

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

In the Matter of the Fair Hearing Request of:

CLAIMANT,

vs.

SAN GABRIEL/POMONA REGIONAL CENTER,

Service Agency.

DDS No. CS0009810

OAH No. 2023100587

DECISION

Administrative Law Judge (ALJ) Deena R. Ghaly, Office of Administrative Hearings, State of California, heard this matter on March 28, 2024, at San Gabriel/Pomona Regional Center (SGPRC).

Claimant's mother (Mother) represented claimant. The names of claimant and his family members are omitted to protect their privacy. Rosa Fernandez, Service Agency Appeals and Resolution Specialist, represented SGPRC.

During the hearing, Mother presented several reports, marked Exhibits A through E, in support of claimant's position, which had not previously been provided

to SGPRC. By a Continuance Order for Evidence Only dated April 2, 2024, the undersigned ALJ kept the record open until April 19, 2024, to allow SPGRC to review these exhibits and either revise its earlier determination regarding the issue in controversy, claimant's eligibility for services, or provide any additional argument. Claimant was provided until April 24, 2024, to respond to SPGRC's submission. SPGRC timely filed and served its response to Exhibits A through E. Claimant did not file any post-hearing submissions. Exhibits A through E were admitted into evidence. SPGRC's response, marked Exhibit 15 for identification, was admitted into evidence.

The record closed on April 24, 2024.

ISSUE

Is claimant eligible for services under the category of autism pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act)?

EVIDENCE RELIED UPON

In reaching this Decision, the ALJ relied upon SPGRC Exhibits 1 through 15, claimant's Exhibits A through E, as well as the testimony of Dr. Deborah Langenbacher, ABA provider Hoyin Lee, and Mother.

SUMMARY

Claimant appeals SPGRC's denial of his request to be deemed eligible for regional center services under the Lanterman Act. SPGRC contends claimant does not have autism spectrum disorder (ASD) and, even if he does, he is not substantially

disabled by the condition. Claimant presented evidence to the contrary but the evidence was not sufficient to meet his burden of proof. Accordingly, on this record and the applicable law, claimant's request for regional center services must be denied.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Regional centers such as SPGRC determine eligibility and provide funding for services to persons with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4500 et seq.; undesignated statutory references are to this code.)

2. On September 27, 2023, SPGRC issued a Notice of Action informing Mother its interdisciplinary team determined claimant is not eligible for regional center services because he does not have a qualifying developmental disability. Mother timely appealed the decision on behalf of claimant and this matter ensued.

Background

3. Claimant was born on September 17, 2017. He was in SPGRC's early start program from September 2019 through September 2019. Claimant is currently in kindergarten and qualifies for special education assistance under an Other Health Impairment diagnosis. Mother, concerned about claimant's atypical behavior, has enrolled claimant in Applied Behavior Analysis (ABA) classes. Parents have requested ongoing services from SPGRC based on a diagnosis of ASD.

March 2022 Assessment - Dr. Jennie Mathess

4. SGPRC retained Jennie M. Mathess, Psy.D. to assess him for intellectual disability or autism. Dr. Mathess evaluated claimant on March 29, 2022. Her assessment included interviewing claimant's parents, observing claimant, and administering the Wechsler Preschool and Primary Scale of Intelligence, Fourth Edition (WPPSI-IV), the Autism Diagnostic Interview - Revised (ADI-R), the Autism Diagnostic Observation Schedule, 2nd Edition, Module 2 (ADOS-2), and the Vineland Adaptive Behavior Scales, 3rd Edition, Comprehensive Interview Form (Vineland-3).

5. In observing claimant, Dr. Mathess found he displayed "fair to good attention and concentration . . . [and] was easily engaged and communicated with the examiner using phrases and simple sentences in English." (Exh. 4, p. A14.) She also noted he used his imagination while playing with toys. Toward the end of the session, Dr. Mathess observed claimant put the toys on the table and said "Look! I clean up." (*Ibid.*) At the end of the session, Dr. Mathess noted claimant said goodbye to her while maintaining eye contact. (See, Exh. 4, p. A14.)

6. The WPPSI-IV test is a standardized intelligence test that measures cognitive functioning across verbal and nonverbal domains, working memory and processing speed. Dr. Mathess determined claimant performed in the high average range across all subtests.

