOR EVALUATION

35. On November 23, 2022, Tim Kuwazaki, Intake Manager for ACRC, spoke with claimant's mother and informed her that based on Ms. Moreno's referral, claimant was scheduled for a psychological evaluation with the Mind Institute in December 2022. Claimant's mother was previously informed the evaluation would be in November 2022, and she was not happy about the delay. Mr. Kuwazaki informed claimant's mother that "due to the shortage of psychological evaluation appointment availability," the evaluation would not occur until December.

Claimant's mother told Mr. Kuwazaki that she wanted ACRC to make a determination regarding eligibility without the evaluation from the Mind Institute. Claimant's mother believed enough information had already been provided to ACRC to make eligibility decision. Mr. Kuwazaki informed her that he would speak to the ACRC interdisciplinary team to inform them that she would like to move forward with a determination without the evaluation.

36. On November 29, 2022, Ms. Moreno spoke to claimant's mother regarding her request that a decision be made regarding claimant's eligibility, without an evaluation from the Mind Institute. Claimant's mother explained she was unhappy with ACRC delays. She also stated that ACRC was provided with intelligence quotient (IQ) testing and medical documents, which indicated claimant needed assistance with activities of daily living. Claimant's mother also stated that she was not concerned that claimant had autism or intellectual disability, but felt she was eligible for services under the "fifth category." She also stated claimant had "Extreme Executive Functioning" issues.

Claimant's mother stated she was "not against testing" but the processing was taking a long time and she did not understand why the evaluation was needed. She also stated that there was "a lot of documentation on file and that she does not feel further testing is required unless the medical doctors at ACRC, not just the psychologist, also believe it to be beneficial." Ms. Moreno informed claimant's mother she would speak to the eligibility team.

37. ACRC's eligibility team, which included Cynthia Root, Ph.D., Staff Psychologist, agreed to review claimant's eligibility based upon existing information provided to ACRC. The referral to the Mind Institute for a psychological evaluation was cancelled. On November 30, 2022, Ms. Morena informed claimant's mother that she

spoke to ACRC psychologist, who agreed to decide claimant's eligibility with existing information.

ACRC Eligibility Determination

38. Dr. Root is a Staff Psychologist employed by ACRC. She has been a licensed clinical psychologist since 2008. Dr. Root has over 14 years of experience completing, reviewing, and interpreting assessments performed by vendored psychologists for autism, intellectual disability and the fifth category condition. In addition to performing evaluations, Dr. Root is part of the ACRC eligibility review team. Each year, she reviews approximately 800 cases to determine eligibility for services under the Lanterman Act.

39. Dr. Root was assigned to evaluate claimant's request for services. Dr. Root explained that all of claimant's medical and educational records, including the Elk Grove report, were reviewed as part of the determination. An additional assessment from the Mind Institute was not required and not necessarily to make an eligibility determination. Dr. Root considered all five eligible conditions under the Lanterman Act: intellectual disability, cerebral palsy, epilepsy, autism, and the fifth category condition, when determining whether claimant was eligible for ACRC services.

40. Dr. Root concluded that claimant does not suffer from cerebral palsy or epilepsy. In November 2022, claimant's mother informed Ms. Moreno that she was not concerned that claimant had autism or intellectual disability. Dr. Root reviewed claimant's records and agreed there were no clinical concerns regarding autism. Dr. Root also opined that claimant does not have an intellectual disability or qualify for services under the fifth category, which would require claimant to have Global Developmental Delay.

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. The DSM-V explains that Global Developmental Delay is diagnosed when a child “fails to meet expected developmental milestones in several areas of intellectual functioning.”

41. Dr. Root explained the assessments performed by the Elk Grove interdisciplinary team demonstrated that claimant does not have an intellectual disability or a disabling condition that is closely related to or requires treatment similar to that required for individuals with an intellectual disability. Her verbal and nonverbal were in the normal range. This indicates she does not have intellectual delay. Claimant also did not qualify for special education services. Dr. Root explained it would be “highly unusual” for someone who does not qualify for special education services to qualify under the fifth category.

