BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Fair Hearing Request of:

CLAIMANT,

vs.

NORTH LOS ANGELES COUNTY REGIONAL CENTER,

Service Agency.

DDS No. CS0009792

OAH No. 2023100584

DECISION

Cindy F. Forman, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference and telephone on February 12, 2024. The record closed and the matter was submitted for decision at the end of the hearing.

Claimant was represented by her mother (mother). The names of claimant and her family members are omitted to protect their privacy and maintain their confidentiality.

Cristina Aguirre, Due Process Officer, represented North Los Angeles County Regional Center (NLACRC).

ISSUE

Is claimant eligible for services under the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare & Institutions Code section 4500 et seq., based on a diagnosis of autism spectrum disorder (ASD), intellectual disability, or of what is commonly referred to as the fifth category, i.e., she has a condition similar to or requiring treatment similar to that required by individuals with intellectual disability (fifth category condition)?

EVIDENCE RELIED ON

In making this decision, the ALJ relied on NLACRC's exhibits 1 through 12, and the testimony by Heike Ballmaier, Psy.D., BCBA, and mother.

FACTUAL FINDINGS

Jurisdictional Matters

1. On May 10, 2023, mother submitted an application to NLACRC for claimant to receive regional center services.

2. In a Notice of Action dated September 21, 2023, NLACRC denied mother's request for regional center services because NLACRC found claimant did not

have a developmental disability as defined by the Lanterman Act and California Code of Regulations, title 17, section 5400.

3. On September 27, 2023, claimant filed an appeal of NLACRC's denial.

4. All jurisdictional requirements were met.

Background Information

5. Claimant is a five-year-old girl. She lives with her mother and three siblings. Until recently, claimant attended a pre-kindergarten program at a private school. Claimant receives medical services through and is insured by Kaiser.

6. Claimant had an uneventful delivery. There are no reports of prenatal maternal or fetal complications. According to mother, claimant sat up without support at nine months, crawled at eight months, and walked at 12 months. Mother has expressed no concerns with claimant's coordination and gross motor skills.

7. Claimant was fully toilet trained at four years old. She has no vision or hearing issues. Claimant has problems with her fine motor skills, including using utensils and putting on clothing.

8. Mother seeks regional center services for claimant because she believes claimant has behaviors consistent with ASD. Mother reported in the NLACRC Intake Application that claimant engages in a "lot of hand flapping," tip-toeing, screaming, and spinning. Claimant's mother also reported claimant does not stay still, does not like to share toys, does not listen to directions, does not engage in a "lot of eye contact" and is aggressive at times. (Exhibit 4, p. A29.) Additionally, mother expressed concern about claimant's inability to say full sentences, her dislike of having people around her, and her lack of safety awareness. (*Id.*, p. A30.)

Kaiser Evaluation

9. Because she was concerned about claimant's behavior and speech, mother arranged for a Developmental-Behavioral Pediatric Consultation at the Kaiser Children's Center for Attentional Problems for claimant. The consultation occurred on May 9, 2023, and as part of the consultation, claimant was evaluated by a multidisciplinary team consisting of a psychologist, an occupational therapist, a speech and language pathologist, and Kristina Galura, M.D., a developmental and behavioral pediatrician (Kaiser team). Dr. Galura prepared a report of the consultation, admitted into evidence as Exhibit 3. According to the report, the purpose of the consultation was "to clarify concerns of social interaction/engagement and rule out autism." (Exhibit 3, p. A17.)

10. The Kaiser team observed claimant, requested claimant's mother to complete various questionnaires, and administered several tests to assess claimant's intelligence, language, and behavior. Claimant's mother reported the same issues with claimant's behavior and speech to the Kaiser team as she reported on the Intake Form. (Exhibit 3, p. A19.) Claimant's mother also completed a Vanderbilt questionnaire to evaluate whether claimant presented with attention deficit hyperactivity disorder (ADHD). According to the Kaiser report, responses by claimant's mother as well as claimant's school to the Vanderbilt questionnaire indicated claimant "often or very often exhibits behaviors usually associated" with ADHD, including not paying attention, not listening, having difficulty organizing tasks, not following through, easily distracted, having difficulty remaining sitting and waiting her turn, running about when remaining seating is expected, and not wanting to start tasks that require ongoing mental efforts. (Exhibit 3, p. A20.)