7. For the ADI-R, Dr. Mathess found claimant scored at or above the necessary cutoff scores for an ASD diagnosis in the areas of Reciprocal Social Interaction and Abnormality of Development and below the cut off scores in all other tested areas including communication and restricted, repetitive, and stereotyped

behavior. Dr. Mathess concluded that such a response pattern indicates a diagnosis of ASD is "not likely." (Exh. 4, p. A15.)

8. Dr. Mathess administered portions of the ADOS-2 to further assess for ASD. She found claimant made appropriate eye contact, "showed definite pleasure" during interactions with her and made appropriate social overtures. (Exh. 4, p. A15.) "The interactions between [claimant] and the examiner was comfortable and appropriate in the context of the assessment. He did not engage in restricted and repetitive behaviors." (*Ibid.*)

9. Dr. Mathess administered the Vineland Adaptive Behavior Scales, 3rd Edition (Vineland-3) to claimant's parents. According to them, claimant could follow instructions "involving left and right," pay attention and understand what is happening in a show for up to 30 minutes. However, claimant's parents' responses also exposed deficiencies: "[Claimant] does not read at least 10 words, does not ask questions beginning with who, does not tell basic parts of a familiar story, does not respond to questions that ask who or when, does not follow instructions requiring three actions, and does not understand sarcasm." (Exh. 4, p. A15.)

10. Overall, Dr. Mathess concluded claimant did not have ASD: " Regarding [ASD], diagnosis requires persistent deficits in social communication and social interaction, as well as the presence of restricted, repetitive patterns of behavior, interests, and activities. Based upon his parents' report, test data, and the examiner's observations, [claimant] does not meet criteria for ASD." (Exh. 4, p. A15.)

January 2023 Assessment - Dr. Lisa French

11. At claimant's parents' request, in January 2023, claimant was assessed again by Lisa French, Psy.D. For her assessment, Dr. French interviewed claimant's

parents, observed claimant, and administered the ADOS-2 and the Gilliam Autism Rating Scale - 3rd Edition (GARS-3).

12. When Dr. French administered the ADOS-2 to claimant, the results reflected deficits in social affect. Regarding these deficits, Dr. French noted claimant exhibited "limited reciprocal social communication, and deficits in shared enjoyment. Conversations were difficult for him and he did not continue them. While he did join in on tasks when prompted or invited, he tended to play on his terms and did not sustain interactive play for long." (Exh. 7, p. A29.) However, these findings were tempered by observations Dr. French made of claimant smiling, making appropriate facial gestures, and laughing at humor among other social interactions.

13. The ADOS-2 also revealed claimant's propensity to restricted or repetitive behavior. Dr. French observed claimant engage in stereotypical behavior including lining up the toys he played with and stereotypical/idiosyncratic use of words and phrases "such as repeating phrases in a scripted pattern at times rather than novel phrases and displaying articulation issues with some words . . . [claimant] was not observed to make any unusual hand/finger movements and was not observed to engage in unusual sensory issues." (Exh. 7, p. A29.)

14. Claimant's overall ADOS-2 score was 8, indicating a mild level of ASD-related symptoms. According to Dr. French, Claimant's performance on the ADOS-2 test "*did* meet the criteria for the presence of an Autism Spectrum Disorder." (Exh. 7, p. A30 [bold, italic text in original].)

15. In her report, Dr. French explained the second test she administered, GARS-3, both assesses for the presence of ASD and estimates the degree of severity of the disorder. "The instrument consists of 56 clearly stated items describing the

characteristic behaviors of persons with autism. The items are grouped into six subscales: Restrictive, Repetitive Behaviors, Social Interaction, Social Communication, Emotional Responses, Cognitive Style, and Maladaptive Speech. The higher the score, the greater the severity of the characteristic or the probability of [ASD]." (Exh. 7, p. A30.)

16. Claimant's scores on the six subscales of the GARS-3 ranged from five to 29. Based on the scores, including an overall Autism index score of 109, the test reflected he was "very likely" to have ASD. In particular, he had scores in the elevated range for restrictive/repetitive behaviors, social communication, emotional responses, and cognitive style.

