

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

**In the Matter of the Fair Hearing Request of:**

**CLAIMANT,**

**vs.**

**SOUTH CENTRAL LOS ANGELES REGIONAL CENTER,**

**Service Agency.**

**DDS No. CS0004060**

**OAH No. 2023040357**

**DECISION**

Howard W. Cohen, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on January 10, 2024, in Los Angeles.

Tami Summerville, Appeals Manager, represented South Central Los Angeles Regional Center (SCLARC).

Claimant's father and authorized representative appeared on behalf of claimant, who was present. Claimant's mother also appeared and testified. The names of claimant and her family members are omitted to protect their privacy. A certified Spanish language interpreter, Offad Vallejo, was present to assist claimant's parents.

Oral testimony and documentary evidence was received. The record was closed and the matter was submitted for decision on January 10, 2024. By order dated January 18, 2024, the ALJ reopened the record to allow SCLARC to procure and file an accurate written English-language translation of the document admitted as exhibit 10 by January 26, 2024, when the record would again close. SCLARC did not file a translation of the document until January 30, 2024, after the record closed. By order dated January 30, 2024, the ALJ again reopened the record to allow the translation into evidence. The translation was marked and admitted as part of exhibit 10.

The record was closed and the matter was submitted for decision on January 30, 2024.

## **ISSUE**

Is claimant eligible to receive services and supports from SCLARC under the Lanterman Developmental Disabilities Services Act (Lanterman Act)?

## **EVIDENCE RELIED UPON**

Documents: Service Agency's exhibits 1 through 13; claimant's exhibits A and B.

Testimony: Laurie McKnight Brown, Ph.D.; claimant's father and mother.

## FACTUAL FINDINGS

### Parties and Jurisdiction

1. Claimant is a non-conserved 21-year-old woman who lives at home with her father. In late 2022, claimant's father asked SCLARC to determine claimant's eligibility for services and supports due to his concerns that claimant may have an intellectual disability (ID).

2. SCLARC conducted a psycho-social evaluation of claimant on December 1, 2022. (See Factual Findings 6-10, *infra*). On February 1 and 8, 2023, a SCLARC consultant conducted a psychological evaluation of claimant. (See Factual Findings 11-21, *infra*). A SCLARC interdisciplinary eligibility team reviewed the results of those evaluations as well as other documents. (See Factual Findings 29-34, *infra*.)

3. In a Notice of Action letter claimant received on March 17, 2023, SCLARC denied claimant is eligible for regional center services under the Lanterman Act. (Ex. 1, p. A5.) (For reasons not explained at hearing, the Notice of Action letter submitted in evidence is, apparently erroneously, dated August 2, 2023, not March 17, 2023.) The letter states:

[Y]ou do not have a "developmental disability" as that term is defined by California Welfare and Institutions Code, Section 4512, subdivisions (a) and (j) and the California Code of Regulations, Title 17, Sections 54000 through 54002. More specifically, you are not substantially disabled as a result of having Intellectual Disability, Seizures or Cerebral Palsy. The interdisciplinary team also concluded

that you are not substantially disabled as a result of a condition closely related to Intellectual Disability nor do you require treatment similar to that required by individuals with Intellectual Disability.

*. . . [Y]ou were diagnosed with Borderline Intellectual Functioning & Autism Spectrum Disorder, not considered substantially handicapping.*

(Ex. 1, p. A8, italics added.) SCLARC recommended that claimant obtain interventions from other sources, as described in the psychological evaluation.

4. On April 4, 2023, claimant's father appealed SCLARC's determination that claimant is not eligible for services and requested a hearing.

5. All jurisdictional requirements have been met.

### **DECEMBER 2022 PSYCHO-SOCIAL EVALUATION**

6. In 2022, when claimant was 20 years old, claimant's father requested that SCLARC perform an eligibility assessment. Maritza Cortes, a service coordinator at SCLARC, conducted a psycho-social assessment of claimant on December 1, 2022. Ms. Cortes conducted the assessment by telephone because of the COVID-19 pandemic.

7. In her report dated December 2, 2022, Ms. Cortes noted that claimant was diagnosed with anxiety, for which she took prescription medications. Claimant and her two sisters, one of them claimant's twin, live with their father, who is separated from their mother. The family moved from Mexico to the United States when claimant was 11 years old. Claimant was born prematurely, with a birth weight of two pounds. She began walking at 24 months, began saying words at 12 months, began speaking

in short sentences at two years old, and was toilet-trained at three years old. She has a history of hypothyroidism. There is a recent family history of ASD.