11. The Kaiser team administered speech and language assessments as well as assessments for functional abilities. Claimant scored in the fifth percentile for language and the seventh percentile for functional abilities. Although Dr. Galura's report indicates the Kaiser team also administered an intelligence assessment, the report does not include claimant's scores from that assessment.

12. On the Autism Diagnostic Observation Schedule – Second Edition (ADOS-2), which allows the examiner to observe the occurrence or nonoccurrence of behaviors identified as important to a diagnosis of ASD, the Kaiser team found claimant exhibited few symptoms consistent with children with autism. (Exhibit 3, p. A22.) Although the Kaiser team observed or mother reported deficits in social or emotional reciprocity, the Kaiser team noted claimant had great eye contact, used a wide variety of gestures, shared information, engaged in pretend play, was able to follow the examiner's lead, and expressed "true shared enjoyment." (*Id.*, p. A23.) The team noted claimant needs "structure to provide reciprocal conversation" and found open questions challenging. Additionally, although the Kaiser team observed claimant use repetitive speech at times, the team did not observe claimant exhibit any repetitive behaviors or show any excessive adherence to routines or ritualized patterns of verbal or nonverbal behavior. (*Ibid.*) The Kaiser team did not find claimant's issues caused clinically significant impairment in her social, occupational, or other key areas of current functioning. The Kaiser team also did not find claimant's issues resulted from intellectual disability or global developmental delay. (*Id.,* pp. A25-A26.)

13. Based on its findings, the Kaiser team diagnosed claimant with developmental delays and "monitor for ADHD." The team recommended claimant receive clinic-based speech therapy and return for a follow-up in one year to evaluate claimant's possible ADHD. (Exhibit 3, p. A26.)

Medical Review

14. On May 14, 2023, Carlo DeAntonio, M.D., reviewed claimant's medical charts on behalf of NLACRC. Dr. DeAntonio found no information in claimant's charts to suggest the presence of a substantially handicapping cerebral palsy or epilepsy. He also noted the Kaiser team did not diagnose claimant with ASD. (Exhibit 6.)

Psychological Assessment

15. On July 18, 2023, Myah Gittelson, Psy.D., a California licensed psychologist, at NLACRC's request, conducted a psychological assessment to determine claimant's current levels of cognitive and adaptive functioning and to rule out ASD. Dr. Gittelson also observed claimant at school on September 8, 2023. A report of her findings was admitted as Exhibit 7.

16. Dr. Gittelson administered the Wechsler Preschool and Primary Scale of Intelligence-Fourth Edition to assess claimant's cognitive functioning. Claimant's scores ranged from borderline to average, with weakness in verbal comprehension (fourth percentile). According to Dr. Gittelson, claimant showed some adequate skill in verbally answering questions without visual cues and pointing out pictures with similarities to the target group. However, claimant struggled with verbally describing similarities between objects without visual cues. Claimant scored low average on the visual-spatial intelligence scale, with adequate skills for manipulating blocks to replicate presented designs and better skills for completing multi-piece puzzles. Claimant scored low average on fluid reasoning, with adequate skills for scanning patterns and completing patterns with the missing picture and better skills for deciphering among pictures those with commonality. (Exhibit 7, p. A45.)

17. To evaluate whether claimant presented with ASD, Dr. Gittelson sought information about claimant from mother, personally observed claimant, and administered the ADOS-2 to claimant. Dr. Gittelson was unable to gather information about claimant's adaptive skills because she did not receive the questionnaire regarding such information from mother. (Exhibit 7, pp. A45-A46.) Mother's responses to the Social Responsiveness Scale 2nd Edition, which measures the severity of ASD symptoms, indicated clinically significant deficiencies in reciprocal social behavior that could interfere with everyday social interactions, and which are strongly associated with a clinical diagnosis of ASD. (*Id.*, pp. A46–A47.)

