

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

**In the Matter of**

**CLAIMANT,**

**v.**

**SOUTH CENTRAL LOS ANGELES REGIONAL CENTER**

**OAH No. 2023040063**

**Case No. CS0004034**

**DECISION**

Thomas Lucero, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on June 12, 2023.

Tami Summerville, Appeals Manager, appeared on behalf of the Service Agency, South Central Los Angeles Regional Center (SCLARC). Claimant, whose name is withheld to protect her privacy, represented herself.

This matter is governed by the Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code sections 4500 through 4885 (Lanterman Act).

Testimony and documents were received in evidence. The record closed and the matter was submitted for decision on June 12, 2023.

## **SUMMARY OF CASE**

Claimant has had learning difficulties. She applied to the Service Agency after reading at a college that for persons with learning disabilities the Service Agency offers assistance in coordination with college programs. The Service Agency tested Claimant and found that her difficulties do not qualify her for services under the Lanterman Act.

## **FINDINGS OF FACT**

1. In a letter dated March 1, 2023, the Service Agency advised Claimant that its interdisciplinary core staff team had reviewed her case and concluded on February 28, 2023, that she was ineligible for services. The team found that Claimant did not have a “developmental disability” under the Lanterman Act definition in Welfare and Institutions Code section 4512, subdivisions (a) and (j), and in California Code of Regulations, title 17, section (Regulation) 54000.

2. OAH received Claimant’s appeal on April 3, 2023.

## **Background**

3. Claimant is 31 years old and lives with and supports her five year-old son. She and her husband are separated. Claimant has a driver’s license and a vehicle. At the time of an October 20, 2022 Psycho-Social evaluation by the Service Agency’s Service Coordinator (SC), Maritza M. Cortes Melendez, Claimant was employed by DoorDash, delivering food.

4. Hard of hearing, Claimant wears bilateral hearing aids. School personnel noted her hearing loss. Claimant received special education support in high school as a student with Specific Learning Disability (SLD). She was unable to pass the high school exit examination, but was awarded a diploma in 2011 nonetheless. Shortly after graduation, she attended two semesters of community college, but struggled there and was later homeless for some years.

5. The October 20, 2022 Psycho-Social evaluation recommended Claimant's evaluation for developmental disability, findings to be considered by the Service Agency's interdisciplinary team regarding eligibility and recommendations.

### **December 12, 2022 Psychological Evaluation**

6. Clinical Psychologist, Thomas L. Carrillo, Ph.D., performed a psychological evaluation of Claimant on December 12, 2022. Dr. Carrillo states at the outset that the evaluation is limited to assessment of developmental disabilities, specifically intellectual disability (ID) and Autism Spectrum Disorder (ASD). Claimant suspects she has ID.

7. Dr. Carrillo reviewed and summarized the October 20, 2022 Psycho-Social evaluation by SC Cortes Melendez. He also reviewed Claimant's June 21, 2011 Individualized Education Program (IEP), but he was unaware that HOH, an abbreviation in the IEP, meant that she was hard of hearing.

8. Due to COVID-19 safety protocols, Dr. Carrillo's evaluation was performed remotely, via FaceTime. Dr. Carrillo described Claimant as friendly and engaging, displaying no unusual or bizarre behaviors or any symptoms of ASD. Although Dr. Carrillo found Claimant friendly, she told him she has no friends, only acquaintances.

9. Because of limitations imposed by remote testing, Dr. Carrillo was unable to administer the full Wechsler Adult Intelligence Scale – Fourth Edition (WAIS-IV), but the Verbal section was used. Dr. Carrillo noted that verbal comprehension skills are a strong indicator of overall cognitive abilities.

10. To obtain a standardized assessment of Claimant’s communication abilities, Dr. Carrillo administered the Communication portion of the Vineland Adaptive Behavior Scales – Third Edition (Vineland-3).

11. On the Verbal section of the WAIS-IV, Claimant received scale scores of 7 on the subtest item of Similarities, 6 on the subtest item of Vocabulary, and 5 on the subtest item of Information. The overall result of this part of the WAIS-IV was a Verbal Comprehension IQ Composite Score of 78.

12. Under Dr. Carrillo’s guidance, Claimant also completed the Working Memory category of the WAIS-IV, receiving scale scores of 5 on Digit Span and 6 on Arithmetic. The overall result was a Working Memory IQ Composite Score of 74.

13. In light of the WAIS-IV results, Dr. Carrillo found that Claimant’s Verbal Comprehension and Working Memory skills fell within the borderline range of delay.