17. After reviewing her observations from meeting with claimant and his parents and the results of the ADOS-2 and GARS-3, Dr. French determined claimant met the criteria for ASD, as well as affirming an earlier diagnosis for Attention Deficit and Hyperactive Disorder (ADHD). She further found the ASD was creating deficits in social communication and language impairment. (See, Exh. 7, pp. A31-32.)

August 2023 Assessment - Dr. Christopher Cooper

18. At SPGRC's request, on August 10, 2023, Christopher Cooper, PhD. examined claimant. Dr. Cooper's examination included observing claimant and administering the Vineland-3 test and the ADOS-2.

19. While observing him, Dr. Cooper noted claimant's behavior was "disruptive" at the beginning of the session, including being hyperactive, tearing papers and placing the pieces on his head, "displaying unusual tongue movements," and touching his parents. (Exh. 9, p. A38.) As the session progressed, however, Dr. Cooper noted claimant's behavior changed:

. . . after prompting and redirection and parental assistance, [claimant] participated in the activities of the assessment. He subsequently smiled and engaged the examiner and his parents. He was sociable and interacted with the examiner. [Claimant] exhibited no stereotyped or repetitive behaviors during the observation. He also demonstrated no unusual sensory interest in objects. Furthermore, [claimant] displayed no excessive hand or finger movements or self-injurious behavior.

(Exh. 9, p. A38.)

20. Regarding the results of the Vineland-3, Dr. Cooper administered, claimant's results on all the modules was in the low to moderately low range, with the exception of written communication module, for which claimant scored in the adequate range.

21. Regarding the results of the ADOS-2 Dr. Cooper administered, claimant's score was a total on one, consistent with "nonspectrum" classification. Elaborating on the results, Dr. Cooper wrote:

[Claimant] used single words, phrases and sentences during the examination. [Claimant] displayed no echolalia [repetition of vocalization made by another person] or stereotyped use [of] words or phrases. He exhibited some spontaneous elaboration however reciprocal conversation during the assessment was reduced. [Claimant] displayed a

ranger of gestures throughout the examination.

Additionally, he was able to point to a distal object.

[Claimant's] eye contact was good. He exhibited an appropriate range of facial expressions during interactions with the examiner and his parent. When the examiner called his name, he raised his head and made eye contact.

[Claimant] responded to the examiner's use of eye gaze to engage him in joint attention. Additionally, he initiated joint attention during the observation and showed toys to the examiner. He used nonverbal and verbal means to make social overtures to the examiner. [Claimant] made frequent attempts to gain his parent's attention during the observation. He made attempts to gain and maintain the examiner's attention. Moreover, [claimant] spontaneously demonstrated functional play with cause and effect toys. He also displayed spontaneous imaginative and creative play.

Behaviorally, [claimant] demonstrated no stereotyped or repetitive behaviors. [Claimant] also demonstrated no unusual sensory interests during the observation. He displayed no excessive hand or finger movements or self-injurious behaviors.

(Exh. 9, p. A40.)

22. Overall, Dr. Cooper concluded claimant did not meet the criteria for an ASD diagnosis.

Additional Information from Claimant

23. In September 2023, claimant and his family participated in a research project at the Children's Hospital Los Angeles studying the impact of the pandemic on early intervention services and outcomes for children. As part of the project, claimant underwent a comprehensive evaluation which, among other, reflected that claimant "demonstrates behaviors and symptoms consistent with [ASD], mild to moderate range." (Exh. 11, p. A47.) Regarding his intelligence, the report reflects several areas where claimant performed in the superior range, including fluid reasoning, working memory, and processing speed. (See, Exh. 11, p. A46.)

24. In December 2023, Dr. French performed an updated autism evaluation. By this time, claimant was six years, two months old. As reflected in Dr. French's second report, Mother reported several developments causing her concern:

[Claimant] does speak in sentences, but still has difficulties expressing his emotions and communicating his needs. He has difficulty paying attention and following directions. He does better with 1:1 attention from an adult, but as soon as he is in a group setting, he needs constant prompting and supervision to participate, and tends to go off on his own. His mother shared several pictures with the evaluator of [claimant] at a school party event, and he was off in the corner, nowhere near his classmates. He appeared to be wandering and "lost in his own world." . . . [Claimant] continues to struggle with peer relationships. He will play with much younger children and babies but does not interact much with children his own age. He does not

understand social cues and is overly touchy with peers, making it difficult to make and maintain friendships. He continues to report feeling lonely and sad and cries at times . . . [Claimant] also has adaptive skill delays, as he is toilet trained, but does not initiate going. He will also not eat in many environments, such as school . . . [Claimant] also engages in crying and tantrum behavior, including engaging in self-injurious behaviors of hitting himself, scratching himself, or rubbing his face against objects. . . He also engages in repetitive/stereotypical vocalizations such as talking to himself, and echoing/repeating words and phrases, walking in circles, or pacing back and forth. His mother showed the evaluator videos of him spinning in circles rather than participating in a group activity.

