

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

**In the Matter of:**

**CLAIMANT**

**v.**

**ALTA CALIFORNIA REGIONAL CENTER**

**OAH Case No. 2023080170**

**DDS No. CS0008625**

**DECISION**

Wim van Rooyen, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, acting as a hearing officer, conducted a fair hearing on November 21, 2023, by videoconference and telephone from Sacramento, California.

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

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

Evidence was received, the record closed, and the matter submitted for decision on November 21, 2023.

## **ISSUE**

Is Claimant eligible for services from ACRC under the Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code section 4500 et seq. (Lanterman Act)?

## **FACTUAL FINDINGS**

### **Jurisdiction**

1. Mother requested that ACRC assess Claimant to determine eligibility for services under the Lanterman Act. After completing the assessment process, ACRC issued a Notice of Action (NOA) dated April 5, 2023, which deemed Claimant ineligible for such services.

2. On July 28, 2023, Mother signed and thereafter filed an appeal request. Consequently, the matter was set for a fair hearing before an ALJ of the OAH, an independent adjudicative agency of the State of California.

### **ACRC's Evidence**

3. Claimant was born in September 2015 and is eight years old. He resides in Truckee with Mother and two siblings. He is in second grade and receives educational services from the Tahoe Truckee Unified School District (District) under an Individualized Education Program (IEP).

## **APPLICATION FOR ASSESSMENT**

4. In 2022, Mother requested that ACRC assess Claimant's eligibility for Lanterman Act services. Mother completed an intake application, which outlined Claimant's behavioral concerns, including refusal to go to school, emotional outbursts, elopement, screaming, hitting himself and others, hand clapping, and property destruction. ACRC then requested relevant documentation, including school, medical, and mental health records.

5. On August 30, 2022, Dorena Vargas, an ACRC intake specialist, also conducted an intake social assessment with Claimant and Mother via videoconference. In addition to describing Claimant's problematic behavior, Mother reported that she had been the victim of domestic violence, that Claimant had witnessed such domestic violence, and that Claimant was previously diagnosed with attention deficit hyperactivity disorder (ADHD) and anxiety.

6. Based on all the information gathered, ACRC decided to send Claimant for a psychological evaluation. The purpose of the evaluation was to determine whether Claimant qualifies for Lanterman Act services on the basis of an intellectual disability or autism.

## **PSYCHOLOGICAL EVALUATION**

7. On March 21, 2023, Claimant underwent a psychological evaluation by licensed clinical psychologist Sarah Avey, Ph.D. Dr. Avey reviewed Claimant's prior records; interviewed and observed Claimant in person; interviewed Mother and Claimant's father, school psychologist, and teacher; and performed psychological testing. Dr. Avey drafted a detailed report of her psychological evaluation, which was admitted at hearing.

8. On cognitive testing, Claimant consistently scored in the average range for verbal, nonverbal reasoning, spatial, and general conceptual abilities. Consequently, Dr. Avey concluded there was no indication that Claimant had an intellectual disability.

9. Dr. Avey further opined Claimant did not meet the diagnostic criteria for autism. She explained:

although data collected through direct testing, observations, clinical history, and interviews with various informants do indicate that [Claimant] demonstrates some features potentially suggestive of autism spectrum disorder, such [as] passionate interests about particular areas, repetitive behaviors such as tapping, and inconsistent social engagement, he does not appear to exhibit the full symptom profile associated with this condition at the current time.

Dr. Avey noted that during the assessment, Claimant drew Dr. Avey's attention to his tapping behavior and explained that he enjoyed the sound. Significantly, interviewees did not observe that behavior across all settings. Additionally, Claimant at times displayed very good eye contact during the evaluation and he used a range of facial expressions. Furthermore, Claimant's education team reported he was able to engage in conversation and interact with peers. They also noted improvements in his flexibility.

10. Dr. Avey acknowledged Claimant's significant behavioral difficulties. However, she opined they were more likely caused by Claimant's other psychiatric

diagnoses, including ADHD and anxiety. She recommended Claimant pursue a range of mental health treatments for ADHD and anxiety.

### **ELIGIBILITY TEAM REVIEW**

11. At an April 2023 meeting, ACRC's eligibility team reviewed Claimant's records, including Dr. Avey's psychological evaluation. The eligibility team determined there was no evidence Claimant had a qualifying developmental disability. As such, it directed issuance of the NOA.

### **TESTIMONY OF CYNTHIA ROOT, PH.D.**

12. Dr. Root is a California-licensed clinical psychologist. She has been employed by ACRC as a staff psychologist since 2008 and serves on ACRC's eligibility team. She was recently promoted to lead psychologist at ACRC. As part of her position, Dr. Root routinely performs assessments and consultations to determine eligibility for Lanterman Act services.

13. Dr. Root explained an individual must have a developmental disability to qualify for Lanterman Act services. Developmental disabilities include intellectual disability, cerebral palsy, epilepsy, autism, and a fifth category condition, which is a disabling condition found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability.

14. Dr. Root agreed with Dr. Avey's conclusion that Claimant does not have an intellectual disability. His average scores on cognitive testing definitively ruled out intellectual disability. They also ruled out a fifth category condition, i.e., a disabling condition found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability.

15. Dr. Root further agreed with Dr. Avey's conclusion that there was insufficient evidence to support an autism diagnosis. In her view, Dr. Avey's report was detailed and thorough. It made clear that Claimant had "a lot of skills you would not expect a child with autism to possess" such as good eye contact, a range of facial expressions, and the ability to converse and interact with peers. As such, he did not meet the diagnostic criteria for autism.