8. Ms. Cortes noted no reported hearing impairment, though there was contradictory testimony on the issue of claimant's hearing.

9. Ms. Cortes noted claimant can feed, groom, dress, and bathe herself. She does not know how to cook and is afraid to use the stove. She needs reminders to help with cleaning. She is afraid to take public transportation. She struggles with counting money. She knows how to cross a street but is naïve about stranger danger. She has one friend in the United States, who has a developmental disability, and had two friends in Mexico. But she does not like going out "and has always struggled making friends." (Ex. 2, pp. A13-A14.) She does not make appropriate eye contact and has difficulty holding a conversation. She enjoys manga. Anxiety prevents her participating in social activities. She is verbally aggressive with her family and becomes nervous easily in unfamiliar situations. She does not display self-injurious behaviors. Claimant speaks Spanish only; she needs repetition and guidance when asked to do something or follow directions. Claimant works part-time at Porto's' Bakery, placing fruit on top of pastries, and attends Cerritos College, where she takes one course, English. She has private health insurance with Medi-Cal.

10. Ms. Cortes recommended that a psychological evaluation be performed "to evaluate for developmental disability" and to present the findings to SCLARC's interdisciplinary team to determine eligibility. (Ex. 2, p. A14.)

### **FEBRUARY 2023 PSYCHOLOGICAL ASSESSMENT BY DR. WILLIAMS**

11. On February 1 and 8, 2023, Sammie Williams, Psy.D., performed a psychological assessment of claimant at SCLARC's request. Claimant was 20 years old.

Dr. Williams wrote that her evaluation would “assess [claimant] for developmental disabilities, specifically an intellectual disability (ID) and autism spectrum disorder (ASD). Thus, the present evaluation is not a comprehensive evaluation of mental health or other potential psychiatric disorders.” (Ex. 3, p. A16.)

12. Dr. Williams reviewed two documents: an Individualized Education Program (IEP) prepared by claimant’s school district dated December 2016 and Ms. Cortes’s psycho-social examination report. Dr. Williams interviewed claimant’s father and administered the following testing instruments: Adaptive Behavior Assessment System–Third Edition (ABAS-3), Autism Diagnostic Observation Schedule–2 (ADOS-2, Module 4), Social Responsiveness Scale–Second Edition (SRS-2), and Wechsler Adult Intelligence Scale– 4th Edition (WAIS-IV).

13. Based on her examination, while relying on the Diagnostic and Statistical Manual of Mental Disorders, 5th edition (DSM-5), Dr. Williams diagnosed claimant with ASD. Her diagnostic impressions included finding that claimant would be “requiring support for deficits in social interactions/communication (Level 3), [and] requiring support for restricted, repetitive behaviors (Level 2), with accompanying intellectual impairment.” (Ex. 3, p. A23.) Dr. Williams also diagnosed claimant with Borderline Intellectual Functioning.

14. Dr. Williams found claimant to be cooperative and receptive during testing, especially with Dr. Williams’s prompting and praising her. Claimant presented as “very child-like, immature, with an awkward smile and no consistent eye-contact.” (Ex. 3, p. A18.) Claimant had difficulty following complex conversations; even the concept of “exact change” confused her.

15. Dr. Williams found, applying the WAIS-IV, that claimant's cognitive functioning was in the borderline range, "less than 96% of others her age." (Ex. 3, p. A19.) Her verbal comprehension was in the low average range. Her perceptual reasoning index, measuring reasoning with nonverbal information, fell in the borderline range. Her processing speed index was also in the borderline range. Her working memory index, measuring claimant's ability to hold information active in her mind while solving a problem with it, as when remembering multi-step instructions, was in the extremely low range, "less than approximately 99% of others her age." (*Ibid.*)

16. Dr. Williams found claimant's functional communication skills were extremely low, based on claimant's father completing the ABAS-3. Claimant's ability to make independent choices, exhibit self-control, and take responsibility when appropriate was in the low range; her ability to function in the community was in the extremely low range and in the home was in the low range; her safety awareness and skills were in the low range; her ability to perform self-care activities such as eating, dressing, and personal hygiene were in the extremely low range.