14. On the Communication portion of the Vineland-3, Claimant received a Standard Score of 100, in the normal range. She received a Receptive Language Age Equivalent of 11 years, 0 months, an Expressive Language Age Equivalent of 16 years, 0 months, and a Written Language Age Equivalent of 16 years, 0 months. To Dr. Carrillo these results suggested that Claimant’s receptive, expressive, and written language skills were within the normal range.

15. In the Daily Living Skills section of the Vineland-3, Claimant received a score of 94, within the normal range. In the area of Socialization Skills, her score was 89, also within the normal range. Dr. Carrillo found that Claimant's Adaptive Behavior Composite was 91, so that her overall adaptive abilities were within the normal range.

16. Dr. Carrillo's diagnostic impression was Borderline Intellectual Functioning, coded as V62.89 (R41.83) under the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5). He recommended remedial and tutoring assistance upon returning to community college, or other assistance that would help Claimant complete college and find employment.

## **2011 IEP**

17. The Service Agency obtained a copy of Claimant's June 21, 2011 IEP. It states that initially in 2003 Claimant was identified as a student with SLD. Her cognitive ability was then assessed in the low average to average range with psychological deficits apparent in auditory processing.

18. Claimant's IEP states that she was able to write clear declarative sentences with conventional spelling, could construct organized paragraphs, and present her thoughts with clarity. The IEP notes that Claimant's hearing disability, however, impairs her ability to write, and affected her involvement and progress in the general education curriculum.

19. The recommendation of Elizabeth Stapleton, the School Psychologist who prepared the IEP, was that Claimant continue to receive special education services.

## **Psychologist's Testimony**

20. Clinical Psychologist Laurie McKnight Brown, Ph.D., is the Service Agency's lead psychologist, overseeing the work of its other psychologists. She has worked at SCLARC for six years. Dr. Brown has a bachelor's and master's degree in psychology. Her doctorate in the subject had a clinical emphasis.

21. Having reviewed all of the materials described above, Dr. Brown noted Claimant's many challenges and their negative impact on her mental health and well-being. Examples are traumatic experiences in her past, as the victim of domestic violence or similarly grave trauma, and Claimant's years of homelessness, ending in approximately 2016. Homelessness is of itself traumatic. The trauma she experienced has contributed to Claimant's intellectual deficits.

22. Afforded some special education resources, Claimant has had difficulty with learning over the years. On the other hand she is able to live independently and cares for her son independently. She has no difficulty with motor skills or self-care. She has a bank account and keeps to a budget She has a vehicle and, as a licensed driver, has used it for work.

23. Dr. Brown took into account Claimant's scores as found by Dr. Carrillo on the WAIS-IV and the Vineland-3 and direct observations of Claimant by Dr. Carrillo and SC Cortes Melendez. All other materials regarding Claimant available to the Service Agency Dr. Brown considered as well. She concluded that Claimant did not meet the diagnostic criteria for eligibility and is not substantially disabled under the Lanterman Act and its implementing regulations.

## **Claimant's Testimony**

24. Claimant is unable to accomplish many things independently, notwithstanding the psychologists' observations. She has a vehicle, but had help from her estranged husband and could not have purchased a vehicle on her own. Similarly, though she has a bank account, she finds it hard to maintain. In the past she has had help with it and with other matters that allow her to live alone with her son.

25. Claimant is not sure what help she needs or exactly why, but she struggles a great deal with everyday life and believes that any assistance from the Service Agency would greatly enhance her life and her prospects.

26. Claimant applied for services after hearing a presentation at a college. Claimant understood that the Service Agency may partner with a college to provide practical assistance of various kinds, such as with managing money, obtaining employment, and easing challenges that arise day to day. Claimant believes she is in urgent need of such assistance and, without it, may again experience trauma, such as the homelessness in her past.

27. There was no question that Claimant is sincere and was wholly truthful in her testimony. It was evident from Claimant's hesitation to speak, her professions that she did not quite understand the proceedings of the administrative hearing, and her puzzled expressions and questions, that Claimant has both intellectual deficits and pressing needs for herself and her son.

## LEGAL CONCLUSIONS

### PRINCIPLES OF LAW

1. The party that asserts a claim or seeks to change the status quo generally has the burden of proof in administrative proceedings. (Cal. Administrative Hearing Practice (Cont. Ed. Bar 2d ed. 1997) § 7.50, p. 365.) In these proceedings, then, Claimant bears the burden of proof.

2. Under Evidence Code sections 115 and 500, the evidentiary standard Claimant must meet is proof by a preponderance of the evidence, meaning Claimant must show that the evidence makes it more likely than not that he should prevail on his claim of eligibility.