(Exh. 12, p. A48.)

25. Dr. French's second report also includes an extensive review of claimant's record, including school records, medical records, an assessment report from claimant's ABA provider, and Dr. Cooper's report. Regarding Dr. Cooper's report, Dr. French noted certain inconsistencies:

. . . inconsistencies were found in Dr. Cooper's report dated 8/10/2023. It was stated in the behavior observations that [claimant] had difficulty transitioning into the room, he ripped up paper and placed it on his head, repetitively touched his parents, and displayed unusual tongue movements. He only participated in the activities of the

assessment after prompting, redirection, and parental assistance. However, in the summary, it was stated [claimant] did not exhibit repetitive patterns of behavior or display unusual sensory interests during the observation. These statements are not congruent. If the evaluator had accurately scored these assessments, [claimant's] scores would fall within the classification of [ASD] rather than the classification of "nonspectrum." In addition, it was documented that there was "No Diagnosis or Condition" completely disregarding diagnosis of Attention Deficit Hyperactivity Disorder which was determined by the other assessments conducted by several other clinicians.

(Exh. 12, p. A52.)

26. In undertaking her updated assessment, Dr. French began with observing claimant as he played in her office. In her report, Dr. French noted claimant chose an action figure to play with, did not respond when she attempted to join in his play or ask him questions, repeated phrases as he played, and, as Mother answered some questions about how he was doing in school and whether he was making friends, hit his head on the wall. When Mother showed evaluator videos of claimant, claimant started to cry. (See, Exh. 12, pp. A53 - A54.)

27. Dr. French also re-administered the ADOS-2, measuring Social Affect and Restricted and Repetitive Behavior. Through the ADOS-2, Dr. French found claimant exhibited deficits in Social Affect as well as some strengths:

[Claimant] earned points on the [Social Affect] scale because of limited reciprocal social communication, and deficits in sustained play during interactions. . . He displayed some deficits in social overtures, as while he did make attempts and gaining and sustaining the evaluator's attention, it was limited to certain activities that were of interest to him. He was not observed to initiate conversation with the evaluator. . . [Claimant] hit his head or cried to gain attention from his parents rather than making appropriate social overtures or appropriately expressing his emotion or dislike for the topic. [Claimant] did look over and make eye contact when talking to the evaluator or when items were presented. He smiled and made appropriate facial expressions throughout the assessment. He pointed and made gestures to accompany what he was talking about. He displayed some perspective taking (sic) skills when looking through pictures of social situations and was able to label some emotions/thoughts of others in the pictures when asked specific questions.

(Exh. 12, p. A54.)

28. Regarding the Restricted and Repetitive Behavior (RRB) portion of the ADOS-2, Dr. French observed claimant engaging in "stereotyped/idiosyncratic use of words and phrases such as repeating phrases in a scripted pattern at times rather than novel phrases and speaking in a monotone voice at times." (Exh. 12, pp. A54-A55.) Claimant was not observed making unusual hand or finger movements. He was

observed displaying some repetitive interests such as only playing with one color of the Lego building blocks.

29. Overall, Dr. French determined claimant's ADOS-2 score was an 8, the cut-off for an ASD finding. Dr. French's conclusion was that claimant has a mild level of ASD.

30. Dr. French also re-administered the GARS-3 test. Claimant's scaled scores on the six subscales of the GARS-3 ranged from nine to 15. Based on the scores, including an overall Autism index score of 121, the test reflected he was "very likely" to have ASD.

