

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

**In the Matter of:**

**CLAIMANT,**

**vs.**

**SOUTH CENTRAL LOS ANGELES REGIONAL CENTER,**

**Service Agency.**

**Case No. CS0005727**

**OAH No. 2023050282**

**DECISION**

Thomas Lucero, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on September 13, 2023.

Tami Summerville, Fair Hearings Manager, appeared on behalf of the Service Agency, South Central Los Angeles Regional Center (SCLARC). Priscilla Dominguez, Social Worker, Department of Children and Family Services (DCFS) represented Claimant. Names of Claimant and his family will not be used in order to protect privacy.

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 September 13, 2023.

## **STATEMENT OF THE CASE**

Claimant, seven years old, has been diagnosed with Autism Spectrum Disorder (ASD) or Autism, as it is called in the Lanterman Act. He faces other significant challenges, some attributable to his having been placed in 14 different foster homes. Claimant is currently with a foster mother with whom he communicates well. He has missed much school in the past, but has shown he has learning abilities and is adapting to his current school. The Service Agency has found him ineligible for services under the Lanterman Act. The evidence is not sufficient to establish that Claimant is substantially disabled or disabled to an extent that renders him eligible for regional center supports or services.

## **FINDINGS OF FACT**

1. In a letter dated January 25, 2023, the Service Agency advised Claimant that its interdisciplinary core staff team had reviewed his case and concluded on January 24, 2023, that he was ineligible for regional center services.

2. As the team acknowledged, Claimant had been diagnosed with ASD. It found however that the ASD did not render Claimant substantially disabled and thus

he did not have a “developmental disability” within the meaning of the Lanterman Act, Welfare and Institutions Code section 4512, subdivisions (a) and (j).

3. Claimant’s appeal is dated May 4, 2023.

4. On July 20, 2023, the Service Agency’s motion to continue the initial fair hearing was granted without opposition from Claimant, who waived the right to issuance of a decision within 90 days of the date his appeal request was received.

### **October 2022 Psycho-Social Report**

5. Service Coordinator (SC) De’orlean Claiborne, SCLARC, prepared a Psycho-Social report dated October 13, 2022. She noted that Claimant, placed in a foster home, was then six years old. He was able to perform personal care activities with assistance. He was able to wash his face, brush his teeth, don clothes, and put his shoes on independently. As his caregiver reported, however, he required constant supervision to prevent injury or harm in unfamiliar settings.

6. According to his caregiver Claimant was aggressive and behaved disruptively with a negative impact on his socializing with others. He would destroy property. He picked at his skin, causing himself injury.

7. Claimant had no sensory issues, but did not initiate interactions with others. He maintained eye contact when communicating and was easily understood. His repetitive body movements included fidgeting with his hands and rocking often. He was not functioning in school readiness as expected.

8. In the first grade, not in special education and having no Individualized Education Program (IEP), Claimant could count to 25 and knew the letters of the

alphabet. But he wrote backwards and was unable to spell his name. His teacher reported that he struggled to behave appropriately.

9. SC Claiborne recommended obtaining medical and school records and conducting a psychological evaluation.

### **November, December 2022 Psychological Evaluation**

10. Sammie Williams, Psy.D., CAS, performed a psychological evaluation on behalf of the Service Agency on November 30 and December 7, 2022. The purpose of the evaluation was to assess Claimant regarding ASD.

11. Claimant's previous foster mother, not the same foster mother who appeared at the fair hearing, had little information about Claimant. She reported past trauma but could provide no details. She noted, Exhibit 3, page A21, that when she met Claimant, he presented with "extremely aggressive behavior, irregular sleep patterns," and difficulty with changes and transitions. Dr. Williams quotes foster mother's comments that Claimant had "loud screaming temper tantrums, and extremely picky eating." She also said that Claimant was extremely hard to redirect.

12. The previous foster mother was concerned that Claimant suffered speech and language deficits, did not reciprocate in conversations, and did not make eye contact. Dr. Williams on the other hand found, Exhibit 3, page A23, Claimant made sporadic eye contact, his reciprocal interactions were awkward, and his general intellect and awareness of his surroundings appeared "extremely delayed for his age and development . . . ."

13. The previous foster mother described Claimant's persistent stereotypical and repetitive behaviors as stacking, lining up, and throwing various items such as toy

cars and trains. He used random words, showed echolalia in repeating words he and others used, and, sensitive and fearful of certain sounds, would cover his ears.

14. The previous foster mother reported that Claimant had limited awareness of safety, and might run out into the street, prompting the family to hold his hand to prevent this.

