

**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.

OAH No. 2020080828

DECISION

Ji-Lan Zang, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on February 1 and February 16, 2024, in Los Angeles, California.

Claimant's mother (Mother) represented claimant, who was not present. (Names of claimant and her family members are omitted to protect their privacy.)

Tami Summerville, Fair Hearings Manager, appeared by video conference and represented Service Agency, South Central Los Angeles Regional Center (Service Agency or SCLARC).

Oral and documentary evidence was received. On February 15, 2024, claimant submitted to OAH two speech and language evaluations which were marked for identification on the February 16, 2024, hearing date as Exhibits I and J. Service Agency and its eligibility team did not have a full opportunity to review and respond to them at the time of the hearing. Consequently, at the conclusion of the fair hearing on February 16, 2024, the ALJ granted leave to Service Agency until March 1, 2024, to allow the Service Agency's eligibility team to review Exhibits I and J and to allow Service Agency to submit any objections and/or comments to the two exhibits. Claimant was granted leave until March 8, 2024, to submit a response, if any.

On March 4, 2024, Service Agency submitted a letter, dated February 28, 2024, from its eligibility team notifying claimant again that it again found claimant not eligible for regional center services. However, Service Agency did not submit any objection or comments to Exhibits I and J. Therefore, Exhibits I and J are admitted into the record without objection. On the same date, claimant submitted a letter to OAH requesting the ALJ to close the record. The record was closed, and the matter was submitted for decision on March 4, 2024.

ISSUE

Is claimant eligible to receive regional center services and supports from Service Agency under the Lanterman Developmental Disabilities Services Act (Lanterman Act) based on a claim of autism spectrum disorder (ASD)?

EVIDENCE RELIED UPON

Documents: Service Agency's Exhibits 1-8. Claimant's Exhibits A to J.

Testimony: Laurie McKnight Brown, Ph.D.; Mother and claimant's father (Father).

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is an eight-year-old female. Mother asked Service Agency to determine whether claimant is eligible for regional center services under the Lanterman Act based on a claim of autism.

2. By a Notice of Proposed Action (NOPA) and letter dated June 23, 2023, Service Agency notified claimant that she is not eligible for regional center services. Service Agency's interdisciplinary team had determined that claimant does not meet the eligibility criteria set forth in the Lanterman Act. The NOPA stated: "[Claimant] was diagnosed with Autism Spectrum Disorder, [but] not considered substantially handicapping." (Ex. 1, p A16.)

3. On November 3, 2023, claimant filed a fair hearing request to appeal Service Agency's determination. This hearing ensued.

4. At the hearing, the parties stipulated that claimant is properly diagnosed with ASD under the Diagnostic and Statistics Manual, Fifth edition (DSM 5) and has significant functional limitations in the area of self-direction under California Code of Regulations, title 17, section 54001, subdivision (a)(2) (Regulation 54001). The sole issue is whether claimant has significant functional limitations in three or more major life activities such that she has a substantial disability within the meaning of the Regulation 54001.

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Claimant's Background

5. Claimant lives at home with her parents and her older siblings. She received early intervention services, including language and speech services, from the regional center. From October 2018 to October 2020, claimant received weekly, 30-minute sessions of speech and language services from her school district, as she was eligible for specialized education services under the category of Speech or Language Impairment. On October 21, 2020, claimant met her speech and language goals and exited specialized education. She attended a private school for the majority of her first-grade year before transferring to her current school on April 10, 2023. Claimant is currently attending second grade in the generalized education setting.

SCLARC's Psychosocial Assessment (January 2023)

6. On January 23, 2023, Service Coordinator (SC) La Tonya Buchanan conducted a psychosocial assessment of claimant. This assessment was conducted via videoconferencing due the social distancing requirements resulting from the COVID-19 pandemic.

7. According to SC Buchanan's psychosocial assessment, claimant can walk on her own, has full use of her arms and legs, and can pedal a bicycle. Claimant has sensitivity to textures, especially to articles of clothing. She is a picky eater with a restrictive diet consisting mostly of peanut butter and jelly sandwiches and rice and beans. Mother reported claimant engages in aggressive behaviors and often acts aggressively towards others. Claimant can say 20 words per sentence and has a good vocabulary. She is able to identify her body parts, her name, date of birth, age, her address, and Mother's phone number. She is also able to identify colors, shapes, letters, numbers, and money.

8. Regarding claimant's self-care skills, claimant can eat with utensils without spillage, and she knows how to fasten her buttons and zipper. SC Buchanan wrote in the psychosocial assessment:

[Claimant's] mother reported she can perform [self-care] tasks on her own but will need prompting. [Mother] reported [claimant] can perform the tasks on her own but will need prompting. [sic] [Mother] stated [claimant] will run off or wander with no sense of danger awareness. Mom stated [claimant] doesn't follow safety rules and she's not cautious around dangerous objects. When [claimant] is hungry, she can ask or go get herself.

(Ex. 2, p. A20.)

9. With regard to claimant's social and behavioral skills, Mother reported to SC Buchanan claimant often engages in aggressive behavior and hits Mother when she is having a tantrum. However, Mother did not report any history of repetitive or obsessive behaviors. Mother stated that "[claimant] is able to get along with others and she is able to reciprocate affection." (Ex. 2, p. A20.)

Psychological Evaluation (February and March 2023)

10. SC Buchanan referred claimant to Loren M. Hill, Ph.D., for a psychological evaluation of claimant to determine claimant's eligibility for SCLARC's services. Dr. Hill conducted an evaluation of claimant on February 27 and March 29, 2023. Dr. Hill performed clinical observations, interviewed Mother, and administered standardized tests to complete her evaluation. She set forth her findings in an undated psychological evaluation report.

11. Dr. Hill conducted the first session of her evaluation by videoconference due to the mandated closure of the regional center due to the COVID-19 pandemic. For the second session, she met claimant in person. While she administered standardized tests to claimant, Dr. Hill made the following behavioral observations:

When the evaluator attempted to converse with [claimant], she reciprocated, but her eye contact was inconsistent, and she spoke loudly. [Claimant] was escorted to the testing room and completed a cognitive measure. [Claimant] transitioned to testing. The evaluator observed that [claimant] fidgeted constantly and had difficulty remaining seated. Additionally, [claimant] continually pinched her lips while thinking, put her feet on the table, and repositioned herself several times. [Claimant] often verbalized her thought process about test answers and talked about off-topic and tangential subjects. For example, [claimant] relayed to the evaluator that she likes to count her money and does it frequently. [Claimant] offered unprompted information about herself, her family, and other parts of her life. During testing, she would attempt to turn the pages ahead of the evaluator. As testing progressed, [claimant] started to become bored and restless. With some encouragement and redirection, [claimant] was able to complete the testing measure.

(Ex. 3, p. A25.)

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12. In standardized tests, Dr. Hill administered the Comprehensive Test of Nonverbal Intelligence-Second Edition (CTONI-2). Claimant's overall performance on the CTONI-2 yielded a full-scale IQ of 117, which suggests a general level of intellectual ability in the above average range. Specifically, claimant scored in the above average range in pictorial scales and in geometric scales. Dr. Hill explained in her report: "[Claimant's] performance matched and surpassed 87% of her peers, indicating significantly developed cognitive skills compared to her peers." (Ex. 3, p. A26.)

13. With Mother serving as an informant, Dr. Hill administered the Adaptive Behavior Assessment System-Third Edition (ABAS-3) to evaluate claimant's adaptive functioning. Claimant's score of 83 in General Adaptive Composite, which summarizes her performance across all adaptive skill areas, is in the below average range. In the Conceptual domain, which summarizes performance across the communication, functional academics, and self-direction skill areas, claimant scored 86, falling into the below average range. In the Social domain, which summarizes performance across the leisure and social skill areas, claimant scored 86, falling into the below average range. In the Practical domain, which summarizes performance across the community use, home living, health and safety, and self-care skill areas, claimant scored 83, falling into the below average range.

14. Dr. Hill administered the Autism Spectrum Rating Scales, Short Form (ASRS) and the Autism Diagnostic Interview-Revised (ADI-R) for a further assessment of ASD. On the ASRS, claimant scored 58, which ranks at the 79th percentile and falls in the average range. Dr. Hill wrote, "This scoring pattern indicates that [claimant] has some symptoms related to Autism Spectrum Disorder; however, her reported symptoms do not definitively indicate the presence of Autism Spectrum Disorder." (Ex.

3, p. A28.) on the ADI-R, which was completed with Mother as the reporter, Dr. Hill wrote:

In the area of *qualitative abnormalities in reciprocal interactions*, [claimant's] use of nonverbal behaviors to regulate social interactions is minimal. While she does engage in some direct gaze, she does not engage in social smiling and uses limited facial expressions. She does not engage in imaginative play with peers, shows minimal interest in peers, and is hesitant and/or disinterested when other children approach her. At times, [claimant] seeks to share enjoyment with others; however, she does not offer to share and engages in minimal showing. She does not use other's body to communicate. At times she does offer comfort and has some appropriate facial expressions. In the area of *qualitative abnormalities in communication*, [claimant] does nod and shake her head appropriately; however, she does not point to expressed interests. She does not engage in imaginative play and does not spontaneously imitate actions. In the area of *stereotyped patterns of behavior*, she has unusual preoccupations and compulsions. She does have stereotyped and repetitive motor mannerisms and unusual sensory interests. The results are scored using the diagnostic algorithms. Responses resulted in scores above the necessary cut-off in all areas (Qualitative Abnormalities in Reciprocal Social Interactions, Qualitative Abnormalities in Communication,

Restrictive, and Stereotyped Patterns of Behavior and Abnormality of Development Evident at or Before 36 Months). Such a response pattern indicates that a diagnosis of Autism Spectrum Disorder may be indicated.

(Ex. 3, p. A28, emphasis in original.)

15. Using the DSM 5, Dr. Hill diagnosed claimant with ASD, without intellectual impairment, without accompanying language impairment, without a known genetic or other medical condition or environmental factor, and without catatonia. She rated claimant's ASD level of severity as level 2, "requiring substantial support," in both social communication and restricted, repetitive behaviors.

16. Dr. Hill made several recommendations in her report, which included for claimant to be further assessed for behavior intervention, speech and language therapy (SLT), occupational therapy (OT), and special education with her school district. Dr. Hill also recommended for claimant to participate in Applied Behavioral Analysis therapy, SLT, and OT.

Occupational Therapy Assessment (May and August 2023)

17. Following Dr. Hill's psychological evaluation, claimant's school district requested Sujin Kim, Licensed Occupational Therapist (LOT), to conduct an OT assessment. LOT Kim conducted her assessment on May 30, 2023, and August 29, 2023. To complete her assessment, LOT Kim interviewed claimant's parents and teachers, reviewed claimant's work samples, conducted school observations, and administered standardized tests.

18. LOT Kim observed claimant at her school on May 9 and June 7, 2023, when claimant was in the first grade, and on September 5, 2023, when claimant was in the second grade. During the May 9, 2023 observation, claimant participated in a classroom activity where she was given ice cream. Although claimant engaged in a minor verbal disagreement with a peer during this activity, she “subsequently settled.” (Ex. 4, p. B27.) Claimant pushed some M&M candies deep into her ice cream using her fingers, attracting the attention of her classmates who tried to stop her. Claimant persisted in this behavior. However, when redirected by her teacher for new toppings for her ice cream, claimant “returned to her spot and waited patiently for her turn.” (*Ibid.*)

19. During the June 7, 2023, observation, one of claimant’s classmate (peer 1) joined the claimant on the field. Claimant repeatedly attempted to hug and squeeze peer 1 from behind. Despite the student's initial refusal, claimant continued the behavior for three attempts within a span of five minutes. She then interacted with another peer (peer 2), who seemed to be friendly to claimant. Later, claimant engaged in play with the peer 2 in the sand box, where they dug, kicked, scooped sand.