18. Dr. Gittelson found claimant's scores on the ADOS-2 were below those indicative of ASD. However, Dr. Gittelson expressed concern about the quality of claimant's social overtures and joint attention rather than the lack of any trait or behavior. (*Id.*, p. A46.) Both in her office and at claimant's school, Dr. Gittelson observed claimant to display both social initiation and responsiveness to social interactions initiated by others more often than a child with a diagnosis of ASD. Dr. Gittelson also observed claimant display appropriate eye contact and gestures. According to Dr. Gittelson, claimant also exhibited pretend play in a self-directed way. Dr. Gittelson reported claimant answered questions related to the topic, however, she had difficulty expressing specific details. Claimant showed a clear interest in interacting with Dr. Gittelson, but Dr. Gittelson found claimant's initiations and interactions were not always at appropriate times or sustained. Dr. Gittelson observed claimant hand-flapping, spinning, and rocking but only in the waiting room; Dr. Gittelson noted she did not observe these behaviors when claimant was in Dr. Gittelson's office. In the school setting, Dr. Gittelson observed claimant lacked interest in direct play with peers and went into emotional dysregulation. (Exhibit 7, pp. A47-A51.)

19. Based on her own observations and assessments, mother's reporting, and the results of the Vanderbilt questionnaire completed at the Kaiser evaluation, Dr. Gittelson's diagnosis for claimant was Rule-out Autism Spectrum Disorder, Rule-out Attention Deficit Hyperactivity Disorder (per Kaiser findings), and Language Disorder. Dr. Gittelson did not find claimant presented with intellectual disability. However, she expressed concern for claimant's cognitive ability because many of her scores were in the borderline and low average range. (Exhibit 7, p. A51.)

20. Based on her diagnoses, Dr. Gittelson recommended speech therapy and the implementation of intensive behavioral intervention, such as ABA therapy, to start addressing claimant's behaviors at home and in school. She suggested a follow-up evaluation within six to 12 months to continue to rule out ASD and ADHD as possible diagnoses. Dr. Gittelson also recommended a re-evaluation of claimant's cognitive skills in the future if concerns persist for below-average intelligence. Dr. Gittelson encouraged mother to discuss these concerns with claimant's medical team at Kaiser and also initiate the "IEP process" (the process to obtain an Individualized Education Plan (IEP)) to determine claimant's eligibility for school–based services to address claimant's needs. (Exhibit 7, pp. A51–A52.)

NLACRC Denial

21. On September 19, 2023, the NLACRC Interdisciplinary Team (NLACRC team) met to review claimant's medical records, including the Kaiser evaluation, Dr. Gittelson's report, and other information provided by mother. The NLACRC team did not find claimant currently presents with epilepsy, cerebral palsy, ASD, intellectual disability, or a fifth-category condition. The team recommended claimant follow up with her local school to determine her eligibility for school-based services and with a mental health provider because of her attention issues. The team indicated claimant

may return in the future after she receives school-based services if there is "increased concern." (Exhibit 8.)

Testimony by Heike Ballmaier, Psy.D., BCBA

22. Dr. Ballmaier is the Senior Clinical Psychologist specialist at NLACRC and has worked at NLACRC for 25 years conducting psychology evaluations regularly. Dr. Ballmaier is also part of the NLACRC team charged with determining claimant's eligibility for regional center services. At hearing, Dr. Ballmaier reviewed the reports by Kaiser and Dr. Gittelson and explained the reasons for the NLACRC team's denial of claimant's request for services. Dr. Ballmaier testified the records indicated claimant showed some symptoms of ASD but not enough to qualify for an ASD diagnosis. Dr. Ballmaier explained the NLACRC team believed claimant should be assessed by the school district for language delays and evaluated by a mental health professional because of claimant's attention deficits. She also noted claimant should return to the regional center for another evaluation if her needs remain unaddressed after claimant is assessed by the school district and placed in a suitable school setting.

Mother's Testimony

23. Mother's testimony echoed the concerns she expressed in the Intake Application. According to Mother, claimant is behind in her speech, cries throughout the day, has many intense tantrums, tip-toe walks, flaps her hands, and spins her body frequently. Claimant does not focus on her tasks. She has trouble sharing and often acts aggressively with her siblings. Claimant sometimes wanders away from her family without concern. Claimant does not engage in reciprocal conversations.

24. Claimant is currently not attending school because of her behaviors. Mother is working with claimant at home and is considering home-schooling her.

Claimant's mother is also looking at other school options. Claimant's mother has tried to obtain an IEP from the Los Angeles Unified School District but has been told she needs to look first to the regional center for services.

25. Claimant is currently receiving speech therapy once a week from Kaiser. Claimant does not receive ABA therapy or occupational therapy. Claimant has not been prescribed medication for her attention-related issues.