17. To test for ASD, Dr. Williams had claimant's father complete the SRS-2: Adult instrument, which assessed claimant's interpersonal behavior, communication, and repetitive/stereotypic behaviors characteristic of ASD. Claimant was in the severe range for expressive social communication; claimant "is typically unmotivated to engage in social-interpersonal behavior. Elements of social anxiety, inhibition, and empathic orientation are included . . . ." (Ex. 3, p. A21.) In the area of stereotypical behaviors or highly restricted interests, claimant functioned in the severe range.

18. Dr. Williams also applied the ADOS-2, Module 4, to evaluate claimant for ASD. Dr. Williams found claimant was fluent and used complex language but was

immature for her age. Claimant rarely used appropriate and consistent eye contact. Her facial expressions were inconsistent with her conversation. Her social overtures were restricted to personal demands and related to her own interests. She engaged in little or no social give and take. "[T]he overall quality of rapport with [claimant] was inappropriate at times and not sustained. Findings indicate deficiencies in reciprocal social interactions that are clinically significant and lead to severe interference with everyday social interactions . . . and points out [claimant's] lack of insight and awareness into the severity of her (social) challenges." (Ex. 3, p. A22.) With respect to stereotypical behaviors and restricted interests, claimant constantly fondled and rubbed her fingers, drifted into her own world, presented as anxious in response to certain sounds, and consistently asked repetitive questions.

19. Dr. Williams summarized that claimant:

is experiencing various symptoms associated with ASD and a co-occurring intellectual impairment. . . . [¶] It further appears that [claimant] struggles to integrate information that may be applied to day-to-day social situations, primarily when interacting with others. In addition, [claimant] is also struggling with internal emotional difficulties that limit her abilities to implement appropriate coping mechanisms that could then allow her to sustain self-regulation when required. [S]he [claimant] also presents with a range of symptoms associated with ASD (e.g., deficits in communication, speech/language, social interactions, restricted interests and repetitive patterns of behavior, etc.). [Claimant] has struggled with various observable symptoms,



such as, poor reciprocal communication, attention to task, restrictive/repetitive interests and behaviors, varying activity levels, poor problem solving, self-control and regulation, as well as a range of stereotypical behaviors.

(Ex. 3, p. A22.)

20. In a section of her report entitled "Diagnostic Impressions," Dr. Williams wrote claimant:

continues to display impairment in her cognitive abilities, and day-to-day functioning, including notable symptoms associated with and intellectual disability and a comorbidity of ASD. [Claimant] has significant deficits in the reciprocal nature of social communication, restricted interests and stereotypical patterns of behaviors. With [a] "Borderline " FSIQ of 74, including a well-documented history of developmental delays. [Claimant] also presents with a history of communication, social challenges, as well as learning difficulties, as her cognitive and intellectual scores suggest that overall, she is performing significantly below her same-age peers. Additionally, [claimant]'s adaptive functioning also present with a range of challenges in her reciprocal social communication abilities, self-help, safety awareness, self-direction, and her overall daily living socialization skills which impairs her ability to function across most psychosocial domains (i.e., self-care, interpersonal, home, school, community). Specifically,

individuals that meet criteria for ASD have difficulties in three major areas: their social skills, language skills, and stereotyped/repetitive behaviors or interests. In [claimant]'s case, her social difficulties are further evidenced by her lack expressive/receptive communication abilities, minimal social eye contact and inappropriate sharing of facial expressions, lack of awareness of social interactions, and very minimal sharing of her interests or achievements with others. Thus, [claimant] will likely need ongoing support in these areas as she continues to mature toward becoming interdependent in her home, school and community.

(Ex. 3, pp. A33-A34.)

21. Dr. Williams listed five recommendations for claimant:

(1) Dr. Williams "highly" recommended that claimant receive psychotherapy "with a well-trained (or Certified) individual in the areas of Child/Adolescent Development, Autism Spectrum and Sensory Processing related issues. "This will likely help [claimant] understand her (situational) anxiety-levels and behavior-related issues, specifically anxiety and self-regulation." (Ex. 3, p. A23.)

(2) Claimant's family should be more open with claimant about her developmental disability and help her find skills she can be proud of. "Awareness of her disorder: [claimant] appears quite confused, and at times display discontent with her current social interactions and has very limited awareness of how she differs from other adults. It is not uncommon for individuals with ASD to eventually realize they are

different from others, which leads to an exacerbation of anxiety and depressed moods.” (Ex. 3, p. A23.)