20. During the September 5, 2023, observation, when a classmate sitting next to her used an eraser without seeking permission, claimant said to her classmate, "Did I tell you to use that?" She then handed her own smaller eraser to the classmate and retrieved the one that the classmate had been using. LOT Kim also noted:

Throughout the observation, [claimant] actively engaged with the class and teacher, frequently raising her hand to participate. . . [Claimant] demonstrated her ability to follow the class routine and independently manage classroom materials, including copying information from the board for

planner announcements. . . . During a principal's announcement, a peer friendly patted [claimant] on the head, indicating a close and friendly relationship between them. When teacher announced [class dismissal], [claimant] effectively managed her personal belongings, retrieved her backpack and joined a line to dismissal. While waiting, she gave a hug to another peer from the class, who appeared to be moving to a different classroom. Though the hug may have been slightly strong, the peer appeared to be comfortable with the interaction, indicated with a smile.

(Ex. D, p. B28.)

21. On standardized testing, LOT Kim administered the Miller Function & Participation Scales (M-FUN), which measures how a child's motor ability affects his or her ability to perform home and school activities and to participate in his or her social environment. On the M-FUN, claimant scored 88 on fine motor skills, which is in the mild/borderline range, and 89 on visual motor skills, which is in the average range. Her total score was 64 out of 75, which falls in the borderline below average range. LOT Kim also administered the Sensory Processing Measure, Second Edition (SPM-2) which measures a child's sensory functioning, praxis, and social participation in home, school, and community environments. Claimant's parents completed the SPM-2 Home Form, while claimant's second-grade teacher completed the SPM-2 School Form. On the SPM-2 School Form, claimant's second-grade teacher scored claimant in the "typical" range across all areas, which include Vision, Hearing, Touch, Taste & Smell, Body Awareness, Balance & Motion, Sensory Total, Planning & Ideas, Social Participation. On the SPM-2 Home Form, however, claimant's parents rated claimant has having

“moderate difficulties” in Vision, Hearing, and Planning & Ideas, and “severe difficulties” in Touch, Taste & Smell, Body Awareness, Balance & Motion, Sensory Total, and Social Participation. LOT Kim explained in her report the discrepancies in the rating of claimant’s teacher and her parents indicate claimant has more difficulty in the home environment.

22. LOT Kim concluded:

Within her educational setting, [claimant] demonstrates independent self-care skills such as completing toileting and self-feeding routine. . . . Based on classroom and assessment observation, [claimant] demonstrates functional sensory processing skills to access her educational curriculum as she is able to follow simple/familiar directions as well as multistep/novel instructions, comply with rules and redirections and complete preferred/non- preferred tasks/activities, given short breaks and verbal encouragement. In regards to social participation, [claimant] demonstrates functional skills within her educational setting. During classroom observation and teacher interview with [claimant’s first grade teacher] in May 2023, [claimant] displayed some difficulty in peer interaction. Based on classroom observation and teacher interview with [claimant’s second-grade teacher] in August 2023, [claimant] demonstrates functional social participation skills to engage and participate in her educational setting.

(Ex. 4, p. B37.)

Speech and Language Assessment (August 2023)

23. Claimant's school district also requested Elizabeth Alvarez, certified Speech and Language Pathologist (SLP), to conduct a speech and language assessment. SLP Alvarez conducted her assessment on August 17, 30, 31, and September 6, 2023. To complete her assessment, SLP Alvarez interviewed claimant's parents and teachers, conducted school observations, and administered standardized tests.

24. SLP Alvarez observed claimant at her school on August 17, 2023, for 20 minutes during recess, and on September 6, 2023, for 20 minutes in the classroom and 20 minutes during lunch break. During the August 17, 2023 recess observation, claimant talked to her peers in a socially appropriate manner while waiting in line to go to recess. She was patient and walked in an appropriate manner out to the playground. Claimant then saw SLP Alvarez and engaged her in conversation. SLP Alvarez wrote, "During this conversation, [claimant] answered and asked questions. She communicated in an appropriate volume and maintained appropriate social distance." (Ex. G, B83.) Afterwards, claimant walked away and joined another group which was engaged in a conversation with a supervisor. During this interaction, claimant engaged in reciprocal conversation and maintained appropriate distance between herself and others.

25. During the September 6, 2023 classroom observation, claimant was working independently when a guest teacher walked into the classroom. Claimant attempted to gain her second-grade teacher and the guest teacher's attention by saying their names. When the guest teacher did not respond, claimant waited until the teachers were done talking to attempt to gain their attention again. When the guest teacher responded to claimant, she then engaged in a conversation with the guest

teacher and her second-grade teacher. Claimant took turns, used facial expressions, and gestures throughout the conversation. Afterwards, claimant engaged in brief conversation with her classmates, and she followed the teacher's instructions to clean up, waited for further instructions, and helped her classmates by telling them to clean up. When the teacher and her classmates talked about cleaning and doing chores, claimant listened, raised her hand to share, and made on-topic comments once she was called on. Claimant did interrupt her teacher twice while her teacher spoke. However, when the teacher stopped and looked at claimant, "[claimant] was able to interpret her facial cues and stopped talking and waited to share once the teacher called on her." (Ex. G, B84.)

26. During the September 6, 2023, lunch time observation, SLP Alvarez wrote of claimant's interactions with her classmates:

. . . [Claimant] was seen initiating and maintaining conversations as she ate. She communicated using verbal and nonverbal cues (i.e. gestures). [Claimant] maintained appropriate social distance and leaned in when talking to her peers. She made eye contact, pointed to objects/people, and followed the gaze of her peers. She demonstrated these skills throughout the entirety of the lunch period. [Claimant] was constantly engaged in a conversation with at least one other student.

(Ex. G, p. B85.)

27. SLP Alvarez administered the Comprehensive Assessment of Spoken Language (CASL-2) to assess claimant's language skills. Claimant obtained scores in

the average range across all categories, which included synonyms, expressive vocabulary, grammatical judgment, nonliteral language, meaning from context, inference, and pragmatic language. Overall, claimant obtained scores in the average range in the general language ability index (general spoken language skill) and in the supralinguistic language index (ability to understand the deeper meaning of vocabulary and syntax). Additionally, SLP Alvarez administered Expressive One-Word Picture Vocabulary Test- 4th Edition to assess claimant's expressive vocabulary. On this test, claimant obtained scores in the average range.

28. SLP Alvarez also conducted informal tests, including language samples, informal assessment of social cognition, and input from claimant's second grade teacher. SLP Alvarez summarized her findings as follows:

. . . Additionally, [claimant's] social language fell within the average range on the CASL-2 assessment. This indicates she has the knowledge and skills necessary to interact appropriately with peers and adults. Informal assessments further support this by demonstrating her ability to take perspective, interpret facial cues, interpret tone of voice, and problem solve. Additionally, [claimant's second-grade] teacher rated her social skills mostly in the average to above average range. [Claimant's second-grade teacher] reported she does not have concerns regarding [claimant's] language or social skills. Observations revealed [claimant] is able to follow along in the classroom, participate, and engage with her peers in a variety of settings. She is able to interpret other's facial expressions and gestures, maintain

appropriate social distance, stay on topic, and initiate and maintain conversations with others.

(Ex. G, p. B90.)

29. SLP Alvarez concluded claimant does not meet eligibility criteria for speech and language impairment.

Functional Behavior Assessment (September 2023)

30. On September 8, 2023, Maria Santos, Resource Specialist Teacher (RST), performed a functional behavior assessment of claimant. For this assessment, RST Santos interviewed claimant's parents and her first-grade and second-grade teachers. During RST Santo's interview with claimant's parents, Mother shared concerns that claimant does not pick up on social cues from her classmates and is unable to understand boundaries with adults and strangers. Mother reported claimant makes unsafe choices or runs away from adults while being unaware of her surroundings. During RST Santo's interview with claimant's teachers, claimant's second-grade teacher shared claimant follows directions well, performs tasks assigned to her, and tries her best and wants to do well. Claimant's first-grade teacher reported claimant was on task when she was doing a preferred activity but would not do non-preferred activities to the best of her abilities. According to claimant's first-grade teacher claimant exhibited non-compliance in the classroom and at the school, and she has exhibited aggressed towards some of her classmates. Claimant's first-grade teacher expressed concerns about claimant's management of feelings and emotions when things do not go her way.

31. To assess claimant's behavior, RST Santos observed claimant at her school for two hours on August 20, 2023, three hours on August 31, 2023, three hours

and 10 minutes on September 5, 2023, two hours and 40 minutes on September 6, 2023, and three hours on September 7, 2023. These observations occurred during the classroom hours (including partner work, whole group, and independent work) and lunch time. RST Santos found zero occurrences of noncompliance and zero occurrence of aggression across 10 hours of observation for these behaviors. RST Santos found claimant was on task 87 percent of time, compared to her peers who were on task 73 percent of the time. RST Santos summarized her findings:

Observation of [claimant] took place in the classroom during class hours, cafeteria, transitioning from classroom to recess, and on the yard during lunch recess. Direct observations were done using Baseline Frequency. Targeted behaviors [of noncompliance and aggression] are not observed during this time. Antecedent-Behavior-Consequence (ABC) data collection is also used for direct observation. Targeted behaviors [of noncompliance and aggression] are not observed during this time. When compared with her peers, [claimant] is engaged 87% of intervals, and peers were engaged 73% of intervals as evidenced by the Planned Activity Check (Placheck) collection tool.

(Ex. E, p. B52.)

Psycho-Educational Assessment (May 2023 to September 2023)

32. Between May 2023, and September 2023, the school psychologist at claimant's elementary school conducted an evaluation of claimant to determine

claimant's continued eligibility for special education services and his current levels of performance. The school psychologist administered a battery of standardized tests, interviewed claimant's parents and her first-grade and second grade teachers, and observed claimant in her classroom and on the school yard on two separate dates. The school psychologist set forth her findings in a report dated September 8, 2023.

33. On August 25, 2023, the school psychologist observed claimant in her classroom for 30 minutes and in the school yard for 20 minutes during recess. On September 7, 2023, the school psychologist again observed claimant in her classroom for 30 minutes and in the school yard for 20 minutes during recess. The school psychologist summarized her observation of claimant as follows:

In summary, [claimant] consistently demonstrates appropriate adult interactions and good work habits. Overall, she also demonstrates appropriate interactions with peers. She is helpful, friendly, and it appears that she likes to be social. However, there may be times when she experiences difficulty with social cues or [has] difficulty incorporating herself as an active participant in a group social situation. Other than this slight difficulty with social interactions, no other behaviors or characteristics typically associated with an Autism Spectrum Disorder was observed.

(Ex. 6, p. B60.)

34. The school psychologist administered a battery of standardized tests. The Cognitive Assessment System, Second Edition (CAS-2) was administered to assess claimant's cognitive functioning. The CAS-2 measures overall cognitive functioning by

combining a student's performance in planning, attention, simultaneous processing, and successive processing. Measurements in these four areas of processing yield scores for the student's working memory and executive functioning. Claimant scored within the average range in planning, simultaneous processing, and attention scales. She scored within the low average range on the successive processing scale. On the Supplemental CAS-2 composite scores, claimant scored within the average range in executive function, working memory, and executive function with working memory.

35. The Comprehensive Test of Phonological Processing-Second Edition (CTOPP-2) was administered to measure claimant's phonological and auditory processing skills. The CTOPP-2 uses a variety of tasks to assess a student's ability to work with auditory/phonological processing information. Claimant scored within the high average range on the phonological awareness composite, indicating strength understanding the relations between written and spoken language. She scored within the average range on the phonological memory composite, indicating adequate ability coding information phonologically for temporary storage in working or short-term memory. She scored within the low average range on the rapid symbolic naming composite, indicating adequate ability retrieving phonological information from long-term or permanent memory. Overall, claimant's performance on the CTOPP-2 suggests average auditory processing skills.

36. Test of Visual Perceptual Skills (Non-Motor)-4th Edition (TVPS-4) was administered as a non-verbal measure of claimant's visual processing skills. Claimant scored in the average range on all subtests, except for figure ground subtest, where she scored in the low average range. Claimant's overall performance on the TVPS-4 suggests average visual processing skills.