31. Dr. French's ultimate diagnoses for claimant were that he met the criteria for both ASD and ADHD.

32. Rui Zhe (Rena) Song, an ABA therapist for claimant, provided a list of observations and issues reported to her by Mother. Among Ms. Song's own observations were that claimant lines up his toys, repeats phrases, has a restricted interest in cars, exhibits repetitive motor movements such as spinning, makes "adequate eye contact, but exhibits some restricted affect or affect incongruent with mood." (Exh. A, p. B1.) Ms. Song also noted claimant "has an interests in peers but has had difficulty initiating and responding to social interactions" (*Ibid.*), though Ms. Song did note claimant made one friend in his social skills group class.

33. Claimant is currently in kindergarten in the Rowland Unified School District. There, claimant receives some special education assistance though he has been placed in a regular classroom. Mother presented two annual reports tracking his progress under his individual education plan (IEP). One, dated September 5, 2023, reflects Mother sharing several concerns about claimant's behaviors that his teachers

did not see him manifest during the school day. For instance, Mother believed claimant was not able to express his wants and needs at school while his teachers reported the opposite, that claimant could express his needs and could also accept redirection appropriately. Mother also expressed concern claimant was off-task and unable to follow direction while his teachers observed him taking direction. Mother believed claimant was unable to make friends while the teachers observed him playing with peers. (Exh. B, pp. B6-B7.)

34. In a February 2024 school progress report, claimant's teachers describe claimant as demonstrating appropriate communications skills, noting "his voice, fluency, and articulation skills are appropriate at this time." (Exh. C, p. B12.) Regarding social and emotional issues, his teachers wrote:

[Claimant] has made a lot of growth with his ability to give peers space and play appropriately in the playground and in the classroom. He responds well to re-directions if he is engaging in off-task behavior and he is asking for help if needed. [Claimant] shows some difficulty managing peer conflict, specifically when it happens out in the playground. He tends to become upset and needs support identifying what he is feeling and how to manage peer conflict.

(Exh. C, p. B12.)

SGPRC Expert - Dr. Deborah Langenbacher

35. At the hearing, SGPRC staff psychologist Dr. Deborah Langenbacher testified. Dr. Langenbacher stated to be eligible for regional center services based on ASD, an applicant must meet the standard diagnostic criteria for the condition,

including persistent deficits in social communication and social interaction, repetitive patterns of behavior or interests, and symptoms that cause clinically significant impairment in social, occupational, or other important areas of day-to-day functioning.

36. Dr. Langenbacher did not examine claimant but did review the reports from the clinicians who had assessed him, as well as other records. She stated she agreed with the conclusions of Dr. Mathess and Dr. Cooper and did not agree with Dr. French. Specifically, she opined claimant's strengths in social interaction, including his ability to maintain eye contact and to engage in some reciprocal social intercourse militated away from an ASD diagnosis. Further, Dr. Langenbacher found Dr. French's analyses from both of the assessments she performed to be deficient for several reasons: (i) Dr. French recognized claimant suffered from at least one other mental condition, ADHD yet did not distinguish which condition was causing which symptoms; (ii) she did not address the substantially different impressions and observations of, for instance, claimant's teachers from those of Mother; and (iii) her own observations were limited to what she saw during office sessions, rather than "natural" settings like school.

37. Dr. Langenbacher also stated that, even to the extent there is evidence claimant has ASD, there was no evidence that his condition is "substantially disabling" as is required under the Lanterman Act for him to be found eligible for regional center services.

Additional Testimony

38. Hoyin Lee, an ABA provider who worked with claimant five times a week for approximately one year testified at the hearing. Ms. Lee stated she observed claimant engaging in some repetitive behavior such as spinning or repeating what

others say. Regarding socialization, Ms. Lee noticed claimant tended to prefer playing with children younger than him but would play with his peers. She also observed claimant maintaining eye contact with her and recognizing others' emotions such as sadness. For instance, if another child was crying in his presence, claimant was likely to ask why the child was upset.

39. Mother testified at the hearing. She stated she had witnessed claimant engaging in problematic behavior but had also been told by teachers that she should take claimant to a psychologist to address his behavior. She has also been asked to have claimant's hearing tested.

40. Mother stated she and claimant's father initially did not want to believe there was anything wrong with claimant beyond a tendency to hyperactivity. But as more and more clinicians came to the same conclusion about him, they had to accept claimant had ADS. Mother reported experiencing intense distress from claimant's behavior.