(3) Claimant should receive social skills training “in problem solving, emotional and stress management and positive interpersonal relatedness. . . . A cognitive-behavioral approach is suggested that assists [claimant] in improving cognitive awareness, thought restructuring and the connection between thoughts, feelings, and behaviors. This approach would also provide clear, simple directives with consistent reinforcement of positive behavior as well as logical and natural consequences for negative and/or acting-out behavior(s).” (Ex. 3, p. A23.)

(4) Claimant’s “support system should be referred to SCLARC’s Family Resource Center in an effort to obtain psychoeducational information that may assist those supporting and [claimant] with appropriate and available resources to help [claimant] develop to her full potential.” (Ex. 3, p. A24.)

(5) Claimant’s progress should “be carefully monitored by to determine whether further evaluation is necessary in the future.” (Ex. 3, p. A24.)

### **CLAIMANT’S EARLY RECORDS AND IEP’S FROM CLAIMANT’S SCHOOL DISTRICT FROM 2014 TO 2019**

22. The only documentation in this record regarding claimant before she moved to the United States are notes of examinations conducted on July 17, 2009, and on October 16, 2010, by Dr. Miguel Mercado Silva, a pediatric neurologist in Guadalajara, Jalisco, Mexico. In the July 2009 notes, when claimant was seven years old, Dr. Mercado Silva found claimant had a specific learning disorder “of the visual-spatial perceptual disorder type.” (Ex. 10, p. OAH1.) Dr. Mercado Silva noted claimant finished the school year “with good grades, even without achieving good reading and

simple dictations, she continues with pedagogical support . . . ." (*Ibid.*) She displays "[o]ppositionism, defiant, argues with adults . . . . Anxiety: she sucks her fingers . . . ." (*Ibid.*) In the October 2020 notes, when claimant was eight years old and in third grade, Dr. Mercado Silva noted the same specific learning disorder diagnosis, some improvement in "reading and simple dictations" while claimant continued to receive "pedagogical support," and symptoms of anxiety, including sucking her fingers. Other entries in the notes are confusing and seemingly self-contradictory (e.g., "reading is more fluid, his [*sic*] understanding is better, not well sequenced and organized"). (*Id.* at p. OAH2.) "[T]here is a need for better sequence and organization of reading and spelling . . . ." (*Ibid.*)

23. School district records show claimant receiving her first IEP on June 5, 2014, the year her family moved to the United States, when claimant was 11 years old. The 2014 IEP states claimant is a beginning-level English Language Development student in middle school. Though the IPP noted claimant's "ability to communicate in English is limited since she has been in this country for less than a year" (ex. 4, p. A39), claimant's parents were also concerned about claimant's limited ability to communicate in Spanish. The IEP noted, with respect to social, emotional, and behavioral issues, that claimant is "shy and depends heavily on her twin sister to speak/advocate for her." (*Id.* at p. A40.) The IEP made no mention of ASD and reflected no concerns about claimant's adaptive and daily living skills or vocational skills, noting claimant turns in her assignments on time. The school district began providing claimant with special education services as a student meeting the criteria for speech and language impairment.

24. A school district bilingual speech-language pathologist, Adelaida B. Bourgoïn, M.S., conducted an Initial Speech and Language Evaluation of claimant on

January 7 and 8, 2015. In her January 14, 2015 report, Ms. Bourgoïn found that claimant had a language deficit and met the eligibility criteria for special education for speech and language impairment and articulation difficulty, though claimant could express her needs adequately. (Ex. 9, pp. A218, A220.)