37. Beery-Buktenica Developmental Test of Visual Motor Integration, 6th Edition (VMI-6) was administered to measure claimant's "hand-eye" coordination. Claimant scored within the Average range on the VMI-6, indicating adequate visual motor integration skills.

38. The school psychologist concluded that the results of the assessment indicate claimant is functioning within the average to high average range of cognitive ability. She wrote, "Overall, [claimant] does not evidence psychological processing deficits which adversely impact her educational access and performance at this time." (Ex. 6, p. B64.)

39. Claimant's academic achievement, as measured by the Woodcock-Johnson Tests of Achievement, Fourth Edition was in the average range across all subtests, including reading, broad reading, mathematics, broad mathematics, written language, spelling, calculation, and writing samples. Claimant's first-grade teacher reported claimant demonstrated all aspects of school readiness and was either on or above her grade level in reading, mathematics, and spelling/written expression. The school psychologist concluded:

[Claimant's] most recent progress report indicates overall academic performance is at or above grade level expectations. Current classroom-based assessments show age-appropriate progress. Standardized test results reflect academic strengths in the areas of English Language Arts and Math. Although written language was her lowest area of performance, her score still fell within the Average range. Therefore, [claimant's] current overall performance does not suggest a significant educational impact.

(Ex. 6, p. B65.)

40. To assess claimant's social-emotional status, the school psychologist interviewed claimant's parents and teachers. During the parent interview, claimant's mother expressed concerns about claimant's attention, hyperactivity, and impulsivity. Mother also indicated she would like for claimant to improve her social skills so that her social experience reflects her kindness and desire to be a good friend. During the teacher interviews, claimant's first-grade teacher reported claimant had difficulty taking responsibility for her actions, could be openly defiant and oppositional to requests, and could lose emotional control when she felt frustrated. The first-grade teacher also observed that sometimes claimant had difficulty joining her classmates in play and preferred to be on her own. Claimant's second-grade teacher, however, reported claimant consistently demonstrated appropriate interactions with her teacher. She follows teacher's directions, complies with classroom rules, engages in appropriate social interactions with adults, reciprocates greetings, initiates social interactions with adults, and maintains eye contact. She also consistently demonstrates appropriate interactions with her classmates. Claimant gets along well with peers, is friendly and social, shows interest in her classmates, reciprocates peer-initiated social interactions, and initiates social interactions with classmates. According to claimant's second grade-teacher, claimant does not remain quiet or keep to herself.

41. The school psychologist also administered behavior rating scales (Behavior Assessment System for Children, Third Edition (BASC-3), Conners-3rd Edition (Conners-3), and Autism Spectrum Rating Scales (ASRS)) with claimant's first-grade teacher and Mother as reporters. Because those tests administered while claimant was in the first grade, the results indicated that claimant demonstrated areas of need in Hyperactivity/Impulsivity, Defiance/Aggression, Peer/Family Relations, Peer/ Adult

Socialization, Social/Emotional Reciprocity, and Social/Communication. However, the school psychologist noted claimant's current, second-grade teacher reported no behavioral or social-emotional concerns this school year and her current teacher's report is consistent with observations and other school staff reports. Therefore, the school psychologist reasoned claimant does not evidence social, emotional and behavioral needs which adversely impact her educational access and performance at this time.

42. Based on the information from her review of the documents as well as the testing data, the school psychologist concluded that claimant did not meet the eligibility criteria for special education under categories of Specific Learning Disability, Other Health Impairment, or Autism. An individualized education program (IEP) meeting was held on September 14, 2023, during which claimant's school district found claimant not eligible for special education services. Claimant's parents are contesting this finding.

Reports From Other Providers

CLAIMANT'S PEDIATRICIAN

43. Claimant's pediatrician, Kyle Whitney Monk, M.D., wrote a letter dated January 31, 2024, stating claimant has deficits in hygiene, self-care, language skills, and social skills. (Ex. B) However, Dr. Monk did not provide any examples of these deficits that he had personally observed in his letter.

CLAIMANT'S SOCIAL SKILLS TRAINING SUPERVISOR

44. In a letter dated September 5, 2023, Erica Rich, Ph.D., Clinical Director and Supervisor at Rich & Associates, described claimant's behaviors during her social

skills class. Claimant has attended social skills training at Rich & Associates since May 2023. Dr. Rich observed claimant has difficulty with body boundaries, makes rude and insensitive comments to others, cannot read social cues when others are annoyed or disinterested, and has difficulty expressing her ideas to others. Dr. Rich also described claimant's difficulties in adaptive functioning, as claimant required prompting to wash her hands appropriately, had difficulty opening her food items, spilled food on herself, and required help with clothing items. Moreover, Dr. Rich noted, "[Claimant] is unable to engage in play with others that includes a true reciprocity of ideas, conversation, and respect. While her vivacious personality might at first attract peers, they are soon turned off by [claimant's] poor social skills, as noted above." (Ex. 5, p. A59.) Dr. Rich's letter did not contain any standardized testing of claimant's behavioral issues.

PRAGMATIC LANGUAGE EVALUATION BY KATIE HOOPS, SLP

45. On February 11, 2024, Katie Hoops, SLP, conducted a pragmatic language evaluation of claimant by videoconference. SLP Hoops interviewed Mother and administered the Clinical Assessment of Pragmatics (CAPs) and the Clinical Evaluation of Language Fundamentals, 5th Edition, Pragmatics Profile (CEFLP5-PP) to assess claimant's pragmatic language.

46. Of claimant's scores on the CAPs, SLP Hoops wrote in relevant part:

[Claimant's] scores on the CAPs indicate strength in the following areas: awareness of basic social routines, reading nonverbal cues, and using social routine language. Areas of weakness include: reading context cues, expressing emotions, and using nonverbal cues. Although [claimant's] Core Pragmatic Language Composite score reflects overall

pragmatic language skills within the low average range for her age, index scores indicate that she understands social routines and social cues, but does not effectively use social routine language or age-appropriate nonverbal communication. . . .

(Ex. I, B103.)

47. The CELF-5 is a checklist completed by SLP Hoops with input from Mother. Skills are rated on a scale from 1 to 4, with 1 meaning “never or almost never” and 4 meaning “always or almost always.” On the CELF-5, Mother indicated claimant’s observed skills fell within the 1 to 2 point range across the categories of Ritual and Conversational Skills; Asks For, Gives, and Responds to Information; and Nonverbal Communication Skills. SLP Hoops did not provide an explanation of the significance of claimant’s scores on the CELF-5 in her report.

48. SLP Hoops summarized that claimant presents with pragmatic language strengths which include awareness of basic social routines, reading nonverbal cues, and using social routine language. Claimant’s pragmatic language deficits include reading context cues, expressing emotions, and using nonverbal cues. SLP Hoops recommended that claimant receive instruction and practice in social language skills to help her identify and pursue social communication opportunities.

SCHEFLEN SPEECH-LANGUAGE EVALUATION

49. On February 13, 2024, Sarah Clifford-Scheflen, SLP, conducted an evaluation of claimant for her pragmatic language and social skills. Although SLP Scheflen did not administer any standardized tests, she informally surveyed claimant for her pragmatic language, social skills, and behavior during a 50-minute pragmatic

language focused social skills group therapy session, where claimant was introduced to three same-aged peers. SLP Scheflen summarized that claimant displayed the following difficulties during this group session: (1) “reading the room” and joining in play and conversation for a variety of activities and topics; (2) recognizing and understanding non-verbal cues; (3) using language to solve problems in social situations; (4) using language to connect with her peers, rather than directing them; (5) engaging in back and forth conversations for a variety of topics. SLP Scheflen concluded, “[claimant] presents with deficits in her pragmatic language skills consistent with her diagnosis of autism.” (Ex. J, p. B110.) SLP Scheflen recommended that claimant receive speech and language therapy from an SLP one to two hours per week in a small group setting comprised of matched peers.

Testimony of Laurie McKnight Brown, Ph.D.

50. Laurie McKnight Brown, Ph.D., is Service Agency’s lead psychologist consultant. She is a licensed clinical psychologist. She is a member of the Service Agency’s eligibility team, which consists of a physician, a licensed clinical psychologist, a nutritionist, and an educational specialist.

51. At the hearing, Dr. McKnight Brown testified to provide a more detailed explanation of the eligibility team’s determination that claimant did not qualify for regional center services. Dr. McKnight Brown conceded claimant has ASD. However, she opined the overall records in claimant’s case indicate claimant does not have a substantial disability because she suffers significant functional limitations in the area of self-direction only. According to Dr. McKnight Brown, claimant has significant deficits in her social skills, emotional regulation, and self-initiative, which all fall into the area of self-direction. Dr. McKnight Brown asserted the eligibility team did not consider the areas of independent living skills and economic self-sufficiency because these

categories are not considered for children of claimant's age under the Association of Regional Center Agencies Guidelines on Assessing "Substantial Disability" (ARCA Guidelines).

52. Dr. McKnight Brown noted that Dr. Hill's Psychological Evaluation showed that there were no concerns with claimant's motor skills, cognitive ability, or language skills. Specifically, Dr. Hill's cognitive testing demonstrated claimant's IQ on the CTONI-2 was 117, in the above average range. Dr. Hill diagnosed claimant with ASD without language and intellectual impairment. Thus, according to Dr. McKnight Brown, language is a not an area of disability for claimant.

53. Dr. McKnight Brown testified the eligibility team also focused on the results of the ABAS-3, which measured claimant's adaptive functioning. Dr. McKnight Brown opined that claimant's scores on the ABAS-3 were either in the low average, or the borderline range, which she characterized as "not average, but not low." According to Dr. McKnight Brown, a low score, indicating significant deficits, would be two standard deviations away from the mean, a score that claimant only obtained in the subtest of safety under the Practical Domain on the ABAS-3. Dr. McKnight Brown cited to the portion of Dr. Hill's report, which stated, in relevant part:

[Claimant's] ability to function and get around in the community, including shopping and using community resources, is in the Average range. [Claimant's] level of functioning inside the home, including cleaning, food preparation, performing chores and taking care of personal possessions, is in the Below Average range. [Claimant's] ability to protect her physical well-being and prevent and respond to injuries, including following safety rules,

showing caution, and using medicine, when appropriate, is in the Low range. Her ability to perform self-care activities such as eating, dressing, and taking care of personal hygiene is in the Average range.

(Ex. 3, p. A27.)

54. Based on claimant's scores in self-care skills on the ABAS-3 and Mother's report to CSW Buchanan that claimant can perform self-care tasks with prompting, Dr. McKnight Brown concluded claimant does not demonstrate any deficits in self-care. However, Dr. McKnight Brown conceded claimant has a deficit in safety, as her scores on the ABAS-3 in this area was in the low range.

55. Dr. McKnight Brown also considered the school psychologist's Psychoeducational Assessment and claimant's current IEP report. Dr. McKnight Brown summarized the findings of the Psychoeducational Assessment as showing claimant having no needs in the areas of reading, writing, math, and language because claimant obtained average scores in standardized testing in these areas. The school psychologist's testing also confirmed claimant's cognitive ability was in the high average range. In the area of academic achievement, claimant is performing as expected for her age. While claimant's first-grade teacher reported some social emotional issues with defiance and aggression, her second-grade teacher reported no social-emotional concerns in the classroom setting. The IEP found claimant not eligible for special education services. Additionally, Dr. Knight Brown noted her receipt of the Functional Behavioral Assessment, which confirmed that claimant was observed at school over several days for 10 hours, but no behaviors of noncompliance or aggression were identified. Dr. Knight Brown concluded that these documents do not provide evidence of any other areas of significant functional limitation in claimant.

Father's Testimony

56. Father testified at the hearing regarding claimant's deficits he has observed. Father believes claimant lacks self-care skills. Specifically, Father reported claimant need help with toileting, brushing teeth, and combing her hair. Claimant also does not blow her nose and allows her snot to hang out. Claimant's food choices are also restricted, and she often gags or throw up her food.