Analysis

ASD

26. Mother's chief concern is whether claimant presents with ASD. An ASD diagnosis is based on the criteria in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition Text Revision (DSM-5-TR), which is authored by the American Psychiatric Association. According to the DSM-5-TR, a diagnosis of ASD requires the following:

> A. Persistent deficits in social communication and social interaction across multiple contexts, as manifested by all of the following, currently or by history . . . :
>
> 1. Deficits in social-emotional reciprocity, ranging, for example, from abnormal social approach and failure of normal back-and-forth conversation; to reduced sharing of interests, emotions, or affect; to failure to initiate or respond to social interactions.
>
> 2. Deficits in nonverbal communicative behaviors used for social interaction, ranging, for example, from poorly

integrated verbal and nonverbal communication; to abnormalities in eye contact and body language or deficits in understanding and use of gestures; to a total lack of facial expressions and nonverbal communication.

3. Deficits in developing, maintaining, and understanding relationships, ranging, for example from difficulties adjusting behavior to suit various social contexts; to difficulties in sharing imaginative play or in making friends; to absence of interest in peers.

B. Restricted, repetitive patterns of behavior, interests, or activities, as manifested by at least two of the following, currently or by history (examples are illustrative, not exhaustive; see text):

1. Stereotyped or repetitive motor movements, use of objects, or speech (e.g., simple motor stereotypies, lining up toys or flipping objects, echolalia, idiosyncratic phrases).

2. Insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior (e.g., extreme distress at small changes, difficulties with transitions, rigid thinking patterns, greeting rituals, need to take same route or eat same food every day).

3. Highly restricted, fixated interests that are abnormal in intensity or focus (e.g., strong attachment to or

preoccupation with unusual objects, excessively circumscribed or perseverative interests).

4. Hyper- or hypo reactivity to sensory input or unusual interests in sensory aspects of the environment (e.g., apparent indifference to pain/temperature, adverse response to specific sounds or textures, excessive smelling or touching objects, visual fascination with lights or movement). [¶] . . . [¶]

(Exhibit 9, pp. A58–A59.)

Thus, to be diagnosed with ASD under the DSM-5-TR criteria, claimant must meet all three categories of behaviors indicating persistent deficits in social communication and social interaction (categories A1, A2, and A3) and two of the four categories (categories B1, B2, B3, and B4) showing restricted, repetitive patterns of behavior, interests, or activities.

27. In separate, independent evaluations, both the Kaiser team and Dr. Gittelson found claimant, although showing some behaviors consistent with ASD, did not meet the criteria for ASD under the DSM-5-TR. The Kaiser team found, based on mother's reporting or their own observations, claimant met only two of the three categories of social communication and social interaction deficits (categories A1 and A3) and only one of the four aspects of restricted, repetitive patterns of behavior, interests, or activities (category B1). Specifically, according to the Kaiser team, claimant showed deficits in social-emotional reciprocity as she did not engage in normal back-and-forth conversation, had difficulties maintaining relationships with peers, and had an absence of interest in people. (Exhibit 3, pp. A24-A25.) However, the Kaiser team

did not find claimant showed any deficits in nonverbal communication as her eye contact and body language were normal. (*Id.*, p. A24.) The Kaiser team observed claimant used stereotyped or repetitive speech or motor movements, i.e., hand-flapping and spinning (category B1), but did not observe any excessive adherence to routines, ritualized patterns, or highly restricted, fixated interests, or hyper- or hypo-reactivity to sensory input or unusual interest in sensory aspects of the environment (categories B2, B3, and B4).

28. Dr. Gittelson analyzed claimant's behavior based on the DSM-5-TR criteria of ASD as well. (Exhibit 7, pp. A47-A50.) Her conclusions were not as decisive as those of the Kaiser team. Many of her observations contradicted those of mother. Dr. Gittelson, like the Kaiser team, found claimant had deficits in social-emotional reciprocity (category A1) as far as claimant was easily distracted and had problems supplying specific details in response to questioning. However, Dr. Gittelson noted she observed claimant initiating interactions, volunteering information, and sharing information. Although mother described claimant as having fleeting eye contact and tantrums when distressed, Dr. Gittelson found claimant to make proper eye contact, share emotions, and express excitement contrary to the deficits in nonverbal communication required in category A2, which was consistent with the Kaiser team's findings. (*Id.*, pp. A47–A48.) Dr. Gittelson also noted mother's observations of claimant's difficulties in developing, maintaining, and understanding relationships (category A3); however, Dr. Gittelson found contradictory evidence as far as claimant engaged in self-directed pretend play.