25. The next IEP in the evidentiary record is dated January 8, 2016. Claimant was described as “an eight[h] grade student enrolled in ELD and general education classes with a special education eligibility of speech [or] language impairment.” (Ex. 5, p. A61.)

a. Claimant’s parents expressed concern that claimant was having trouble in math and science classes, experienced anxiety when taking tests, and was often unable to complete most test items. The IEP notes that claimant’s peers helped her with classroom presentations and she “has made progress in speech with producing multi-syllabic words in sentences.” (Ex. 5, p. A61.) Nevertheless, she was unable to produce consonant clusters in words with 60 percent accuracy.

b. The school district’s Free and Appropriate Public Education (FAPE) for claimant was providing her with 30 minutes per week of group speech and language therapy. Though she received good grades in all subjects but math, her teachers noted she continued to have difficulty with speech and language and was “shy.”

c. The 2016 IEP noted claimant “has a diagnosis of ADHD. Teacher observations include that claimant’s “participation is minimal” and that she has difficulty writing in class unless she allowed to write in Spanish. (Ex. 5, p. A78.) Claimant “relies a lot on her sister. Looks to her sister for confirmation for guidance and support.” (*Id.* at p. A97.) Claimant “has been recently diagnosed with a mild case of

ADD and is taking medication.” (*Ibid.*) Claimant’s reasoning abilities and cognitive test results were in the average range. “There are no concerns with her intelligence.” (Ex. 5, p. A97.)

26. Claimant’s IEP’s from 2017 and 2018 (exs. 6, 7) reflected mostly similar information, conclusions, and school district services. All the IEP’s show claimant’s eligibility for speech and language supports. All indicate a language deficit. All indicate no concern with motor skills and ADL skills and no significant difficulties with social skills. None contemplates assessing claimant for ASD.

27. In claimant’s November 21, 2019 IEP, covering her senior year in high school, the school district noted that claimant “continues to present with mild to moderate articulation impairment which impacts her articulatory precision in conversation. . . . [¶] [Her] articulation impairment impacts her ability to communicate her learning in the general education classroom. She requires additional support and time to speak intelligible [*sic*] and within age limit.” (Ex. 8, p. A184.) Claimant “presents as a reserved young woman yet states that she enjoys eating lunch and spending time with friends.” (*Ibid.*)

a. The IEP, which continued to note claimant’s anxiety and ADHD concerns, also documented no impact of claimant’s speech and language or ADHD disabilities on her vocational and adaptive and daily living skills. Noting teacher reports that claimant “minimally participates in classroom discussions” in English, and to help her transition to employment and independent living, claimant was to “participate in social conversations with peers . . . and in classroom discussions. (Ex. 8, p. A185.)

b. Claimant was also to attend the College and Career fair at her high school and would receive English Language Learner services in the general education program. Program accommodations for claimant were to “allow extra time for oral responses, allow additional time to complete test/quizzes, allow use of Spanish-English dictionary in all classes . . . .” (Ex. 8, p. A195.)

c. Claimant was to receive, over her entire her senior year, a total of two and one-half hours of speech and language services, 30 minutes of college awareness, and 30 minutes of vocational assessment, counseling, guidance, and career assessment. (Ex. 8, p. 195.)

28. Claimant graduated high school in 2020.

### **Eligibility Team Review of Claimant’s Records**

29. Laurie McKnight Brown, Ph.D., the lead psychologist consultant at SCLARC and a member of various interdisciplinary teams, including the eligibility team, testified the team found claimant did not meet the criteria for eligibility despite claimant’s ASD diagnosis, because the team saw no evidence of claimant’s ASD or of any substantial disability related to ASD during her developmental period, i.e., prior to age 18.

30. The eligibility team reviewed and considered the following records: (a) Ms. Bourgoïn’s 2015 speech and language evaluations; (b) claimant’s IEP’s from 2014 and 2015 through 2019; (c) Ms. Cortes’s December 2022 psycho-social assessment; and (d) Dr. Williams’s February 2023 psychological evaluation.

31. In none of the documents the eligibility team reviewed, other than Dr. Williams’s psychological evaluation, was claimant diagnosed with ASD or ID or any

other developmental disability. The team did not review Dr. King's ASD diagnosis or other documents from Kaiser Permanente. (See Factual Findings 35-37, *infra*.)

32. Dr. Brown believes claimant's developmental milestones discussed in Ms. Cortes's psycho-social assessment (see Factual Findings 6-10, *ante*) were reached in the normal timeframe, other than walking. Claimant's psychosocial assessment also concluded that claimant was able to perform activities of daily living and knows how to cross the street.

33. About the eligibility team's interpretation of claimant's IEP's, Dr. Brown testified that the 2014 IEP, claimant's first, supports the existence of a language deficit, i.e., a speech and language impairment, but does not support the existence of other deficits or regional center eligibility. Dr. Brown testified that the 2016 IEP does not show substantial disability in at least three areas, only a language deficit with no autism-like behavior. The 2017 and 2018 IEP's were similar to the 2016 IEP. The 2019 IEP was similar but included information about preparation for college and employment.