41. Mother maintained she has observed in claimant virtually all the behaviors and symptoms indicative of ASD: he consistently has difficulty maintaining positive social interactions, has no friends, and is often found alone and isolated during school and other activities; he engages in many repetitive behaviors including lining up his cars, insisting on wearing one color of clothing, down to his underwear, and is obsessed with cars, refusing to speak about, or participate in activities concerning anything else; he has exhibited these behavioral patterns since as young as two and they are becoming more prominent and out of control and (iv) his behavior prevents him from participating in school, in learning and other aspects of day-to-day life.

42. Mother also maintained claimant is limited in his development and capacity to engage in the activities and level of self-sufficiency commensurate with his age. He does not remember to wear protective clothing in cold or rainy weather, he forgets or refuses to eat or drink under certain conditions, he has accidents or just chooses to urinate wherever he is, he does not know how to follow directions at school and has wandered away from his group during school excursions. To the extent claimant has overcome some of his idiosyncratic habits and practices more conventional ones, Mother believes it is the result of repeated lessons he has learned during ABA classes.

LEGAL CONCLUSIONS

Jurisdiction

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. (§§ 4710-4714.) As set out in Factual Finding 2, Mother requested a hearing to contest service agency's denial of claimant's eligibility for services under the Lanterman Act and therefore jurisdiction for this appeal was established.

General Provisions

2. An individual is eligible for services under the Lanterman Act if it is established he is suffering from a substantial disability attributable to intellectual disability, cerebral palsy, epilepsy, autism, or what is referred to as the fifth category. (§ 4512, subd. (a).) The fifth category condition is specifically defined as "disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability." (§ 4512, subd. (a).)

A qualifying condition must originate before one's 18th birthday and continue indefinitely. (§ 4512.)

3. Pursuant to California Code of Regulations, title 17, section (regulation) 54000, subdivision (c)(1), a developmental disability shall not include disabling conditions that are "solely psychiatric disorders where there is impaired intellectual or social functioning which originated as a result of the psychiatric disorder or treatment given for such a disorder." (*Ibid.*)

Burden and Standard of Proof

4. An applicant seeking to establish eligibility for government benefits or services bears the burden of proof. (See, e.g., *Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [addressing disability benefits].)

5. Regarding eligibility for regional center services, "the Lanterman Act and implementing regulations clearly defer to the expertise of the DDS [Department of Developmental Services] and RC [regional center] professionals and their determination as to whether an individual is developmentally disabled." (*Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, 1129.) In *Mason*, the court focused on whether the applicant's expert witnesses' opinions on eligibility "sufficiently refute[d]" those expressed by the regional center's experts that the applicant was not eligible. (*Id.* at pp. 1136-1137.)

6. In this case, claimant bears the burden of establishing he is eligible for services because she has the qualifying condition of ASD and that this condition is substantially disabling. In that regard, claimant's evidence regarding eligibility must be more persuasive than the service agency's evidence in opposition.

7. The standard of proof in this case is the preponderance of the evidence because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) Preponderance of the evidence means evidence that has more convincing force than that opposed to it. (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 324-325.)

Establishing the Qualifying Condition of Autism

8. The Lanterman Act and its implementing regulations contain no specific definition of the neurodevelopmental condition of “autism.” However, the DSM-5-TR, which was published in March 2022, classifies autistic disorder, Asperger’s disorder, and pervasive developmental disorder into the single diagnostic category of ASD. Therefore, a person diagnosed with ASD should be considered someone with the qualifying condition of “autism” pursuant to the Lanterman Act.

Substantial Disability

9. A qualifying condition also must cause a substantial disability. (§ 4512, subd. (a); reg. 54000, subd. (b)(3).)

10. 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.

11. Section 4512, subdivision (1), provides that the "areas of major life activity" should be applied "as appropriate to the age of the person." Therefore, claimant's degree of independent living skills should be viewed in comparison to those of other children claimant's age.

Analysis

12. Here, as set out in Factual Findings 4 through 22 and 23 through 31, each party presented two psychological evaluations in support of their respective positions. Both sets of reports were comprehensive and credible but ultimately contradictory. Looking to other evidence, Mother's testimony, as set out in Factual Findings 39 through 42, indicates claimant exhibits all the behaviors and symptoms characteristic

of ASD and has significant life limitations due to his behavior, including the self-direction and care and at least a rudimentary level of independence commensurate with his age.