15. Dr. Williams administered the Wechsler Intelligence Scale for Children, Fifth Edition (WISC-V), the Adaptive Behavior Assessment System, Third Edition (ABAS-3), the Autism Diagnostic Interview, Revised (ADI-R), Autism Diagnostic Observation Schedule – 2 (ADOS-2), and the Gilliam Autism Rating Scale, Third Edition (GARS-3)

16. Based on the WISC-V, Dr. Williams found Claimant's intellectual level of functioning was in the Average range, his FSIQ being 99, in the 47th percentile.

17. Claimant's strongest performance was in the Verbal Comprehension Index (VCI) of the WISC-V, in the High Average range and the 81st percentile of children his age.

18. The Fluid Reasoning Index (FRI) assesses reasoning using unfamiliar information and novel concepts, with implications for reading social cues. His performance was in the Average range, the 73rd percentile.

19. The Visual Spatial Index (VSI) measures the ability to organize visual information. Here Claimant's score was in the Low Average range, the 33rd percentile.

20. Also in the Low Average range, in the 12th percentile, was Claimant's working memory score on the Working Memory Index (WMI). The WMI measures the ability to hold information in mind while solving a problem, an ability that may be affected by anxiety, focus, concentration, and attention to task.

21. Claimant's lowest score, in the Borderline range, less than the 97th percentile, was on tasks in the Processing Speed Index (PSI), measuring the speed of learning material presented visually. The PSI has implications regarding visual alertness and processing social cues, gestures, body language, and the like.

22. With the ABAS-3 Dr. Williams asked the previous foster mother to rate Claimant's skills to measure his adaptive functioning, the performance of daily activities necessary for self-care and getting along with others. Claimant scored in the Low range, on functional communication and basic academic skills, and the Extremely Low range, on the ability to make independent choices and exhibit self-control.

23. Claimant's ability to initiate and maintain relationships and to express and recognize emotions was also rated Extremely Low, as was his functioning in the community, interest in activities outside the home, and being cautious and keeping safe.

24. After evaluating ASD-related assessments, Dr. Williams found that Claimant was experiencing symptoms of ASD that impacted his daily functioning. He stated that cognitively Claimant was performing at a level consistent with his peers, but his adaptive functioning was impaired. Dr. Williams diagnosed ASD and made recommendations, such as that Claimant would benefit from a program of Applied Behavior Analysis (ABA) that included his foster parents.

### **June 2023 Psycho-Educational Assessment**

25. The Service Agency reviewed a June 13, 2023 Initial Psycho-Educational Assessment that School Psychologist Maria G. Navarro, M.A., performed for the Division of Special Education of the Los Angeles United School District (LAUSD). Ms. Navarro noted Claimant's foster mother, mother, and Social Worker, who all

participated in the fair hearing, referred him for an assessment due to concerns with aggression, defiance, impulsivity, poor self-regulation, and poor academic progress.

26. Mother reported that Claimant met milestones, such as walking and talking, early, before he turned one year old. His toilet training was slower. He is toilet trained, but continued to have toileting accidents at six years of age. Mother reported also that Claimant has been diagnosed with Joubert Syndrome, an abnormality in brain development from the absence or underdevelopment of the cerebellar vermis controlling balance and coordination.

27. Foster mother reported that Claimant was in good health, although he has problems sleeping, bites his nails, and wets the bed.

28. Records from Kedren Community Health Center state Claimant was diagnosed with Disruptive Mood Dysregulation Disorder, coded F34.81 under the International Classification of Diseases, Tenth Revision (ICD-10), a system used by physicians to classify and code diagnoses, symptoms, and procedures for claims processing. Claimant also had a diagnosis of Post-Traumatic Stress Disorder (PTSD), ICD-10 code F43.1.

29. Examining Claimant on October 5, 2022, Natasha Sane, M.D. diagnosed Claimant with Adjustment Disorder with mixed disturbance of emotions and conduct, Reactive Attachment Disorder, and Rule Out Attention Deficit/Hyperactivity Disorder (ADHD).

30. As reported by his DCFS Social Worker and based on review of available records, Claimant had been hospitalized three times in the year before Dr. Sane's examination for danger to himself and others. He has a history of persistent mood swings and the like, as well as physically aggressive outbursts.

31. Claimant was receiving counseling from Intensive Field Capable Clinical Services (IFCCS). In May 2023 he started receiving Therapeutic Behavior Services from Star View Behavioral Health at his school.