Dr. Root also explained a diagnosis of ADHD or Adjust Disorder may cause struggles with adaptive functioning that do not relate to intellectual delay. However, these conditions also do not qualify claimant for Lanterman Act services.

Additional Evidence from Claimant’s Mother

42. Claimant’s mother explained that she declined the Mind Institute evaluation because of the delay. However, she still believes claimant should be evaluated. Claimant’s mother also explained that claimant has ADHD, a neurodevelopment disorder that does not go away. She also has “sensory processing integration” issues, which require treatment similar to that received by individuals with

autism and developmental disability. Claimant's mother explained that claimant receives "skills training," which is a service provided to individuals with developmental disabilities. She thinks this should qualify claimant for services under the fifth category.

Analysis

43. 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 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. Claimant's mother failed to establish that claimant is eligible for services under the Lanterman Act.

44. Dr. Root persuasively testified that claimant does not suffer from autism, intellectual disability, or a disabling condition that is closely related to or requires treatment similar to that required for individuals with an intellectual disability. The Elk Grove School District performed a comprehensive four-day evaluation of claimant. The evaluation included the administering of cognitive and behavior assessments. The results demonstrate claimant's cognitive, speech and language, and academic learning skills are in the normal range. Claimant also did not show any signs of "autistic-like behavior."

Additionally, none of claimant's medical providers have diagnosed claimant with autism, intellectual disability, or presented findings that she has a disabling condition that is closely related to or requires treatment similar to that required for individuals with an intellectual disability. Rather, the evidence demonstrates claimant is being

monitored for ADHD and Adjustment Disorder. These are not conditions that qualify claimant for services under the Lanterman Act.

45. Claimant's mother clearly wants claimant to have the best supportive services for any challenges she may face. However, 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.

LEGAL CONCLUSIONS

1. Pursuant to the Lanterman Act, Welfare and Institutions Code section 4500 et seq., regional centers accept responsibility for persons with developmental disabilities. Welfare and Institutions Code section 4512 defines developmental disability as follows:

"Developmental disability" means 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 an intellectual disability [commonly known as the "fifth category"], but shall not include other handicapping conditions that are solely physical in nature.

2. California Code of Regulations, title 17, section 54000, further defines the term "developmental disability" as follows:

(a) "Developmental Disability" means a disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation.

(b) The Development Disability shall:

(1) Originate before age eighteen;

(2) Be likely to continue indefinitely;

(3) Constitute a substantial disability for the individual as defined in the article.

(c) Developmental Disability shall not include handicapping 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. 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.

(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 psychosocial deprivation, psychiatric disorder, or sensory loss.

(3) Solely physical in nature. These conditions include congenital anomalies or conditions acquired through disease, accident, or faulty development which are not associated with a neurological impairment that results in a need for treatment similar to that required for mental retardation.

3. An administrative “fair hearing” to determine the rights and obligations of the parties, if any, is available under the Lanterman Act. (Welf. & Inst. Code, §§ 4700–4716.) Claimant’s mother requested a fair hearing to appeal ACRC’s denial of her request that claimant be found eligible for services. The burden is on claimant to establish eligibility for services, by a preponderance of the evidence. (See Evid. Code, §§ 115, 500; *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) 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.)

4. As set forth in the Factual Findings, claimant’s mother did not establish that claimant qualifies for services under the Lanterman Act because she is an individual with autism, an intellectual disability, or because she has a disabling condition that is closely related to intellectual disability or requires treatment similar to

that required for individuals with an intellectual disability. Consequently, she did not establish that claimant qualifies for services from ACRC under the Lanterman Act. Claimant's appeal must therefore be denied.

ORDER

Claimant's appeal is DENIED. Alta California Regional Center's denial of services to claimant under the Lanterman Act is SUSTAINED.

DATE: May 25, 2023

MARCIE LARSON
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.