3. There was no evidence that Claimant has or has had cerebral palsy or epilepsy. This matter concerns ASD, ID, and the fifth of the Lanterman Act's five categories of eligibility set out in Welfare and Institutions Code section 4512, subdivision (a)(1). The fifth category encompasses "disabling conditions found to be closely related to [ID] or to require treatment similar to that required for individuals with" ID.

4. Section 54000 of title 17 of the California Code of Regulations states that eligibility depends not only on whether a person's disability comes within one of the Lanterman Act's five categories, but also on characteristics such as whether the disability is likely to last indefinitely and is substantially disabling. The regulation's provisions parallel provisions in Welfare and Institutions Code section 4512.

5. Section 54001, subdivision (a)(1), of title 17 of the California Code of Regulations states that to be substantial, a disability must result in major impairment

of cognitive or social functioning. Subdivision (a)(2) of the regulation lists significant functional limitations that a person's disability must impose to be eligible, including for instance limitations in receptive and expressive language. The regulation's provisions, like those in the previous regulation, parallel provisions in Welfare and Institutions Code section 4512.

6. Section 54010 of title 17 of the California Code of Regulations describes procedures for a Service Agency's decision on eligibility following intake and assessment, and how the decision may be appealed.

7. The DSM-5 description of ASD, Exhibit 5, page A60, begins thus: "Persistent deficits in social communication and social interaction across multiple contexts . . . ." Contexts include failure to interact with others, such as in conversation, poor verbal and nonverbal communication, and deficits in developing, maintaining, and understanding relationships, such as friendships.

8. The DSM-5, Exhibit 6, page A69, describes ID, also called Intellectual Developmental Disorder, as "a disorder . . . that includes both intellectual and adaptive functioning deficits . . . ." Three criteria must be met: A. Intellectual deficits, such as in reasoning and academic learning, confirmed by both clinical assessment and 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." Such deficits limit functioning in daily life. C. Onset of intellectual and adaptive deficits during the developmental period.

## **ANALYSIS**

9. Claimant's deficits were noted by the Service Agency at every step of the intake process. Dr. Carrillo and Dr. Brown reviewed all pertinent information, including

from Claimant's past, as revealed in her 2011 IEP. They honestly assessed Claimant as a person in real need of assistance with the challenges of daily living.

10. The Service Agency, however, must follow the Lanterman Act to determine if an applicant's needs are due to particular characteristics or ailments, those set out in Welfare and Institutions Code section 4512, subdivision (a), in five categories. If an applicant's health and mental state cannot be diagnosed as within at least one of the five categories, the law does not allow the Service Agency to provide services. The Claimant is thus not eligible for services.

11. There was no evidence that Claimant might fall under either of two of the five categories. She does not have epilepsy or cerebral palsy.

12. To evaluate whether Claimant might be eligible under any of the remaining three categories, Service Agency personnel appropriately consulted the standards of the DSM-5 and standardized testing, the WAIS-IV and the Vineland-3, designed to reveal whether Claimant's health or ill health might be described as encompassed within those standards. They reasonably concluded to the contrary. Claimant's state of health, mental or psychological and physical, is not encompassed within the standards used to reveal ASD, ID, or the fifth category that is closely related to ID.

13. Claimant struggles in many ways, as she honestly and believably testified. She has, for instance, no friends, an indication that might show ASD. But Claimant is not disabled from making friends. It was evident during intake procedures, her interactions with SC Cortes Melendez and Dr. Carrillo, and during the hearing as well, that Claimant understands and can act upon social cues. She is not disabled from

engaging in social communication and social interaction across multiple contexts. Claimant is not eligible for services under the Lanterman Act based on ASD.

14. Much the same analysis applies to ID, though here the issue is slightly less clear. Claimant is below average in intellectual functioning in several areas, as the Service Agency's testing revealed. Claimant's adaptive functioning is stronger. In any case, in no area was Claimant found to be far enough below average that ID or the fifth category should be the conclusion.

15. Claimant may herself have doubts, as she expressed during the hearing, but it is evident she meets developmental and socio-cultural standards for personal independence and social responsibility. She lives independently, for instance, and she is socially responsible in caring for her son, among other things.

16. Taking all the evidence into account, it must be concluded that Claimant is not substantially disabled within the meaning of title 17 of the California Code of Regulations, section 54001, subdivision (a)(1).

## **ORDER**

Claimant's appeal is denied.

DATE:

THOMAS LUCERO  
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.