16. Dr. Root also independently reviewed all of Claimant's records, including school, medical, and mental health records. There was no evidence that Claimant has ever been clinically diagnosed with intellectual disability or autism. Dr. Root explained that although Claimant initially received special education services from the District under educational eligibility codes for autism and speech and language impairment, that did not constitute a clinical diagnosis of autism. Moreover, Claimant's eligibility code for special education services has since been changed to "other health impairment." That is because the District found Claimant did not demonstrate significant behaviors or characteristics consistent with autism, but that he had attention and executive functioning deficits indicative of eligibility under an "other health impairment."

17. Finally, Dr. Root opined there was no evidence Claimant had another qualifying developmental disability such as cerebral palsy or epilepsy. She agreed Claimant's significant behavioral difficulties likely stem from his ADHD and anxiety. Those are psychiatric disorders and not developmental disabilities that would qualify Claimant for Lanterman Act services.

## **Claimant's Evidence**

18. Mother testified at hearing. Mother was 43 years of age when she prematurely gave birth to Claimant and his twin brother at around 33 weeks. The pregnancy was complicated by twin-to-twin transfusion syndrome, a rare condition where twins share one placenta (afterbirth) and a network of blood vessels that supply oxygen and nutrients essential for development in the womb. Sometimes there is an imbalance in the blood exchange between the twins, resulting in complications. Given Claimant and his twin brother's condition, they were monitored by the Stanford Developmental Pediatric Program for two years. Claimant's development was generally within normal limits during that period.

19. Mother did not observe anything atypical about Claimant until he started being around other children more. Since then, he has developed significant behavioral problems. Claimant strongly dislikes going to school and has severe learning difficulties. His teachers have to make a lot of accommodations for him in the classroom. Additionally, it takes a lot of energy and focus to get him to school and he returns home with problematic behaviors that include elopement, screaming, hitting, and destroying property. In July 2023, Claimant eloped from an extended school year program following a disagreement on the playground. After attempting to hit and kick a teacher, he had to be restrained until Mother could pick him up.

20. Claimant has undergone therapy through Nevada County Behavioral Health with limited success. Mother has tried to get him to see a pediatric psychiatrist and obtain other behavioral supports, but there are no appropriate providers in the Truckee area.

21. Mother is confused by what she perceives as Claimant's constantly-changing diagnoses by various providers. She believes Claimant displays many characteristics of autism and notes the District initially found him qualified for special education services on that basis. Mother also questions whether Dr. Avey accurately assessed Claimant given she only spent a single evaluation session with him. Dr. Avey does not witness Claimant's daily behavior at work or school.

22. Mother deeply loves Claimant, but his behavior can be very overwhelming and makes life difficult. She only wants him to receive the best available treatment, and she truly believes he could benefit from Lanterman Act services.

## **Analysis**

23. Mother's testimony regarding Claimant's history and behaviors was sincere, heartfelt, and fully credible. It is obvious that Claimant has significant behavioral issues, that Mother has his best interests at heart, and that she only seeks to obtain the best treatment and supportive services for Claimant.

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

25. That the District initially found Claimant eligible for special education services on the basis of autism does not change the outcome. As Dr. Root explained,



the District's finding did not constitute a clinical diagnosis. Moreover, the District subsequently changed the basis for Claimant's special education services eligibility to "other health impairment."

26. Mother believes Dr. Avey did not spend sufficient time with Claimant to assess him. However, licensed psychologists routinely conduct evaluations in a single session and are specially trained to render accurate assessments. In any event, both Dr. Avey and Dr. Root's opinions are consistent with the weight of Claimant's school, medical, and mental health records, which suggest Claimant's behavioral problems stem from his non-qualifying psychiatric conditions of ADHD and/or anxiety.

27. Although the result may seem harsh, the Legislature did not authorize regional centers to provide services to individuals whose conditions fall outside the five specified categories of developmental disabilities. Mother is strongly encouraged to continue to pursue appropriate treatment and services for Claimant through other available resources, such as the school system or other government programs.

## **LEGAL CONCLUSIONS**

1. Pursuant to the Lanterman Act, regional centers are responsible for providing or coordinating services for persons with developmental disabilities. A developmental disability is defined as:

a disability that originates before an individual attains 18 years of age, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public

Instruction, this term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability, but shall not include other handicapping conditions that are solely physical in nature.

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

Solely psychiatric disorders where there is impaired intellectual or social functioning which originated as a result of the psychiatric disorder or treatment given for such a disorder. Such psychiatric disorders include psycho-social deprivation and/or psychosis, severe neurosis or personality disorders even where social and intellectual functioning have become seriously impaired as an integral manifestation of the disorder.

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

2. As the applicant, Mother bears the burden of proving by a preponderance of the evidence that Claimant is eligible for Lanterman Act services from ACRC. (See Evid. Code, §§ 500 ["Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting"] & 115 ["Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the

evidence.”].) A preponderance of the evidence means “evidence that has more convincing force than that opposed to it.” (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

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

## **ORDER**

Mother’s appeal of Alta California Regional Center’s denial of Lanterman Act services to Claimant is DENIED. The non-eligibility determination is AFFIRMED.

DATE: December 5, 2023

WIM VAN ROOYEN  
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.