57. Father believes claimant has receptive/expressive language deficits. He reported claimant engages in "baby talk" and talks like a two-year old. When she has a tantrum, claimant would kick, and if asked to stop, she will not comply, or she will growl as a response. Father reported claimant has shown noncompliance in her private school in the first grade, when she stood on her table during class, but her private school refused to document these episodes. According to Father, claimant cannot read social cues, and she does not understand what her teachers say. Her current second-grade teacher is highly skilled and took it upon herself to make a connection with claimant. However, in the most recent two weeks, claimant's parents have received reports from her teacher of claimant's poor interactions with peers, not listening to her teachers, pouring water on other kids, kicking other kids on the playground, and ignoring the adults on the playground.

58. Father disputed the findings of the Functional Behavioral Report as inaccurate. He believes claimant was in her "honeymoon period" during RST Santo's observations. He also speculated claimant knew RST Santos was watching her and thus behaved differently. Father also disputed the observations of the school psychologist in September 2023. He pointed out that the school psychologist's observation of claimant during recess involved a structured activity, but claimant has difficulty with

unstructured play. Father reported claimant sits by herself at recess, and when a peer is being mean to her, she withdraws rather than confront.

59. Father also believes claimant also has deficits in fine motor skills. He reported claimant is unable to button or use a zipper on her own. Father stated parental reports to CSW Buchanan that claimant knows how to fasten her buttons and zipper (Ex. 2, p. A20) and parental report to OT Kim that claimant needed "minimal assistance to fasten/unfasten fasteners (buttons, zippers, snaps)" (Ex. D, p. B33) were not accurate because at that time, they were not aware of what was normal. Moreover, Father believes claimant has learning deficits, as claimant's teachers must present information in a different way for claimant to learn.

Mother's Testimony

60. Mother also testified at the hearing regarding claimant's deficits she has observed. In the area of self-care, Mother reported claimant is unable to wipe herself properly after toileting, and Mother has found fecal matter on her underwear and sometime in claimant's bed (because claimant sleeps in her bed without clothes). Claimant also cannot tolerate the feeling of lotion on her skin, and she scratches herself until she bleeds. Claimant cannot comb her hair by herself because she does not like the feeling of bristles on her head sensation. Claimant's parents comb her hair a small portion at a time with breaks in between. Claimant also cannot tolerate the feeling of running water on her skin and has to bathe rather than take a shower. Claimant needs assistance with brushing her teeth because she does not like the sensation of bristles on her gum. Additionally, when claimant eats, she sometimes gags and will throw everything up.

61. In the area of language, Mother believes claimant lacks the ability to communicate her needs. Instead, claimant engages in kicking, grunting, head-butting to express her frustrations. Mother pointed to Dr. Rich's comments on claimant's poor social skills and lack of reciprocity in her conversations with her peers as evidence of deficits in her pragmatic language. (Ex. 5, p. A59.) Mother noted claimant's second-grade teacher is invested in claimant's success, and claimant has done well in her classroom. However, Mother does not believe claimant has the skills to be successful in the class setting on her own.

62. In the area of capacity for independent living, Mother reported claimant cannot perform many of the household chores. She recounted that claimant is capable of going to the cabinet and get a bowl of cereal for herself, but the cereal would be spilled all over the floor. Claimant sometimes puts chalk or sand in her mouth, and she cannot be left unsupervised. Claimant was given a weekly allowance previously, but claimant was unable to grasp the concept of saving and gave money away to others. Claimant is also unaware of safety issues. She will not sit in car seat, and she has tried to run out of the car. Mother also recounted a situation when claimant attended her private school. She was put together with two other boys who asked her to lift up her skirt. Because claimant was uncomfortable reporting the boys to the teacher, claimant was sexually assaulted.

63. Overall, Mother believes claimant is functioning on the level of a five-year old. If claimant is found eligible, Mother hopes to receive assistance in case management from Service Agency because she has found it difficult to navigate the system. Mother testified she and her husband need guidance on how to help claimant now that she has been diagnosed with autism. Mother and Father want to make sure claimant is able to access all the resources that are available to her.

Findings on Substantial Disability

64. Claimant established by a preponderance of the evidence that she has significant functional limitations in the following areas of major life activity, as appropriate to a person of her age:

- Self-direction. The parties agree that claimant has significant functional limitations in self-direction.
- Capacity for independent living. Although Dr. McKnight Brown asserted that capacity for independent living is not an area under consideration for a child of claimant's age, this assertion is not credited, as the ARCA Guidelines state otherwise. The ARCA Guidelines suggest that for children of school age, factors including chores a child is expected to perform at home, ability to be left unsupervised, and safety awareness, must be considered in determining whether a claimant has a noticeable impairment in the ability to perform age-appropriate daily living skills. (Ex. 8, p. A104.) Mother's testimony established that claimant is unable to perform age-appropriate household chores and lacks basic safety awareness. Claimant's lack of safety awareness is also corroborated by Dr. Hill's testing, as claimant's scores in the subtest of safety under the Practical Domain on the ABAS-3 was in the low range. (Ex. 3, p. A27.) Dr. McKnight Brown also acknowledged claimant's deficits in safety awareness. (Factual Finding 54.)

65. Claimant did not establish by a preponderance of the evidence that she has significant functional limitations in the following areas of major life activity, as appropriate to a person of her age:

- Receptive and expressive language. Dr. Hill diagnosed claimant with ASD without accompanying language impairment, although she rated claimant's social

communication as requiring substantial support. Dr. Hill recommended further assessment by speech and language therapists. Claimant's school speech and language therapist and a speech and language therapist retained by claimant conducted such assessments focusing on claimant's pragmatic language. Claimant's school speech and language therapist, SLP Alvarez, observed claimant in the school setting during three sessions across different contexts (classroom, recess, and lunchtime). Based on her observations, she found claimant is able to follow along in the classroom, participate, and engage with her peers in a variety of settings. According to SLP Alvarez, claimant is able to interpret other's facial expressions and gestures, maintain appropriate social distance, stay on topic, and initiate and maintain conversations with others. SLP Alvarez also administered to claimant to CASL-2 to assess claimant's social language skills and Expressive One-Word Picture Vocabulary Test 4th Edition to assess claimant's expressive vocabulary. On both tests, claimant's scores were in the average range. Additionally, the speech and language therapist retained by claimant, SLP Hoops, found that using CAPs as a standardized test, claimant's overall pragmatic language skills are within the low average range for her age. Thus, while claimant has some deficits in her pragmatic language, there is little indication of a significant deficit.

Claimant's difficulties in reading social cues and engaging in social play observed by Dr. Rich in claimant's social skill group and by SLP Scheflen during her informal survey sessions were considered in the area of receptive and expressive language. However the ARCA guidelines requires "significant difficulty understanding a simple conversation," "needing information to be rephrased in a simpler level in order to enhance understanding," "significant difficulty following directions," or "significant difficulty understanding and interpreting nonverbal communication" in the area of receptive language; and "significant difficulty participating in basic conversation"

“significant difficulty communicating information effectively,” or “atypical speech patterns.” (Ex. 8, p. A97.) Thus, the ARCA Guides require not only difficulty in these identified areas, but *significant* difficulty. Although Dr. Rich and SLP Scheflen provided anecdotal evidence of weaknesses in claimant’s pragmatic language skills, there was no explanation in their reports of how significant those deficits were. Therefore, the findings of SLP Alvarez and Hoops were more persuasive, as they were corroborated by standardized testing which showed either no deficit or little deficit in claimant’s pragmatic language skills.

- Self-care. Although at this hearing, Mother and Father testified to many deficits in claimant’s self-care skills at home, these reports are not corroborated by the prior reports claimant’s parents made to SC Buchanan during the psychosocial assessment, the ABAS-3 administered by Dr. Hill (which relied on parental reporting), and by OT Kim’s report (which relied on both teacher and parental reporting). Mother reported to SC Buchanan that claimant is able to perform self-care tasks with prompting. Dr. Hill, on the ABAS-3’s Practical Domain, found claimant’s ability to perform self-care activities such as eating, dressing, and taking care of personal hygiene is in the average range. OT Kim found claimant demonstrated the ability to complete daily self-care activities such as self-feeding, toileting, dressing within her educational environment. OT Kim also noted claimant’s teacher confirmed this finding, and claimant’s parents reported claimant required moderate assistance to wash/dry hands and minimal assistance to fasten/unfasten buttons and zippers, use utensils without spillage, open packages, and clean face and mouth at home. Although claimant’s initial reporting of claimant’s self-care skills at home could have been affected by their lack of knowledge of autistic behaviors, OT Kim completed her assessment in May and August 2023, after claimant was diagnosed with ASD in March

2023. Moreover, there is little evidence of claimant's deficits in self-care skills in the school setting.

- Learning. Claimant's IQ scores is in the high average range. Standardized testing in claimant's school evaluations also indicates that she is performing at or above grade level in terms of academic achievement.
- Mobility. No evidence was presented that claimant has significant functional limitations in the area of mobility.
- Economic self-sufficiency. The ARCA Guidelines recommends that for selecting economic self-sufficiency as an area of substantial disability, the applicant should be at least 16 years old. Therefore, this area is not applicable to this case. (Ex. 8, p. A106.)

LEGAL CONCLUSIONS

1. Because claimant is the party asserting a claim, she bears the burden of proving, by a preponderance of the evidence, that she is eligible for government benefits or services. (See Evid. Code, §§ 115 and 500.) She has not met this burden.

2. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 et seq.) Eligibility for regional center services is limited to those persons meeting the criteria for one of the five categories of developmental disabilities set forth in Welfare and Institutions Code section 4512, subdivision (a), as follows:

“Developmental disability” means a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a

substantial disability for that individual.... [T]his term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with intellectual disability [commonly known as the "fifth category"], but shall not include other handicapping conditions that are solely physical in nature.

3. The qualifying condition(s) must also cause a substantial disability. (Welf. & Inst. Code, § 4512, subd. (a); Regulation 54001, subd. (b)(3).) A "substantial disability" is defined by Regulation 54001, subdivision (a), as:

(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.

4. Applying the evidence in this case to the above-described categories, claimant is not substantially disabled, even though she is properly diagnosed with ASD. It is undisputed that claimant has significant deficits in the area of self-direction. Dr. McKnight Brown concedes claimant also has deficits in safety awareness, which she also categorized under the area of self-direction. Dr. McKnight Brown also did not consider claimant under the area of capacity for independent living due to her age. This is an incorrect interpretation of the ARCA guidelines, which requires consideration of safety awareness issues for children of claimant's age under the area of capacity for independent living. (Ex. 8, p. A104.)

5. Despite this mistake in interpreting the ARCA Guidelines, however, Dr. McKnight Brown's opinion that claimant did not have significant functional limitations in the areas of receptive and expressive language, self-care, learning, and mobility was unrefuted and supported by the evidence, and thus, persuasive. While claimant's parents report significant limitations in these areas at home, these reports are not borne out by the evaluations conducted by Dr. Hill, by claimant's school district, and by SLP Hoop. Claimant's parents dispute the validity of evaluations conducted by claimant's school district. However, four different providers across different disciplines, OT Kim, SLP Alvarez, RST Santos, and the school psychologist, completed the evaluations. These providers observed claimant over several days in different contexts (in the classroom, at recess, at lunchtime) for approximately 20 hours in total. These

providers also administered standardized tests to support their observations. The reports of these providers consistently show that claimant does not suffer any significant functional deficits in receptive and expressive language, self-care, learning, and mobility at her school, even if claimant has exhibited some deficits in these areas at home.

6. Under these circumstances, claimant has significant functional limitations in only two areas of her major life activity listed in Regulation 54001, subdivision (a)(2). Claimant's ASD has not resulted in a major impairment of her cognitive and social functioning, as required by Regulation 54001, subdivision (a)(1). Therefore, claimant has not established that her qualifying condition has caused her to be substantially disabled, and her appeal is denied at this time.

ORDER

Claimant is not eligible for services under the Lanterman Developmental Disabilities Services Act at this time. Claimant's appeal of South Center Los Angeles Regional Center's determination that she is not eligible for regional center services is therefore DENIED.

DATE:

JI-LAN ZANG
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.