29. Regarding evidence of restricted, repetitive interests or behaviors, Dr. Gittelson agreed with the Kaiser team and mother that claimant engaged in repetitive motor movements, including spinning, hand-flapping, and walking on tiptoes

(category B1). (Exhibit 7, pp. A48–A49.) Dr. Gittelson also agreed with the Kaiser team's finding that claimant did not exhibit inflexible adherence to routines or ritualized patterns or have highly restricted, fixated interests (categories B2 and B3). (*Id.*, p. A49.) Although mother described claimant as easily fixated or attached to toys, Dr. Gittelson noted no such attachment or fixation. She observed claimant showed an interest in different bodily injuries but thought the interest may be age-appropriate. (*Ibid.*) Dr. Gittelson also found claimant demonstrated sensory-seeking behavior (category B4), but it was unclear whether claimant's conduct was unusual or hyper- or hyporeactive. (*Ibid.*)

30. In sum, Kaiser found claimant did not meet the DSM-5-TR ASD criteria because she satisfied only two of the three required categories of social communication and social interaction deficits and one category (instead of the required two categories) of restricted and repetitive behavior. Dr. Gittelson likewise found claimant did not meet the DSM-5-TR criteria, but her findings were less definitive. She too found claimant did not satisfy all three of the required categories of social communication and social interaction deficits; her findings however regarding repetitive behaviors were less clear. Nonetheless, despite evidence of ASD behaviors, neither Kaiser nor Dr. Gittelson concluded claimant currently satisfies the DSM-5-TR criteria for ASD.

INTELLECTUAL DISABILITY

31. Neither Kaiser nor Dr. Gittelson found claimant to present with intellectual disability as defined in the DSM-5-TR. Under the DSM-5-TR, an individual with intellectual disability must meet the following criteria:

> A. Deficits in intellectual functions, such as reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience, confirmed by both clinical assessment and individualized, standardized intelligence testing.
>
> B. Deficits in adaptive functioning that result in failure to meet developmental and socio-cultural standards for personal independence and social responsibility. Without ongoing support, the adaptive deficits limit functioning in one or more activities of daily life, such as communication, social participation, and independent living, across multiple environments, such as home, school, work, and community.
>
> C. Onset of intellectual and adaptive deficits during the developmental period.

(Exhibit 10, p. A74.)

32. According to the DSM-5-TR, intellectual functioning is typically measured with individually administered and psychometrically valid, comprehensive, and culturally appropriate tests of intelligence. Individuals with intellectual disability have scores of 70 or lower, with a measure of error of plus or minus five points. (Exhibit 10, p. A75.) Although Kaiser did not report claimant's intelligence test scores, Dr. Gittelson reported claimant to score in the borderline to average ranges, with scores of 73 in verbal comprehension, 80 in visual-spatial, and 88 in fluid reasoning. Although claimant's verbal comprehension score concerned Dr. Gittelson, she did not conclude claimant is intellectually disabled considering her other test scores. As there is no

other finding of intellectual disability, claimant cannot be considered intellectually disabled based on the evidence presented.

FIFTH CATEGORY CONDITION

33. To be eligible for regional center services for a fifth-category condition, the individual seeking services must function in a manner like that of a person with intellectual disability or require treatment similar to that required by individuals with intellectual disability. The regional centers have set forth guidelines to determine whether an individual is eligible for regional center services under the fifth category. (See Proposed Guidelines for Determining 5th Category Eligibility for Regional Centers (Guidelines), Exhibit 12.) Under the Guidelines, an individual is considered functioning in a manner like that of a person with intellectual disability, if his or her general intellectual functioning is in the low borderline range of intelligence (I.Q. scores ranging from 70 to 74, and the individual demonstrates significant deficits in adaptive skills. (Exhibit 12, pp. A86–A87.) An individual is considered to require treatment similar to that required by an individual presenting with intellectual disability if the individual needs long-term training to develop skills instead of treatment to increase motivation or short-term remedial training to remedy skill deficits. (*Id.*, pp. A87-A88.)