34. Addressing Dr. Williams's psychological evaluation, Dr. Brown acknowledged Dr. Brown's ASD diagnosis based on two ASD instruments, and also acknowledged Dr. Williams's recommendations for services for claimant. But Dr. Brown pointed out the lack of documentation of a developmental disability before age 18, in that claimant's IEP's indicated no concerns regarding ASD or ID. According to Dr. Brown, claimant received "sufficient" grades in school. And Dr. Brown maintained claimant is not substantially disabled by ASD in three or more areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency. (See Welf. & Inst. Code, § 4512, subd. (j)(1).) Dr. Brown explained that claimant now attends college and is



employed, which tend to show a capacity for independent living and economic self-sufficiency and negate the existence of any substantial disability.

## **Other Evidence**

35. Claimant's father first learned claimant had ASD when Dr. Williams diagnosed her in 2023 and told him claimant has had ASD all her life. Kaiser Permanente had never assessed claimant for ASD but diagnosed her with anxiety disorder.

36. Claimant's father showed Kaiser Permanente Dr. Williams's report diagnosing claimant with ASD. Jennifer King, MD, a psychiatrist at Kaiser Permanente, performed another evaluation of claimant in November 2023.

37. Dr. King affirmed Dr. Williams's ASD diagnosis and agreed therapy was necessary. (Ex. A, p. B2.)

38. Dr. King wrote in a letter dated November 1, 2023, and addressed "To whom it may concern," that claimant:

has been diagnosed with Autism Spectrum Disorder, Social Anxiety Disorder, Generalized Anxiety Disorder, and ADHD, predominately inattentive type. Regional Center testing diagnosed ASD and Borderline Intellectual Functioning. She has tried attending college but struggles greatly academically. She is afraid to leave the house or go into stores or ask for help to get her needs met. She is very concrete in her thinking. [Claimant] would benefit from services that help with things like job training, money

management and social and communication skills to help her become as independent as possible.

(Ex. A, p. B2.)

39. Dr. King referred claimant to Easterseals of Southern California “for autism services,” including ABA assessment and therapy. (Ex. A, p. B2; ex. B, p. Z1.) Easterseals authorized and proposed scheduling an Applied Behavioral Analysis (ABA) assessment and therapy. Claimant’s father testified he did not schedule the ABA assessment because he could not afford the copayments.

40. When claimant’s family arrived in the United States and claimant began attending school here, the family told claimant’s school district that claimant received therapy in Mexico for ADHD. Claimant’s father did not mention ASD to the school district because he was unaware of ASD when he lived in Mexico, where, he testified, it is not a common diagnosis. The school district in turn did not mention or evaluate claimant for ASD.

41. Claimant made little or no progress in school, despite conclusory and mixed findings in her IEP’s. She never was able to learn English and relied on her twin sister for help with schoolwork. In college, claimant is not succeeding; she is only taking an online English course twice per week, but she is doing poorly and still cannot follow discussions in English.

42. Claimant does not know how to use money or take directions. She cannot take care of herself, carry on conversations, or remember what was said to her. Claimant does not know how to go to an address, cannot handle money, overspends with her credit card, and could not survive by herself. Claimant’s father must accompany claimant whenever she needs something. When claimant is nervous, she

gets angry, cries, and falls asleep, sometimes for a whole day, remaining in her room in the dark by herself. Claimant has only one friend, whom she met at high school, who suffers from anxiety and with whom claimant talks about anime.

43. Claimant has been working part-time, from 5:00 a.m. to 9:00 a.m. three or four days per week, at Porto's Bakery and Café. She places fruit on pastries with help from her older sister. Claimant's father wakens her at 4:20 a.m., prepares a meal for claimant to take with her, and drives her to work. Claimant cannot adapt to changes in her routine; for example, she cries when asked to stay late at work and her older sister must try to calm her. If claimant's mother cannot pick her up after work, claimant's father stays on the cellphone with claimant while she walks home the four blocks from work to make sure she is safe.