**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. CS0009202

OAH No. 2023080834

DECISION (Corrected)

Ji-Lan Zang, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on February 1 and February 16, 2024, in Los Angeles, California.

Claimant's mother (Mother) represented claimant, who was not present. (Names of claimant and her family members are omitted to protect their privacy.)

Tami Summerville, Fair Hearings Manager, appeared by video conference and represented Service Agency, South Central Los Angeles Regional Center (Service Agency or SCLARC).

Oral and documentary evidence was received. On February 15, 2024, claimant submitted to OAH two speech and language evaluations which were marked for identification on the February 16, 2024, hearing date as Exhibits I and J. Service Agency and its eligibility team did not have a full opportunity to review and respond to them at the time of the hearing. Consequently, at the conclusion of the fair hearing on February 16, 2024, the ALJ granted leave to Service Agency until March 1, 2024, to allow the Service Agency's eligibility team to review Exhibits I and J and to allow Service Agency to submit any objections and/or comments to the two exhibits. Claimant was granted leave until March 8, 2024, to submit a response, if any.

On March 4, 2024, Service Agency submitted a letter, dated February 28, 2024, from its eligibility team notifying claimant again that it again found claimant not eligible for regional center services. However, Service Agency did not submit any objection or comments to Exhibits I and J. Therefore, Exhibits I and J are admitted into the record without objection. On the same date, claimant submitted a letter to OAH requesting the ALJ to close the record. The record was closed, and the matter was submitted for decision on March 4, 2024.

ISSUE

Is claimant eligible to receive regional center services and supports from Service Agency under the Lanterman Developmental Disabilities Services Act (Lanterman Act) based on a claim of autism spectrum disorder (ASD)?

EVIDENCE RELIED UPON

Documents: Service Agency's Exhibits 1-8. Claimant's Exhibits A to J.

Testimony: Laurie McKnight Brown, Ph.D.; Mother and claimant's father (Father).

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is an eight-year-old female. Mother asked Service Agency to determine whether claimant is eligible for regional center services under the Lanterman Act based on a claim of autism.

2. By a Notice of Proposed Action (NOPA) and letter dated June 23, 2023, Service Agency notified claimant that she is not eligible for regional center services. Service Agency's interdisciplinary team had determined that claimant does not meet the eligibility criteria set forth in the Lanterman Act. The NOPA stated: "[Claimant] was diagnosed with Autism Spectrum Disorder, [but] not considered substantially handicapping." (Ex. 1, p A16.)

3. On November 3, 2023, claimant filed a fair hearing request to appeal Service Agency's determination. This hearing ensued.

4. At the hearing, the parties stipulated that claimant is properly diagnosed with ASD under the Diagnostic and Statistics Manual, Fifth edition (DSM 5) and has significant functional limitations in the area of self-direction under California Code of Regulations, title 17, section 54001, subdivision (a)(2) (Regulation 54001). The sole issue is whether claimant has significant functional limitations in three or more major life activities such that she has a substantial disability within the meaning of the Regulation 54001.

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Claimant's Background

5. Claimant lives at home with her parents and her older siblings. She received early intervention services, including language and speech services, from the regional center. From October 2018 to October 2020, claimant received weekly, 30-minute sessions of speech and language services from her school district, as she was eligible for specialized education services under the category of Speech or Language Impairment. On October 21, 2020, claimant met her speech and language goals and exited specialized education. She attended a private school for the majority of her first-grade year before transferring to her current school on April 10, 2023. Claimant is currently attending second grade in the generalized education setting.

SCLARC's Psychosocial Assessment (January 2023)

6. On January 23, 2023, Service Coordinator (SC) La Tonya Buchanan conducted a psychosocial assessment of claimant. This assessment was conducted via videoconferencing due the social distancing requirements resulting from the COVID-19 pandemic.

7. According to SC Buchanan's psychosocial assessment, claimant can walk on her own, has full use of her arms and legs, and can pedal a bicycle. Claimant has sensitivity to textures, especially to articles of clothing. She is a picky eater with a restrictive diet consisting mostly of peanut butter and jelly sandwiches and rice and beans. Mother reported claimant engages in aggressive behaviors and often acts aggressively towards others. Claimant can say 20 words per sentence and has a good vocabulary. She is able to identify her body parts, her name, date of birth, age, her address, and Mother's phone number. She is also able to identify colors, shapes, letters, numbers, and money.

8. Regarding claimant's self-care skills, claimant can eat with utensils without spillage, and she knows how to fasten her buttons and zipper. SC Buchanan wrote in the psychosocial assessment:

[Claimant's] mother reported she can perform [self-care] tasks on her own but will need prompting. [Mother] reported [claimant] can perform the tasks on her own but will need prompting. [sic] [Mother] stated [claimant] will run off or wander with no sense of danger awareness. Mom stated [claimant] doesn't follow safety rules and she's not cautious around dangerous objects. When [claimant] is hungry, she can ask or go get herself.

(Ex. 2, p. A20.)

9. With regard to claimant's social and behavioral skills, Mother reported to SC Buchanan claimant often engages in aggressive behavior and hits Mother when she is having a tantrum. However, Mother did not report any history of repetitive or obsessive behaviors. Mother stated that "[claimant] is able to get along with others and she is able to reciprocate affection." (Ex. 2, p. A20.)

Psychological Evaluation (February and March 2023)

10. SC Buchanan referred claimant to Loren M. Hill, Ph.D., for a psychological evaluation of claimant to determine claimant's eligibility for SCLARC's services. Dr. Hill conducted an evaluation of claimant on February 27 and March 29, 2023. Dr. Hill performed clinical observations, interviewed Mother, and administered standardized tests to complete her evaluation. She set forth her findings in an undated psychological evaluation report.

11. Dr. Hill conducted the first session of her evaluation by videoconference due to the mandated closure of the regional center due to the COVID-19 pandemic. For the second session, she met claimant in person. While she administered standardized tests to claimant, Dr. Hill made the following behavioral observations:

When the evaluator attempted to converse with [claimant], she reciprocated, but her eye contact was inconsistent, and she spoke loudly. [Claimant] was escorted to the testing room and completed a cognitive measure. [Claimant] transitioned to testing. The evaluator observed that [claimant] fidgeted constantly and had difficulty remaining seated. Additionally, [claimant] continually pinched her lips while thinking, put her feet on the table, and repositioned herself several times. [Claimant] often verbalized her thought process about test answers and talked about off-topic and tangential subjects. For example, [claimant] relayed to the evaluator that she likes to count her money and does it frequently. [Claimant] offered unprompted information about herself, her family, and other parts of her life. During testing, she would attempt to turn the pages ahead of the evaluator. As testing progressed, [claimant] started to become bored and restless. With some encouragement and redirection, [claimant] was able to complete the testing measure.

(Ex. 3, p. A25.)

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12. In standardized tests, Dr. Hill administered the Comprehensive Test of Nonverbal Intelligence-Second Edition (CTONI-2). Claimant's overall performance on the CTONI-2 yielded a full-scale IQ of 117, which suggests a general level of intellectual ability in the above average range. Specifically, claimant scored in the above average range in pictorial scales and in geometric scales. Dr. Hill explained in her report: "[Claimant's] performance matched and surpassed 87% of her peers, indicating significantly developed cognitive skills compared to her peers." (Ex. 3, p. A26.)

13. With Mother serving as an informant, Dr. Hill administered the Adaptive Behavior Assessment System-Third Edition (ABAS-3) to evaluate claimant's adaptive functioning. Claimant's score of 83 in General Adaptive Composite, which summarizes her performance across all adaptive skill areas, is in the below average range. In the Conceptual domain, which summarizes performance across the communication, functional academics, and self-direction skill areas, claimant scored 86, falling into the below average range. In the Social domain, which summarizes performance across the leisure and social skill areas, claimant scored 86, falling into the below average range. In the Practical domain, which summarizes performance across the community use, home living, health and safety, and self-care skill areas, claimant scored 83, falling into the below average range.

14. Dr. Hill administered the Autism Spectrum Rating Scales, Short Form (ASRS) and the Autism Diagnostic Interview-Revised (ADI-R) for a further assessment of ASD. On the ASRS, claimant scored 58, which ranks at the 79th percentile and falls in the average range. Dr. Hill wrote, "This scoring pattern indicates that [claimant] has some symptoms related to Autism Spectrum Disorder; however, her reported symptoms do not definitively indicate the presence of Autism Spectrum Disorder." (Ex.

3, p. A28.) on the ADI-R, which was completed with Mother as the reporter, Dr. Hill wrote:

In the area of *qualitative abnormalities in reciprocal interactions*, [claimant's] use of nonverbal behaviors to regulate social interactions is minimal. While she does engage in some direct gaze, she does not engage in social smiling and uses limited facial expressions. She does not engage in imaginative play with peers, shows minimal interest in peers, and is hesitant and/or disinterested when other children approach her. At times, [claimant] seeks to share enjoyment with others; however, she does not offer to share and engages in minimal showing. She does not use other's body to communicate. At times she does offer comfort and has some appropriate facial expressions. In the area of *qualitative abnormalities in communication*, [claimant] does nod and shake her head appropriately; however, she does not point to expressed interests. She does not engage in imaginative play and does not spontaneously imitate actions. In the area of *stereotyped patterns of behavior*, she has unusual preoccupations and compulsions. She does have stereotyped and repetitive motor mannerisms and unusual sensory interests. The results are scored using the diagnostic algorithms. Responses resulted in scores above the necessary cut-off in all areas (Qualitative Abnormalities in Reciprocal Social Interactions, Qualitative Abnormalities in Communication,

Restrictive, and Stereotyped Patterns of Behavior and Abnormality of Development Evident at or Before 36 Months). Such a response pattern indicates that a diagnosis of Autism Spectrum Disorder may be indicated.

(Ex. 3, p. A28, emphasis in original.)

15. Using the DSM 5, Dr. Hill diagnosed claimant with ASD, without intellectual impairment, without accompanying language impairment, without a known genetic or other medical condition or environmental factor, and without catatonia. She rated claimant's ASD level of severity as level 2, "requiring substantial support," in both social communication and restricted, repetitive behaviors.

16. Dr. Hill made several recommendations in her report, which included for claimant to be further assessed for behavior intervention, speech and language therapy (SLT), occupational therapy (OT), and special education with her school district. Dr. Hill also recommended for claimant to participate in Applied Behavioral Analysis therapy, SLT, and OT.

Occupational Therapy Assessment (May and August 2023)

17. Following Dr. Hill's psychological evaluation, claimant's school district requested Sujin Kim, Licensed Occupational Therapist (LOT), to conduct an OT assessment. LOT Kim conducted her assessment on May 30, 2023, and August 29, 2023. To complete her assessment, LOT Kim interviewed claimant's parents and teachers, reviewed claimant's work samples, conducted school observations, and administered standardized tests.

18. LOT Kim observed claimant at her school on May 9 and June 7, 2023, when claimant was in the first grade, and on September 5, 2023, when claimant was in the second grade. During the May 9, 2023 observation, claimant participated in a classroom activity where she was given ice cream. Although claimant engaged in a minor verbal disagreement with a peer during this activity, she “subsequently settled.” (Ex. 4, p. B27.) Claimant pushed some M&M candies deep into her ice cream using her fingers, attracting the attention of her classmates who tried to stop her. Claimant persisted in this behavior. However, when redirected by her teacher for new toppings for her ice cream, claimant “returned to her spot and waited patiently for her turn.” (*Ibid.*)

19. During the June 7, 2023, observation, one of claimant’s classmate (peer 1) joined the claimant on the field. Claimant repeatedly attempted to hug and squeeze peer 1 from behind. Despite the student's initial refusal, claimant continued the behavior for three attempts within a span of five minutes. She then interacted with another peer (peer 2), who seemed to be friendly to claimant. Later, claimant engaged in play with the peer 2 in the sand box, where they dug, kicked, scooped sand.