34. Here, claimant did not meet the criteria for eligibility for regional center services under the fifth category. Claimant's scores on intelligence tests were for the most part in the low average range; she only performed in the borderline range in one of the three assessment areas. Additionally, neither the Kaiser team nor Dr. Gittelson found claimant's intellectual deficits resulted in any significant adaptive skill deficits. There was also no evidence claimant required treatment similar to a person presented with intellectual disability. Dr. Gittelson recommended behavioral therapy as well as speech therapy; the Kaiser team also recommended speech therapy. No medical

professional recommended claimant receive the kind of treatment typically required by an individual presenting with intellectual disability.

LEGAL CONCLUSIONS

1. An administrative hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Act to appeal a contrary service agency decision. (Welf. & Inst. Code, §§ 4710–4714.) Claimant requested a hearing to appeal NLACRC's determination she was not eligible for regional center services and supports under the Lanterman Act. The jurisdictional requirements for this appeal are met.

2. Claimant has the burden of proving her eligibility for Lanterman Act services and supports by a preponderance of the evidence. (See *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161; Evid. Code, §§ 115, 500.) "Preponderance of the evidence means evidence that has more convincing force than that opposed to it. [Citations] . . . [T]he sole focus of the legal definition of 'preponderance' in the phrase 'preponderance of the evidence' is the *quality* of the evidence. The *quantity* of the evidence presented by each side is irrelevant." (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 324–325 (emphasis in original).) Claimant has not met her burden.

3. To be eligible for Lanterman Act supports and services, claimant must present with a qualifying developmental disability that is substantially disabling. Welfare & Institutions Code section 4512, subdivision (a), defines "developmental disability" as:

///

> [A] disability that originates before an individual attains 18 years of age; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for that individual. . . . [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 an intellectual disability, but shall not include other handicapping conditions that are solely physical in nature.

4. California Code of Regulations, title 17 (CCR), section 54001, subdivision (a), defines "substantial disability" as follows:

> (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

5. According to CCR section 54000, subdivision (c), a developmental disability does not include "handicapping conditions" that are:

> (1) Solely psychiatric disorders where there is impaired intellectual or social functioning which originated as a result of the psychiatric disorder or treatment given for such a disorder. Such psychiatric disorders include psycho-social deprivation and/or psychosis, severe neurosis or personality disorders even where social and intellectual functioning have become seriously impaired as an integral manifestation of the disorder.
>
> (2) Solely learning disabilities. A learning disability is a condition which manifests as a significant discrepancy between estimated cognitive potential and actual level of educational performance and which is not a result of generalized [intellectual disability], educational or psycho-social deprivation, psychiatric disorder, or sensory loss.

(3) Solely physical in nature. These conditions include congenital anomalies or conditions acquired through disease, accident, or faulty development which are not associated with a neurological impairment that results in a need for treatment similar to that required for [intellectual disability].

6. Welfare and Institutions Code section 4643, subdivision (b), provides: "In determining if an individual meets the definition of developmental disability contained in subdivision (a) of Section 4512, the regional center may consider evaluations and tests, including but not limited to, intelligence tests, adaptive functioning tests, neurological and neuropsychological tests, diagnostic tests performed by a physician, psychiatric tests, and other tests or evaluations that have been performed by, and are available from, other sources."

7. Claimant did not prove by a preponderance of the evidence she presents with cerebral palsy, epilepsy, ASD, intellectual disability, or a fifth-category condition. The parties do not dispute claimant has no medical indication of cerebral palsy or epilepsy. Neither the Kaiser team, Dr. Gittelson, nor the NCLARC team found claimant presented with ASD, intellectual disability, or any other condition eligible for regional center services. (Factual Findings 9–13, 15-21; 26–34.) Although claimant demonstrated some symptoms of ASD, none of the medical personnel assessing claimant found she met the DSM-V-TR criteria for ASD. Accordingly, claimant is not entitled to regional center services and supports under the Lanterman Act at this time. Nonetheless, nothing in this Decision prevents claimant from reapplying for regional center services in the future if her symptoms persist after further assessment and services by the school district and her medical providers.

ORDER

1. Claimant's appeal is denied.

2. Claimant is ineligible for regional center services under the Lanterman Act at this time.

3. Nothing in this Order prevents claimant from reapplying for regional center services in the future if her symptoms persist after further assessment and services by the school district and her medical providers.

DATE:

CINDY F. FORMAN
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.