44. Claimant's mother disputed the eligibility team's conclusions about developmental milestones. She testified claimant weighed one pound 12 ounces at birth and had a hypothyroid condition until she was seven years old. She was unable to speak, hear, or see when in infancy and still has problems with hearing in one ear. Claimant's kindergarten teacher noticed claimant was not functioning normally; in elementary school, claimant could not identify letters. Claimant's mother took her to a neurologist, Dr. Mercado Silva (see Factual Finding 22, *ante*), who she testified diagnosed claimant but did not assess for ASD. Claimant's mother "did everything for her that I could."

45. When the family came to the United States, claimant was 11 years old. Claimant's mother took her medical files to doctors in the U.S.; they simply continued to prescribe the ADHD medications. Kaiser Permanente eventually began offering claimant speech therapy, but the family had to discontinue it because they could not afford the copayments.

46. At middle school, the school district continued claimant's speech therapy but did not perform any new evaluations of claimant. In high school the only services claimant received were speech therapy and language acquisition. Claimant's father went to the disabilities services office at claimant's college; they told him they cannot help claimant because she cannot speak English.

47. Porto's Bakery and Café accommodates claimant's disabilities and is a safe and protective environment for claimant. Claimant's older sister's husband works there and the owner's son is a friend of claimant's older sister. Before she worked at Porto's, claimant was hired at a restaurant but lasted there only two days. It takes time for claimant to process when someone asks her a question or tells her what to do.

48. Claimant cannot be left by herself. Claimant's parents want her to keep learning, to socialize and not stay at home all the time, and to function in society. She lives in the world of anime and always brings any conversation back to anime. She uses her credit card to make expensive anime figure purchases online. Claimant's friend from high school also takes medication for ADHD and anxiety, has a similar focus on anime, and was just recently diagnosed with ASD.

49. Claimant's mother became aware of ASD from television and immediately recognized it in her grandson. She wishes she had known about it to help claimant earlier, but now feels that, without regional center help, she can do nothing more to help claimant. If claimant loses her job at Porto's she will not be able to function in the world at all. Claimant is safe in the apartment but she cannot leave the apartment alone. If she were alone outside without her cellphone, she would "freeze up" and be unable to return home.

50. Claimant's mother believes claimant needs emotional support, therapy, job training, and help with social skills, self-autonomy, and self-reliance.

## **Summary of Evidentiary Findings**

51. The eligibility team's conclusions conflict with the conclusions Dr. Williams and Dr. King drew in their evaluations of claimant. The eligibility team did not dispute claimant's ASD diagnosis but, relying largely on claimant's IEP's and her ability to take an online college course and obtain employment at Porto's, concluded that there is no evidence either that claimant's ASD manifested before age 18 or that it is substantially limiting in three or more major life activities.

52. The persuasive power of claimant's IEP's is dubious. Claimant's school district never assessed her for ASD but was content to continue services for speech and language impairment. The school district failed to account for troubling data concerning such matters as claimant's persistent inability to learn English, to perform classwork without assistance, to participate in class, or to socialize, among other things.

53. Claimant's senior year IEP's sunny conclusion that a half hour of college awareness, a half hour of vocational guidance, and attendance at a college and career fair should set claimant up for a productive life after graduation is so unconvincing as to call into question the school district's diligence in properly assessing claimant and tailoring a program for her.

54. The school district's suspect conclusion is echoed in SCLARC's eligibility committee's decision that claimant is not eligible for regional center services and supports, as elaborated in Dr. Brown's testimony. Dr. Brown cited claimant's entering college and being gainfully employed as evidence she is not significantly limited in

major life activities. But claimant is taking a single college course online and is doing poorly because, even after 10 years in the educational system, she cannot understand, speak, or write English well enough to succeed. And claimant could not hold a job before becoming employed by Porto's, where a friendly management and her older sister help her satisfactorily perform fairly simple tasks a few hours each day. But claimant cannot tolerate any changes in her work routine and cannot get to or from work without assistance from her parents, who convincingly testified that claimant would likely not be employable should she ever lose her position at Porto's.

55. Claimant's parents also offered convincing and detailed testimony about all the areas of major life activity in which claimant experiences significant functional limitations, in contrast to the summary conclusions of the eligibility committee. Those areas include self-care, language, learning, self-direction, capacity for independent living, and economic self-sufficiency.

56. Considering the entire record, including claimant's parents' testimony, documentation from Dr. Williams and from Dr. King, as well as the psycho-social evaluation and claimant's IEP's, evidence of substantially disabling ASD manifesting before age 18 is more persuasive than the eligibility team's conclusions.