20. During the September 5, 2023, observation, when a classmate sitting next to her used an eraser without seeking permission, claimant said to her classmate, "Did I tell you to use that?" She then handed her own smaller eraser to the classmate and retrieved the one that the classmate had been using. LOT Kim also noted:

Throughout the observation, [claimant] actively engaged with the class and teacher, frequently raising her hand to participate. . . [Claimant] demonstrated her ability to follow the class routine and independently manage classroom materials, including copying information from the board for

planner announcements. . . . During a principal's announcement, a peer friendly patted [claimant] on the head, indicating a close and friendly relationship between them. When teacher announced [class dismissal], [claimant] effectively managed her personal belongings, retrieved her backpack and joined a line to dismissal. While waiting, she gave a hug to another peer from the class, who appeared to be moving to a different classroom. Though the hug may have been slightly strong, the peer appeared to be comfortable with the interaction, indicated with a smile.

(Ex. D, p. B28.)

21. On standardized testing, LOT Kim administered the Miller Function & Participation Scales (M-FUN), which measures how a child's motor ability affects his or her ability to perform home and school activities and to participate in his or her social environment. On the M-FUN, claimant scored 88 on fine motor skills, which is in the mild/borderline range, and 89 on visual motor skills, which is in the average range. Her total score was 64 out of 75, which falls in the borderline below average range. LOT Kim also administered the Sensory Processing Measure, Second Edition (SPM-2) which measures a child's sensory functioning, praxis, and social participation in home, school, and community environments. Claimant's parents completed the SPM-2 Home Form, while claimant's second-grade teacher completed the SPM-2 School Form. On the SPM-2 School Form, claimant's second-grade teacher scored claimant in the "typical" range across all areas, which include Vision, Hearing, Touch, Taste & Smell, Body Awareness, Balance & Motion, Sensory Total, Planning & Ideas, Social Participation. On the SPM-2 Home Form, however, claimant's parents rated claimant has having

“moderate difficulties” in Vision, Hearing, and Planning & Ideas, and “severe difficulties” in Touch, Taste & Smell, Body Awareness, Balance & Motion, Sensory Total, and Social Participation. LOT Kim explained in her report the discrepancies in the rating of claimant’s teacher and her parents indicate claimant has more difficulty in the home environment.

22. LOT Kim concluded:

Within her educational setting, [claimant] demonstrates independent self-care skills such as completing toileting and self-feeding routine. . . . Based on classroom and assessment observation, [claimant] demonstrates functional sensory processing skills to access her educational curriculum as she is able to follow simple/familiar directions as well as multistep/novel instructions, comply with rules and redirections and complete preferred/non- preferred tasks/activities, given short breaks and verbal encouragement. In regards to social participation, [claimant] demonstrates functional skills within her educational setting. During classroom observation and teacher interview with [claimant’s first grade teacher] in May 2023, [claimant] displayed some difficulty in peer interaction. Based on classroom observation and teacher interview with [claimant’s second-grade teacher] in August 2023, [claimant] demonstrates functional social participation skills to engage and participate in her educational setting.

(Ex. 4, p. B37.)

Speech and Language Assessment (August 2023)

23. Claimant's school district also requested Elizabeth Alvarez, certified Speech and Language Pathologist (SLP), to conduct a speech and language assessment. SLP Alvarez conducted her assessment on August 17, 30, 31, and September 6, 2023. To complete her assessment, SLP Alvarez interviewed claimant's parents and teachers, conducted school observations, and administered standardized tests.

24. SLP Alvarez observed claimant at her school on August 17, 2023, for 20 minutes during recess, and on September 6, 2023, for 20 minutes in the classroom and 20 minutes during lunch break. During the August 17, 2023 recess observation, claimant talked to her peers in a socially appropriate manner while waiting in line to go to recess. She was patient and walked in an appropriate manner out to the playground. Claimant then saw SLP Alvarez and engaged her in conversation. SLP Alvarez wrote, "During this conversation, [claimant] answered and asked questions. She communicated in an appropriate volume and maintained appropriate social distance." (Ex. G, B83.) Afterwards, claimant walked away and joined another group which was engaged in a conversation with a supervisor. During this interaction, claimant engaged in reciprocal conversation and maintained appropriate distance between herself and others.

25. During the September 6, 2023 classroom observation, claimant was working independently when a guest teacher walked into the classroom. Claimant attempted to gain her second-grade teacher and the guest teacher's attention by saying their names. When the guest teacher did not respond, claimant waited until the teachers were done talking to attempt to gain their attention again. When the guest teacher responded to claimant, she then engaged in a conversation with the guest

teacher and her second-grade teacher. Claimant took turns, used facial expressions, and gestures throughout the conversation. Afterwards, claimant engaged in brief conversation with her classmates, and she followed the teacher's instructions to clean up, waited for further instructions, and helped her classmates by telling them to clean up. When the teacher and her classmates talked about cleaning and doing chores, claimant listened, raised her hand to share, and made on-topic comments once she was called on. Claimant did interrupt her teacher twice while her teacher spoke. However, when the teacher stopped and looked at claimant, "[claimant] was able to interpret her facial cues and stopped talking and waited to share once the teacher called on her." (Ex. G, B84.)

26. During the September 6, 2023, lunch time observation, SLP Alvarez wrote of claimant's interactions with her classmates:

. . . [Claimant] was seen initiating and maintaining conversations as she ate. She communicated using verbal and nonverbal cues (i.e. gestures). [Claimant] maintained appropriate social distance and leaned in when talking to her peers. She made eye contact, pointed to objects/people, and followed the gaze of her peers. She demonstrated these skills throughout the entirety of the lunch period. [Claimant] was constantly engaged in a conversation with at least one other student.

(Ex. G, p. B85.)

27. SLP Alvarez administered the Comprehensive Assessment of Spoken Language (CASL-2) to assess claimant's language skills. Claimant obtained scores in

the average range across all categories, which included synonyms, expressive vocabulary, grammatical judgment, nonliteral language, meaning from context, inference, and pragmatic language. Overall, claimant obtained scores in the average range in the general language ability index (general spoken language skill) and in the supralinguistic language index (ability to understand the deeper meaning of vocabulary and syntax). Additionally, SLP Alvarez administered Expressive One-Word Picture Vocabulary Test- 4th Edition to assess claimant's expressive vocabulary. On this test, claimant obtained scores in the average range.

28. SLP Alvarez also conducted informal tests, including language samples, informal assessment of social cognition, and input from claimant's second grade teacher. SLP Alvarez summarized her findings as follows:

. . . Additionally, [claimant's] social language fell within the average range on the CASL-2 assessment. This indicates she has the knowledge and skills necessary to interact appropriately with peers and adults. Informal assessments further support this by demonstrating her ability to take perspective, interpret facial cues, interpret tone of voice, and problem solve. Additionally, [claimant's second-grade] teacher rated her social skills mostly in the average to above average range. [Claimant's second-grade teacher] reported she does not have concerns regarding [claimant's] language or social skills. Observations revealed [claimant] is able to follow along in the classroom, participate, and engage with her peers in a variety of settings. She is able to interpret other's facial expressions and gestures, maintain

appropriate social distance, stay on topic, and initiate and maintain conversations with others.

(Ex. G, p. B90.)

29. SLP Alvarez concluded claimant does not meet eligibility criteria for speech and language impairment.

Functional Behavior Assessment (September 2023)

30. On September 8, 2023, Maria Santos, Resource Specialist Teacher (RST), performed a functional behavior assessment of claimant. For this assessment, RST Santos interviewed claimant's parents and her first-grade and second-grade teachers. During RST Santo's interview with claimant's parents, Mother shared concerns that claimant does not pick up on social cues from her classmates and is unable to understand boundaries with adults and strangers. Mother reported claimant makes unsafe choices or runs away from adults while being unaware of her surroundings. During RST Santo's interview with claimant's teachers, claimant's second-grade teacher shared claimant follows directions well, performs tasks assigned to her, and tries her best and wants to do well. Claimant's first-grade teacher reported claimant was on task when she was doing a preferred activity but would not do non-preferred activities to the best of her abilities. According to claimant's first-grade teacher claimant exhibited non-compliance in the classroom and at the school, and she has exhibited aggressed towards some of her classmates. Claimant's first-grade teacher expressed concerns about claimant's management of feelings and emotions when things do not go her way.

31. To assess claimant's behavior, RST Santos observed claimant at her school for two hours on August 20, 2023, three hours on August 31, 2023, three hours

and 10 minutes on September 5, 2023, two hours and 40 minutes on September 6, 2023, and three hours on September 7, 2023. These observations occurred during the classroom hours (including partner work, whole group, and independent work) and lunch time. RST Santos found zero occurrences of noncompliance and zero occurrence of aggression across 10 hours of observation for these behaviors. RST Santos found claimant was on task 87 percent of time, compared to her peers who were on task 73 percent of the time. RST Santos summarized her findings:

Observation of [claimant] took place in the classroom during class hours, cafeteria, transitioning from classroom to recess, and on the yard during lunch recess. Direct observations were done using Baseline Frequency. Targeted behaviors [of noncompliance and aggression] are not observed during this time. Antecedent-Behavior-Consequence (ABC) data collection is also used for direct observation. Targeted behaviors [of noncompliance and aggression] are not observed during this time. When compared with her peers, [claimant] is engaged 87% of intervals, and peers were engaged 73% of intervals as evidenced by the Planned Activity Check (Placheck) collection tool.

(Ex. E, p. B52.)

Psycho-Educational Assessment (May 2023 to September 2023)

32. Between May 2023, and September 2023, the school psychologist at claimant's elementary school conducted an evaluation of claimant to determine

claimant's continued eligibility for special education services and his current levels of performance. The school psychologist administered a battery of standardized tests, interviewed claimant's parents and her first-grade and second grade teachers, and observed claimant in her classroom and on the school yard on two separate dates. The school psychologist set forth her findings in a report dated September 8, 2023.

33. On August 25, 2023, the school psychologist observed claimant in her classroom for 30 minutes and in the school yard for 20 minutes during recess. On September 7, 2023, the school psychologist again observed claimant in her classroom for 30 minutes and in the school yard for 20 minutes during recess. The school psychologist summarized her observation of claimant as follows:

In summary, [claimant] consistently demonstrates appropriate adult interactions and good work habits. Overall, she also demonstrates appropriate interactions with peers. She is helpful, friendly, and it appears that she likes to be social. However, there may be times when she experiences difficulty with social cues or [has] difficulty incorporating herself as an active participant in a group social situation. Other than this slight difficulty with social interactions, no other behaviors or characteristics typically associated with an Autism Spectrum Disorder was observed.

(Ex. 6, p. B60.)

34. The school psychologist administered a battery of standardized tests. The Cognitive Assessment System, Second Edition (CAS-2) was administered to assess claimant's cognitive functioning. The CAS-2 measures overall cognitive functioning by

combining a student's performance in planning, attention, simultaneous processing, and successive processing. Measurements in these four areas of processing yield scores for the student's working memory and executive functioning. Claimant scored within the average range in planning, simultaneous processing, and attention scales. She scored within the low average range on the successive processing scale. On the Supplemental CAS-2 composite scores, claimant scored within the average range in executive function, working memory, and executive function with working memory.

35. The Comprehensive Test of Phonological Processing-Second Edition (CTOPP-2) was administered to measure claimant's phonological and auditory processing skills. The CTOPP-2 uses a variety of tasks to assess a student's ability to work with auditory/phonological processing information. Claimant scored within the high average range on the phonological awareness composite, indicating strength understanding the relations between written and spoken language. She scored within the average range on the phonological memory composite, indicating adequate ability coding information phonologically for temporary storage in working or short-term memory. She scored within the low average range on the rapid symbolic naming composite, indicating adequate ability retrieving phonological information from long-term or permanent memory. Overall, claimant's performance on the CTOPP-2 suggests average auditory processing skills.

36. Test of Visual Perceptual Skills (Non-Motor)-4th Edition (TVPS-4) was administered as a non-verbal measure of claimant's visual processing skills. Claimant scored in the average range on all subtests, except for figure ground subtest, where she scored in the low average range. Claimant's overall performance on the TVPS-4 suggests average visual processing skills.