13. Mother is an important witness; she is clearly devoted and closely watching claimant and of course, most motivated to understand him and get him the help he needs. These same attributes, however, may cloud her judgment and ability to objectively understand the situation. Many others, including Drs. Mathes and Cooper, claimant's ABA providers, and schoolteachers and even Dr. French in part, see claimant as a capable, intelligent, and at least partly social little boy. Mother's testimony about his troubles is credible and it is understandable why she seeks assistance for him. In the absence of a clear reading that these troubles are the result of ADS; however, he will not be assisted by being placed in programs unsuitable for his condition.

14. Moreover, regional centers are compelled to follow the sometime narrow strictures of the Lanterman Act's eligibility requirements. Dr. French is the clearest proponent of an ASD diagnosis for claimant and even under her analysis, her conclusion as set out in Factual Findings 14 and 29, is claimant's ASD condition is "mild" and her only findings regarding life skills, based on her interviews of Mother, are some failings in toilet training and ability to eat at school. On the other hand, as set out in Factual Findings 33 and 34, claimant's schoolteachers have found him able to navigate the requirements he faces there and increasingly overcome his difficulties with social situations. Under these circumstances, there is insufficient evidence that, even if claimant is correctly diagnosed as having ASD, he is substantially disabled because of the condition.

Claimant is Not Eligible for Services

15. Claimant has not established he has the qualifying developmental disability of autism, and that his condition is substantially disabling. Therefore, he is not eligible for regional center services under the Lanterman Act.

ORDER

Claimant's appeal is denied. Claimant is not eligible for services under the category of autism pursuant to the Lanterman Developmental Disabilities Services Act.

DATE:

DEENA R. GHALY

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:

CLAIMANT,

vs.

SAN GABRIEL/POMONA REGIONAL CENTER,

Service Agency.

DDS No. CS0009810

OAH No. 2023100587

ORDER DENYING CLAIMANT'S APPLICATION FOR RECONSIDERATION

An Administrative Law Judge from the Office of Administrative Hearings issued a final decision in this matter on May 9, 2024. The final decision (in English) was served on the parties on May 9, 2024, and in Mandarin on May 31, 2024.

On June 28, 2023, the Office of Administrative Hearings, which is the hearing office responsible for issuing the final decision, received an application from Claimant's authorized representative requesting reconsideration of the decision.

The undersigned Administrative Law Judge, who did not hear the matter or write the decision for which reconsideration is requested, was assigned to decide the application.

Here, Claimant's authorized representative applies for reconsideration on the ground that she had not been told that she needed to provide additional documentation or present additional witness testimony. Claimant further argues that she had contacted Service Agency after receiving the final decision and did not receive a response to her request to submit additional evidence.

ANALYSIS

Pursuant to Welfare and Institutions Code section 4713, subdivision (b), a party has 15 days of the date of the final hearing decision to apply for reconsideration to: (1) correct a mistake of fact or law; (2) correct a clerical error in the decision, or (3) address the decision of the original hearing officer not to recuse themselves following a request pursuant to Welfare and Institutions Code section 4712, subdivision (g). (Undesignated statutory references are to the Welfare and Institutions Code.)

Claimant did not submit the application for reconsideration within 15 days of the final decision nor did Claimant provide notice of the application to Service Agency and the Department of Developmental Services (DDS).

In addition, the wording of section 4713, subdivision (b), as well as the expedited deadline for deciding an application, make clear that the mistake of fact or law in question must be apparent from the decision, such as an obvious mathematical error in calculating hours of service, an order that fails to accurately encompass the legal conclusions, the citation to the wrong statute, or reliance on a law that is no

longer in effect. In such instances, the hearing office can either correct the mistake if the resolution is apparent from the decision or order the matter to be reheard if the error is not apparent. There is nothing in section 4713 suggesting an application for reconsideration contemplates the hearing office reopening the record to permit Claimant to submit additional evidence after the hearing has been concluded and the final decision issued.

For these reasons, the application must be denied.

ORDER

Claimant's application for reconsideration of the final decision is DENIED.

IT IS SO ORDERED.

DATE:

NANA CHIN

Administrative Law Judge

Office of Administrative Hearing