## **LEGAL CONCLUSIONS**

1. Cause exists to grant claimant's request that she be found eligible for regional center services and supports under the Lanterman Act, as set forth in Factual Findings 1 through 56 and Legal Conclusions 2 through 12.

2. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 et seq.) An individual may appeal a regional center's determination of ineligibility for services

under the Lanterman Act. (Welf. & Inst. Code, §§ 4700-4716; Cal. Code Regs., tit. 17, § 54010, subd. (c).) The party asserting a claim generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, claimant bears the burden of proving, by a preponderance of the evidence, that she is eligible for benefits or services. (See Evid. Code, § 115.)

3. To establish eligibility for regional center services under the Lanterman Act, claimant must show that she suffers from a developmental disability that “originate[d] before [she] attain[ed] 18 years of age; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for [her].” (Welf. & Inst. Code, § 4512, subd. (a); see also Cal. Code Regs., tit. 17, §§ 54000, 54010.)

4. To establish eligibility for regional center services, claimant must first show she has been diagnosed with one of five categories of developmental disability. (Welf. & Inst. Code, § 4512, subd. (a); Cal. Code Regs., tit. 17, §§ 54000.) The categories are cerebral palsy, epilepsy, autism, intellectual disability, and “disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, but [that do] not include other handicapping conditions that are solely physical in nature.” (Welf. & Inst. Code, § 4512, subd. (a); Cal. Code Regs., tit. 17, § 54000, subd. (a).) Developmental disabilities do not include solely learning disabilities or solely psychiatric disorders. Learning disabilities are those that manifest as a significant discrepancy between estimated cognitive potential and actual level of educational performance and are not a result of Intellectual Disability or psychiatric disorders. (Cal. Code Regs., tit. 17, § 54000, subd. (c)(1)-(3).)

5. Claimant established that she has a developmental disability, ASD.  
(Factual Findings 11-21, 29, 36-39.)

6. Second, to establish eligibility for regional center services, claimant must show her disability originated before age 18. (Welf. & Inst. Code, § 4512, subd. (a); Cal. Code Regs., tit. 17, § 54000, subd. (b).)

7. Claimant's parents never sought an evaluation of claimant for ASD until last year. The DSM-5 addresses the appropriate diagnostic approach to an individual who first seeks a diagnosis in adulthood:

Some individuals come for first diagnosis in adulthood, perhaps prompted by the diagnosis of autism in a child in the family or a breakdown of relations at work or home. Obtaining detailed developmental history in such cases may be difficult, and it is important to consider self-reported difficulties. Where clinical observation suggests criteria are currently met, autism spectrum disorder may be diagnosed, provided there is no evidence of good social and communication skills in childhood. For example, the report (by parents or another relative) that the individual had ordinary and sustained reciprocal friendships and good nonverbal communication skills throughout childhood would rule out a diagnosis of autism spectrum disorder; however, the absence of developmental information in itself should not do so.

(Ex. 11, p. A232.)



8. The testimony of claimant's parents establishes that claimant lacked good social and communication skills in childhood (e.g., Factual Findings 42, 48), and is also in other ways consistent, under the DSM-5, with a finding that claimant is eligible for regional center services. Claimant's father also testified that Dr. Williams told him claimant had ASD all her life.

9. Third, SCLARC did not dispute that claimant's condition is expected to continue indefinitely.

10. Finally, claimant must prove that, as a result of her ASD, she has a substantial disability in at least three of these areas of major life activity: (a) self-care; (b) receptive and expressive language; (c) learning; (d) mobility; (e) self-direction; (f) capacity for independent living; and (g) economic self-sufficiency. (Welf. & Inst. Code, § 4512, subd. (j)(1); Cal. Code Regs., tit. 17, § 54001, subd. (a).)

11. The evidence demonstrates substantial disability in all areas except mobility. (See Factual Finding 41-49, 55.)

12. Claimant established by a preponderance of the evidence that she is eligible for regional center services and supports under the Lanterman Act based on her substantially disabling ASD.

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## **ORDER**

Claimant's appeal is granted. South Central Los Angeles Regional Center's decision denying claimant's request for regional center services is overruled.

DATE:

HOWARD W. COHEN

Administrative Law Judge

Office of Administrative Hearings

## **NOTICE**

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