37. Beery-Buktenica Developmental Test of Visual Motor Integration, 6th Edition (VMI-6) was administered to measure claimant's "hand-eye" coordination. Claimant scored within the Average range on the VMI-6, indicating adequate visual motor integration skills.

38. The school psychologist concluded that the results of the assessment indicate claimant is functioning within the average to high average range of cognitive ability. She wrote, "Overall, [claimant] does not evidence psychological processing deficits which adversely impact her educational access and performance at this time." (Ex. 6, p. B64.)

39. Claimant's academic achievement, as measured by the Woodcock-Johnson Tests of Achievement, Fourth Edition was in the average range across all subtests, including reading, broad reading, mathematics, broad mathematics, written language, spelling, calculation, and writing samples. Claimant's first-grade teacher reported claimant demonstrated all aspects of school readiness and was either on or above her grade level in reading, mathematics, and spelling/written expression. The school psychologist concluded:

[Claimant's] most recent progress report indicates overall academic performance is at or above grade level expectations. Current classroom-based assessments show age-appropriate progress. Standardized test results reflect academic strengths in the areas of English Language Arts and Math. Although written language was her lowest area of performance, her score still fell within the Average range. Therefore, [claimant's] current overall performance does not suggest a significant educational impact.

(Ex. 6, p. B65.)

40. To assess claimant's social-emotional status, the school psychologist interviewed claimant's parents and teachers. During the parent interview, claimant's mother expressed concerns about claimant's attention, hyperactivity, and impulsivity. Mother also indicated she would like for claimant to improve her social skills so that her social experience reflects her kindness and desire to be a good friend. During the teacher interviews, claimant's first-grade teacher reported claimant had difficulty taking responsibility for her actions, could be openly defiant and oppositional to requests, and could lose emotional control when she felt frustrated. The first-grade teacher also observed that sometimes claimant had difficulty joining her classmates in play and preferred to be on her own. Claimant's second-grade teacher, however, reported claimant consistently demonstrated appropriate interactions with her teacher. She follows teacher's directions, complies with classroom rules, engages in appropriate social interactions with adults, reciprocates greetings, initiates social interactions with adults, and maintains eye contact. She also consistently demonstrates appropriate interactions with her classmates. Claimant gets along well with peers, is friendly and social, shows interest in her classmates, reciprocates peer-initiated social interactions, and initiates social interactions with classmates. According to claimant's second grade-teacher, claimant does not remain quiet or keep to herself.

41. The school psychologist also administered behavior rating scales (Behavior Assessment System for Children, Third Edition (BASC-3), Conners-3rd Edition (Conners-3), and Autism Spectrum Rating Scales (ASRS)) with claimant's first-grade teacher and Mother as reporters. Because those tests administered while claimant was in the first grade, the results indicated that claimant demonstrated areas of need in Hyperactivity/Impulsivity, Defiance/Aggression, Peer/Family Relations, Peer/ Adult

Socialization, Social/Emotional Reciprocity, and Social/Communication. However, the school psychologist noted claimant's current, second-grade teacher reported no behavioral or social-emotional concerns this school year and her current teacher's report is consistent with observations and other school staff reports. Therefore, the school psychologist reasoned claimant does not evidence social, emotional and behavioral needs which adversely impact her educational access and performance at this time.

42. Based on the information from her review of the documents as well as the testing data, the school psychologist concluded that claimant did not meet the eligibility criteria for special education under categories of Specific Learning Disability, Other Health Impairment, or Autism. An individualized education program (IEP) meeting was held on September 14, 2023, during which claimant's school district found claimant not eligible for special education services. Claimant's parents are contesting this finding.

Reports From Other Providers

CLAIMANT'S PEDIATRICIAN

43. Claimant's pediatrician, Kyle Whitney Monk, M.D., wrote a letter dated January 31, 2024, stating claimant has deficits in hygiene, self-care, language skills, and social skills. (Ex. B) However, Dr. Monk did not provide any examples of these deficits that he had personally observed in his letter.

CLAIMANT'S SOCIAL SKILLS TRAINING SUPERVISOR

44. In a letter dated September 5, 2023, Erica Rich, Ph.D., Clinical Director and Supervisor at Rich & Associates, described claimant's behaviors during her social

skills class. Claimant has attended social skills training at Rich & Associates since May 2023. Dr. Rich observed claimant has difficulty with body boundaries, makes rude and insensitive comments to others, cannot read social cues when others are annoyed or disinterested, and has difficulty expressing her ideas to others. Dr. Rich also described claimant's difficulties in adaptive functioning, as claimant required prompting to wash her hands appropriately, had difficulty opening her food items, spilled food on herself, and required help with clothing items. Moreover, Dr. Rich noted, "[Claimant] is unable to engage in play with others that includes a true reciprocity of ideas, conversation, and respect. While her vivacious personality might at first attract peers, they are soon turned off by [claimant's] poor social skills, as noted above." (Ex. 5, p. A59.) Dr. Rich's letter did not contain any standardized testing of claimant's behavioral issues.

PRAGMATIC LANGUAGE EVALUATION BY KATIE HOOPS, SLP

45. On February 11, 2024, Katie Hoops, SLP, conducted a pragmatic language evaluation of claimant by videoconference. SLP Hoops interviewed Mother and administered the Clinical Assessment of Pragmatics (CAPs) and the Clinical Evaluation of Language Fundamentals, 5th Edition, Pragmatics Profile (CEFLP5-PP) to assess claimant's pragmatic language.

46. Of claimant's scores on the CAPs, SLP Hoops wrote in relevant part:

[Claimant's] scores on the CAPs indicate strength in the following areas: awareness of basic social routines, reading nonverbal cues, and using social routine language. Areas of weakness include: reading context cues, expressing emotions, and using nonverbal cues. Although [claimant's] Core Pragmatic Language Composite score reflects overall

pragmatic language skills within the low average range for her age, index scores indicate that she understands social routines and social cues, but does not effectively use social routine language or age-appropriate nonverbal communication. . . .

(Ex. I, B103.)

47. The CELF-5 is a checklist completed by SLP Hoops with input from Mother. Skills are rated on a scale from 1 to 4, with 1 meaning “never or almost never” and 4 meaning “always or almost always.” On the CELF-5, Mother indicated claimant’s observed skills fell within the 1 to 2 point range across the categories of Ritual and Conversational Skills; Asks For, Gives, and Responds to Information; and Nonverbal Communication Skills. SLP Hoops did not provide an explanation of the significance of claimant’s scores on the CELF-5 in her report.

48. SLP Hoops summarized that claimant presents with pragmatic language strengths which include awareness of basic social routines, reading nonverbal cues, and using social routine language. Claimant’s pragmatic language deficits include reading context cues, expressing emotions, and using nonverbal cues. SLP Hoops recommended that claimant receive instruction and practice in social language skills to help her identify and pursue social communication opportunities.

SCHEFLEN SPEECH-LANGUAGE EVALUATION

49. On February 13, 2024, Sarah Clifford-Scheflen, SLP, conducted an evaluation of claimant for her pragmatic language and social skills. Although SLP Scheflen did not administer any standardized tests, she informally surveyed claimant for her pragmatic language, social skills, and behavior during a 50-minute pragmatic

language focused social skills group therapy session, where claimant was introduced to three same-aged peers. SLP Scheflen summarized that claimant displayed the following difficulties during this group session: (1) "reading the room" and joining in play and conversation for a variety of activities and topics; (2) recognizing and understanding non-verbal cues; (3) using language to solve problems in social situations; (4) using language to connect with her peers, rather than directing them; (5) engaging in back and forth conversations for a variety of topics. SLP Scheflen concluded, "[claimant] presents with deficits in her pragmatic language skills consistent with her diagnosis of autism." (Ex. J, p. B110.) SLP Scheflen recommended that claimant receive speech and language therapy from an SLP one to two hours per week in a small group setting comprised of matched peers.

Testimony of Laurie McKnight Brown, Ph.D.

50. Laurie McKnight Brown, Ph.D., is Service Agency's lead psychologist consultant. She is a licensed clinical psychologist. She is a member of the Service Agency's eligibility team, which consists of a physician, a licensed clinical psychologist, a nutritionist, and an educational specialist.

51. At the hearing, Dr. McKnight Brown testified to provide a more detailed explanation of the eligibility team's determination that claimant did not qualify for regional center services. Dr. McKnight Brown conceded claimant has ASD. However, she opined the overall records in claimant's case indicate claimant does not have a substantial disability because she suffers significant functional limitations in the area of self-direction only. According to Dr. McKnight Brown, claimant has significant deficits in her social skills, emotional regulation, and self-initiative, which all fall into the area of self-direction. Dr. McKnight Brown asserted the eligibility team did not consider the areas of independent living skills and economic self-sufficiency because these

categories are not considered for children of claimant's age under the Association of Regional Center Agencies Guidelines on Assessing "Substantial Disability" (ARCA Guidelines).

52. Dr. McKnight Brown noted that Dr. Hill's Psychological Evaluation showed that there were no concerns with claimant's motor skills, cognitive ability, or language skills. Specifically, Dr. Hill's cognitive testing demonstrated claimant's IQ on the CTONI-2 was 117, in the above average range. Dr. Hill diagnosed claimant with ASD without language and intellectual impairment. Thus, according to Dr. McKnight Brown, language is a not an area of disability for claimant.

53. Dr. McKnight Brown testified the eligibility team also focused on the results of the ABAS-3, which measured claimant's adaptive functioning. Dr. McKnight Brown opined that claimant's scores on the ABAS-3 were either in the low average, or the borderline range, which she characterized as "not average, but not low." According to Dr. McKnight Brown, a low score, indicating significant deficits, would be two standard deviations away from the mean, a score that claimant only obtained in the subtest of safety under the Practical Domain on the ABAS-3. Dr. McKnight Brown cited to the portion of Dr. Hill's report, which stated, in relevant part:

[Claimant's] ability to function and get around in the community, including shopping and using community resources, is in the Average range. [Claimant's] level of functioning inside the home, including cleaning, food preparation, performing chores and taking care of personal possessions, is in the Below Average range. [Claimant's] ability to protect her physical well-being and prevent and respond to injuries, including following safety rules,

showing caution, and using medicine, when appropriate, is in the Low range. Her ability to perform self-care activities such as eating, dressing, and taking care of personal hygiene is in the Average range.

(Ex. 3, p. A27.)

54. Based on claimant's scores in self-care skills on the ABAS-3 and Mother's report to CSW Buchanan that claimant can perform self-care tasks with prompting, Dr. McKnight Brown concluded claimant does not demonstrate any deficits in self-care. However, Dr. McKnight Brown conceded claimant has a deficit in safety, as her scores on the ABAS-3 in this area was in the low range.

55. Dr. McKnight Brown also considered the school psychologist's Psychoeducational Assessment and claimant's current IEP report. Dr. McKnight Brown summarized the findings of the Psychoeducational Assessment as showing claimant having no needs in the areas of reading, writing, math, and language because claimant obtained average scores in standardized testing in these areas. The school psychologist's testing also confirmed claimant's cognitive ability was in the high average range. In the area of academic achievement, claimant is performing as expected for her age. While claimant's first-grade teacher reported some social emotional issues with defiance and aggression, her second-grade teacher reported no social-emotional concerns in the classroom setting. The IEP found claimant not eligible for special education services. Additionally, Dr. Knight Brown noted her receipt of the Functional Behavioral Assessment, which confirmed that claimant was observed at school over several days for 10 hours, but no behaviors of noncompliance or aggression were identified. Dr. Knight Brown concluded that these documents do not provide evidence of any other areas of significant functional limitation in claimant.

Father's Testimony

56. Father testified at the hearing regarding claimant's deficits he has observed. Father believes claimant lacks self-care skills. Specifically, Father reported claimant need help with toileting, brushing teeth, and combing her hair. Claimant also does not blow her nose and allows her snot to hang out. Claimant's food choices are also restricted, and she often gags or throw up her food.