32. Claimant showed great reluctance to be tested with the Cognitive Assessment System 2 (CAS-2). Before one testing session, he argued extensively with his teacher, offering reasons or excuses why he should not have to test. He became defiant at times, as Ms. Navarro noted, refusing to address large portions of certain tests. Claimant liked to interact with his foster mother, as Ms. Navarro also noted, even though his foster mother, like the teacher, was encouraging him to take the tests Ms. Navarro was urging on him.

33. Some subtests Ms. Navarro could not administer, owing to Claimant's recalcitrance. Thus for instance regarding the Comprehensive Test of Phonological Processing, Second Edition (CTOPP-2), she noted, Exhibit 4, page A42, "The CTOPP-2 measuring phonological and auditory processing skills was attempted, but [Claimant] would not attempt items despite multiple attempts." Ms. Navarro was doubtful Claimant put forth good effort in taking many of the subtests she administered, so that she cautioned the results may not reflect Claimant's actual abilities.

34. On some subtests Claimant showed ability. Dr. Williams, as noted above, found Claimant scored in in the Low Average range, the 33rd percentile, on the VSI. On the other hand Ms. Navarro noted, under "Cognitive Summary," Exhibit 4, page A43, Claimant "demonstrates strengths, with skills in the high average range, in . . . his ability to remember, analyze, and make sense of information seen (visual processing skills)." She noted also that Claimant did not appear to suffer psychological processing deficits. His difficulty was rather with self-regulation, motivation, and willingness to follow directions.

35. Ms. Navarro observed Claimant in unstructured settings, on the playground and as he was leaving school. He smiled at one student and said goodbye to girls and he talked to several students.

36. On Ms. Navarro's evaluation, Claimant does not exhibit ADHD. On the other hand Claimant met the criteria for Emotional Disturbance (ED). As Ms. Navarro wrote, Exhibit 4, page A58, ED "appears to be the primary eligibility impacting his educational performance at this time."

### **Testimony of Foster Mother**

37. Foster Mother testified that though Claimant has lived with her for the past seven months, providing him a measure of stability, he still avoids eye contact and facial expressions. She believes he has learning ability, but requires prompts for many things, including in self-care, such as brushing his teeth.

38. Foster mother sees a pattern in Claimant's behavior related to ASD. When she tries to get him to transition from one task or activity to another he shows much confusion and apprehension. When she asks him to do a task like making up his bed, Claimant seems blank at first, as if he is waiting for prompts before he begins the task.

39. Foster Mother considers Claimant observant, as other children tend to be, picking up clues from things you say to him. He hesitates but then he answers. He is also constantly picking up clues from his surroundings and learning in this way.

40. On the whole, Foster Mother believes Claimant is making progress, but it is slow because of ASD. Trauma in his past she believes does not play a large part in his current struggles. She sees progress in his development every day, but it is a daily

struggle. As she stated, every day is a battle to get Claimant to go to school or to perform a simple task like taking out the trash.

41. Foster Mother is careful to be consistent in the home, with weekly strategies that are helping Claimant cope.

## **LEGAL CONCLUSIONS**

### **PRINCIPLES OF LAW**

1. Generally, persons who seek to establish eligibility for government benefits or services bear the burden of proving by a preponderance of the evidence that they meet the criteria for eligibility. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161; Evid. Code, §§ 115, 500.) Preponderance of the evidence means evidence that has more convincing force than that opposed to it. (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 324-325.)

### **Lanterman Act and Regulations**

2. The Lanterman Act, Welfare and Institutions Code section 4512, subdivision (a)(1), provides that a claimant's condition must fall under at least one of five categories to qualify for services from a Service Agency: (i) cerebral palsy; (ii) epilepsy; (iii) Autism or ASD; (iv) intellectual disability (ID); and (v) "disabling conditions found to be closely related to [ID] or to require treatment similar to that required for individuals with" ID. The evidence was undisputed that Claimant has been diagnosed with ASD. The inquiry then turns to whether Claimant's ASD is substantially disabling.

///

3. Welfare and Institutions Code section 4512, subdivision (1)(1), provides:

“Substantial disability” means the existence of significant functional limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person:

(A) Self-care.

(B) Receptive and expressive language.

(C) Learning.

(D) Mobility.

(E) Self-direction.

(F) Capacity for independent living.

(G) Economic self-sufficiency.

4. Regulations promulgated by the Department of Developmental Services implement the Lanterman Act. Each such regulation cited below is a section of title 17 of the California Code of Regulations.