57. Father believes claimant has receptive/expressive language deficits. He reported claimant engages in "baby talk" and talks like a two-year old. When she has a tantrum, claimant would kick, and if asked to stop, she will not comply, or she will growl as a response. Father reported claimant has shown noncompliance in her private school in the first grade, when she stood on her table during class, but her private school refused to document these episodes. According to Father, claimant cannot read social cues, and she does not understand what her teachers say. Her current second-grade teacher is highly skilled and took it upon herself to make a connection with claimant. However, in the most recent two weeks, claimant's parents have received reports from her teacher of claimant's poor interactions with peers, not listening to her teachers, pouring water on other kids, kicking other kids on the playground, and ignoring the adults on the playground.

58. Father disputed the findings of the Functional Behavioral Report as inaccurate. He believes claimant was in her "honeymoon period" during RST Santo's observations. He also speculated claimant knew RST Santos was watching her and thus behaved differently. Father also disputed the observations of the school psychologist in September 2023. He pointed out that the school psychologist's observation of claimant during recess involved a structured activity, but claimant has difficulty with

unstructured play. Father reported claimant sits by herself at recess, and when a peer is being mean to her, she withdraws rather than confront.

59. Father also believes claimant also has deficits in fine motor skills. He reported claimant is unable to button or use a zipper on her own. Father stated parental reports to CSW Buchanan that claimant knows how to fasten her buttons and zipper (Ex. 2, p. A20) and parental report to OT Kim that claimant needed "minimal assistance to fasten/unfasten fasteners (buttons, zippers, snaps)" (Ex. D, p. B33) were not accurate because at that time, they were not aware of what was normal. Moreover, Father believes claimant has learning deficits, as claimant's teachers must present information in a different way for claimant to learn.

Mother's Testimony

60. Mother also testified at the hearing regarding claimant's deficits she has observed. In the area of self-care, Mother reported claimant is unable to wipe herself properly after toileting, and Mother has found fecal matter on her underwear and sometime in claimant's bed (because claimant sleeps in her bed without clothes). Claimant also cannot tolerate the feeling of lotion on her skin, and she scratches herself until she bleeds. Claimant cannot comb her hair by herself because she does not like the feeling of bristles on her head sensation. Claimant's parents comb her hair a small portion at a time with breaks in between. Claimant also cannot tolerate the feeling of running water on her skin and has to bathe rather than take a shower. Claimant needs assistance with brushing her teeth because she does not like the sensation of bristles on her gum. Additionally, when claimant eats, she sometimes gags and will throw everything up.

61. In the area of language, Mother believes claimant lacks the ability to communicate her needs. Instead, claimant engages in kicking, grunting, head-butting to express her frustrations. Mother pointed to Dr. Rich's comments on claimant's poor social skills and lack of reciprocity in her conversations with her peers as evidence of deficits in her pragmatic language. (Ex. 5, p. A59.) Mother noted claimant's second-grade teacher is invested in claimant's success, and claimant has done well in her classroom. However, Mother does not believe claimant has the skills to be successful in the class setting on her own.

62. In the area of capacity for independent living, Mother reported claimant cannot perform many of the household chores. She recounted that claimant is capable of going to the cabinet and get a bowl of cereal for herself, but the cereal would be spilled all over the floor. Claimant sometimes puts chalk or sand in her mouth, and she cannot be left unsupervised. Claimant was given a weekly allowance previously, but claimant was unable to grasp the concept of saving and gave money away to others. Claimant is also unaware of safety issues. She will not sit in car seat, and she has tried to run out of the car. Mother also recounted a situation when claimant attended her private school. She was put together with two other boys who asked her to lift up her skirt. Because claimant was uncomfortable reporting the boys to the teacher, claimant was sexually assaulted.

63. Overall, Mother believes claimant is functioning on the level of a five-year old. If claimant is found eligible, Mother hopes to receive assistance in case management from Service Agency because she has found it difficult to navigate the system. Mother testified she and her husband need guidance on how to help claimant now that she has been diagnosed with autism. Mother and Father want to make sure claimant is able to access all the resources that are available to her.

Findings on Substantial Disability

64. Claimant established by a preponderance of the evidence that she has significant functional limitations in the following areas of major life activity, as appropriate to a person of her age:

- Self-direction. The parties agree that claimant has significant functional limitations in self-direction.
- Capacity for independent living. Although Dr. McKnight Brown asserted that capacity for independent living is not an area under consideration for a child of claimant's age, this assertion is not credited, as the ARCA Guidelines state otherwise. The ARCA Guidelines suggest that for children of school age, factors including chores a child is expected to perform at home, ability to be left unsupervised, and safety awareness, must be considered in determining whether a claimant has a noticeable impairment in the ability to perform age-appropriate daily living skills. (Ex. 8, p. A104.) Mother's testimony established that claimant is unable to perform age-appropriate household chores and lacks basic safety awareness. Claimant's lack of safety awareness is also corroborated by Dr. Hill's testing, as claimant's scores in the subtest of safety under the Practical Domain on the ABAS-3 was in the low range. (Ex. 3, p. A27.) Dr. McKnight Brown also acknowledged claimant's deficits in safety awareness. (Factual Finding 54.)

65. Claimant did not establish by a preponderance of the evidence that she has significant functional limitations in the following areas of major life activity, as appropriate to a person of her age:

- Receptive and expressive language. Dr. Hill diagnosed claimant with ASD without accompanying language impairment, although she rated claimant's social

communication as requiring substantial support. Dr. Hill recommended further assessment by speech and language therapists. Claimant's school speech and language therapist and a speech and language therapist retained by claimant conducted such assessments focusing on claimant's pragmatic language. Claimant's school speech and language therapist, SLP Alvarez, observed claimant in the school setting during three sessions across different contexts (classroom, recess, and lunchtime). Based on her observations, she found claimant is able to follow along in the classroom, participate, and engage with her peers in a variety of settings. According to SLP Alvarez, claimant is able to interpret other's facial expressions and gestures, maintain appropriate social distance, stay on topic, and initiate and maintain conversations with others. SLP Alvarez also administered to claimant to CASL-2 to assess claimant's social language skills and Expressive One-Word Picture Vocabulary Test 4th Edition to assess claimant's expressive vocabulary. On both tests, claimant's scores were in the average range. Additionally, the speech and language therapist retained by claimant, SLP Hoops, found that using CAPs as a standardized test, claimant's overall pragmatic language skills are within the low average range for her age. Thus, while claimant has some deficits in her pragmatic language, there is little indication of a significant deficit.

Claimant's difficulties in reading social cues and engaging in social play observed by Dr. Rich in claimant's social skill group and by SLP Scheflen during her informal survey sessions were considered in the area of receptive and expressive language. However the ARCA guidelines requires "significant difficulty understanding a simple conversation," "needing information to be rephrased in a simpler level in order to enhance understanding," "significant difficulty following directions," or "significant difficulty understanding and interpreting nonverbal communication" in the area of receptive language; and "significant difficulty participating in basic conversation"

“significant difficulty communicating information effectively,” or “atypical speech patterns.” (Ex. 8, p. A97.) Thus, the ARCA Guides require not only difficulty in these identified areas, but *significant* difficulty. Although Dr. Rich and SLP Scheflen provided anecdotal evidence of weaknesses in claimant’s pragmatic language skills, there was no explanation in their reports of how significant those deficits were. Therefore, the findings of SLP Alvarez and Hoops were more persuasive, as they were corroborated by standardized testing which showed either no deficit or little deficit in claimant’s pragmatic language skills.

- Self-care. Although at this hearing, Mother and Father testified to many deficits in claimant’s self-care skills at home, these reports are not corroborated by the prior reports claimant’s parents made to SC Buchanan during the psychosocial assessment, the ABAS-3 administered by Dr. Hill (which relied on parental reporting), and by OT Kim’s report (which relied on both teacher and parental reporting). Mother reported to SC Buchanan that claimant is able to perform self-care tasks with prompting. Dr. Hill, on the ABAS-3’s Practical Domain, found claimant’s ability to perform self-care activities such as eating, dressing, and taking care of personal hygiene is in the average range. OT Kim found claimant demonstrated the ability to complete daily self-care activities such as self-feeding, toileting, dressing within her educational environment. OT Kim also noted claimant’s teacher confirmed this finding, and claimant’s parents reported claimant required moderate assistance to wash/dry hands and minimal assistance to fasten/unfasten buttons and zippers, use utensils without spillage, open packages, and clean face and mouth at home. Although claimant’s initial reporting of claimant’s self-care skills at home could have been affected by their lack of knowledge of autistic behaviors, OT Kim completed her assessment in May and August 2023, after claimant was diagnosed with ASD in March

2023. Moreover, there is little evidence of claimant's deficits in self-care skills in the school setting.

- Learning. Claimant's IQ scores is in the high average range. Standardized testing in claimant's school evaluations also indicates that she is performing at or above grade level in terms of academic achievement.
- Mobility. No evidence was presented that claimant has significant functional limitations in the area of mobility.
- Economic self-sufficiency. The ARCA Guidelines recommends that for selecting economic self-sufficiency as an area of substantial disability, the applicant should be at least 16 years old. Therefore, this area is not applicable to this case. (Ex. 8, p. A106.)

LEGAL CONCLUSIONS

1. Because claimant is the party asserting a claim, she bears the burden of proving, by a preponderance of the evidence, that she is eligible for government benefits or services. (See Evid. Code, §§ 115 and 500.) She has not met this burden.

2. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 et seq.) Eligibility for regional center services is limited to those persons meeting the criteria for one of the five categories of developmental disabilities set forth in Welfare and Institutions Code section 4512, subdivision (a), as follows:

"Developmental disability" means a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a

substantial disability for that individual.... [T]his term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with intellectual disability [commonly known as the "fifth category"], but shall not include other handicapping conditions that are solely physical in nature.

3. The qualifying condition(s) must also cause a substantial disability. (Welf. & Inst. Code, § 4512, subd. (a); Regulation 54001, subd. (b)(3).) A "substantial disability" is defined by Regulation 54001, subdivision (a), as:

(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.

4. Applying the evidence in this case to the above-described categories, claimant is not substantially disabled, even though she is properly diagnosed with ASD. It is undisputed that claimant has significant deficits in the area of self-direction. Dr. McKnight Brown concedes claimant also has deficits in safety awareness, which she also categorized under the area of self-direction. Dr. McKnight Brown also did not consider claimant under the area of capacity for independent living due to her age. This is an incorrect interpretation of the ARCA guidelines, which requires consideration of safety awareness issues for children of claimant's age under the area of capacity for independent living. (Ex. 8, p. A104.)

5. Despite this mistake in interpreting the ARCA Guidelines, however, Dr. McKnight Brown's opinion that claimant did not have significant functional limitations in the areas of receptive and expressive language, self-care, learning, and mobility was unrefuted and supported by the evidence, and thus, persuasive. While claimant's parents report significant limitations in these areas at home, these reports are not borne out by the evaluations conducted by Dr. Hill, by claimant's school district, and by SLP Hoop. Claimant's parents dispute the validity of evaluations conducted by claimant's school district. However, four different providers across different disciplines, OT Kim, SLP Alvarez, RST Santos, and the school psychologist, completed the evaluations. These providers observed claimant over several days in different contexts (in the classroom, at recess, at lunchtime) for approximately 20 hours in total. These

providers also administered standardized tests to support their observations. The reports of these providers consistently show that claimant does not suffer any significant functional deficits in receptive and expressive language, self-care, learning, and mobility at her school, even if claimant has exhibited some deficits in these areas at home.

6. Under these circumstances, claimant has significant functional limitations in only two areas of her major life activity listed in Regulation 54001, subdivision (a)(2). Claimant's ASD has not resulted in a major impairment of her cognitive and social functioning, as required by Regulation 54001, subdivision (a)(1). Therefore, claimant has not established that her qualifying condition has caused her to be substantially disabled, and her appeal is denied at this time.

ORDER

Claimant is not eligible for services under the Lanterman Developmental Disabilities Services Act at this time. Claimant's appeal of South Center Los Angeles Regional Center's determination that she is not eligible for regional center services is therefore DENIED.

DATE:

JI-LAN ZANG
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.