5. Regulation 54000 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.

///

6. Regulation 54001 provides in pertinent part:

(a) "Substantial disability" means:

(1) A condition which results in major impairment of cognitive and/or social functioning, representing sufficient impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential; and

(2) The existence of significant functional limitations, as determined by the regional center, in three or more of the following areas of major life activity, as appropriate to the person's age:

(A) Receptive and expressive language;

(B) Learning;

(C) Self-care;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living;

(G) Economic self-sufficiency.

7. Regulation 54010 describes procedures for a Service Agency's decision on eligibility following intake and assessment, and how the decision may be appealed, procedures that the Service Agency followed in this case.

## **ANALYSIS**

8. Claimant is able to care for himself, with some limitations that appear to be largely due to his age, rather than significant functional limitations. He can dress himself, for instance. He is toilet trained. He must be prompted, but he is able to wash and brush his teeth. These activities are to be considered in regarding whether self-care is a substantial disability under guidelines in Exhibit 7, the Clinical Recommendations for Defining "Substantial Disability" for the California Regional Centers (Clinical Recommendations) published by the Association of Regional Center Agencies.

9. At the time of Dr. Williams's testing, Claimant's the previous foster mother was concerned about deficits in his language skill and did not reciprocate in conversations. But there is evidence Claimant has considerable language skills, both receptive and expressive, for his age. He is able to communicate clearly with his foster mother, teachers, and peers. Dr. Williams found he performed particularly well in the VCI of the WISC-V, in the High Average range. Under the Clinical Recommendations, Exhibit 7, page A82, Claimant is not "an individual [who] has significant limitations in both the comprehension and expression of verbal and/or nonverbal communication resulting in functional impairments."

10. Claimant has learning abilities, such that he is able to recite the alphabet and he can count. Claimant is lagging somewhat academically, but not for lack of learning ability. Claimant has missed a great deal of school as a result of moving from one foster placement to another. Under the Clinical Recommendations, Exhibit 7, page A83, Claimant is not "substantially impaired in the ability to acquire and apply knowledge or skills to new situations even with special intervention." Dr. Williams noted that Claimant was in the Average range in the FRI portion of the WISC-5.

11. There was no evidence Claimant has problems with mobility. The evidence shows that Claimant is able to move about like others his age.

12. Claimant may be lacking somewhat in self-direction, but to some extent this is attributable to his age. He requires prompts at home for several activities, but he seems more reluctant to do as he is told than unable to understand what he ought to do. Under the Clinical Recommendations, Exhibit 7, page A83, Claimant did not show that he “has significant impairment in the ability to make and apply personal and social judgments and decisions.”

13. Because of Claimant’s age, capacity for independent living and economic self-sufficiency are not pertinent.

14. Considering the list of factors in Welfare and Institutions Code section 4512, subdivision (j)(1) and the similar list in Regulation 54001, subdivision (a)(2), the evidence did not show Claimant has significant functional limitations in three or more areas of major life activity.

15. Claimant’s condition at present does not result in “major impairment of his cognitive and/or social functioning” as provided in Regulation 54001, subdivision (a)(1). Regarding cognitive abilities, testing Dr. Williams shows Claimant’s intelligence is near average.

16. There are legitimate concerns that Claimant lacks awareness of safety, but this does not appear attributable to cognitive impairment. Claimant is not so much cognitively impaired as he is at times determined to do as he wishes, even at times to the point of being defiant and aggressive. Claimant may elope from a classroom or into the street, not due to lack of understanding but because he prefers to do as he wishes notwithstanding rules or adverse consequences.

17. Claimant displayed this sort of willful behavior when the school psychologist, Ms. Navarro, tried testing him. Claimant was sometimes defiant in the speech and gestures he directed towards Ms. Navarro. He understood that she wished him to sit for tests of different kinds, and at times he showed he could understand and comply with what was expected of him during a test. But just as often Claimant acted on preferences of his own and for this reason he sometimes failed, not the test itself, but to take the test at all.

18. Claimant is able to function socially to a significant degree. He is on good terms with his foster mother and he enjoys their interactions to some extent, as Ms. Navarro noted. Claimant may have few friends and does not tend to initiate interactions with others, but he is not without all ability to function socially. At one point when asked to submit to testing, Claimant said he would not do so unless he was accompanied to the testing area by another child with whom he played electronic games, and he got his way. Claimant has real if superficial appreciation, so far, for the society of others.

19. As the Service Agency acknowledged at hearing, Claimant faces many challenges and struggles, due to ASD and other diagnoses. But the evidence presented did not establish that Claimant is so functionally impaired that he is eligible for regional center services or supports at this time.

///

///

///

## **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.