

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

In the Matter of:

CLAIMANT,

vs.

WESTSIDE REGIONAL CENTER, Service Agency.

OAH No. 2024010773

DDS No. CS0012011

DECISION

Taylor Steinbacher, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter via videoconference on June 20, 2024.

Claimant's mother (Mother) represented Claimant at the hearing. Names are omitted to protect the privacy of Claimant and his family.

Westside Regional Center (WRC) was represented by Kirsten Davis, Appeals and Resolution Specialist.

The ALJ received testimony and documentary evidence at the hearing. At the close of the hearing, the ALJ determined the hearing should be continued until June 28, 2024, for Claimant to upload three additional exhibits, and to allow WRC to

submit objections to those exhibits. No additional exhibits were submitted. The record closed, and the matter was submitted for decision on June 28, 2024.

ISSUE

Is Claimant's diagnosis of autism spectrum disorder (ASD) substantially disabling such that Claimant is eligible for Regional Center services under the Lanterman Act?

EVIDENCE RELIED UPON

Documents: WRC Exhibits 1-13; Claimant's Exhibits A-I.

Witnesses: for WRC - Dr. George Meza, L.C.S.W., Ph.D.; for Claimant – Mother and Claimant's father (Father).

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant is an 8-year-old male who lives with his Mother and Father in the catchment area served by WRC.
2. WRC is a regional center designated by the Department of Developmental Services (DDS) to provide funding for services and supports to persons with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4500 et seq.)

3. Claimant's parents applied for services from WRC. On December 6, 2023, WRC's multidisciplinary eligibility team found that although Claimant had a qualifying diagnosis of ASD, he was not substantially disabled by that condition and therefore did not meet the eligibility criteria for regional center services under the Lanterman Act. (Ex. 2, p. A17; Ex. 8.) WRC sent Claimant's parents a Notice of Action on December 15, 2023, explaining the reasons for the denial. (Ex. 2, p. A18.)

4. Mother filed a fair hearing request, which was received by WRC on January 18, 2024. (Ex. 2, pp. A12–A15.) Following an informal meeting with Claimant's parents on February 29, 2024, WRC did not change its position that Claimant was ineligible for regional center services. (Ex. 13.) This hearing ensued.

Claimant's Medical Records

UCLA DEVELOPMENTAL BEHAVIORAL PEDIATRICS REPORT

5. An assessment team at the Developmental Behavioral Pediatrics Clinic at UCLA Medical Center consisting of Dr. Sai N. Iyer, MD, a developmental-behavioral pediatrician; Dr. Samantha Kucaj, Psy.D., a licensed psychologist, and Priya Dakshnamoorthy, MD, a developmental-behavioral pediatrics fellow, conducted an assessment of Claimant in the summer of 2023 and drafted a report (UCLA Report). (Ex. 5.)

6. As to Claimant's language skills, the UCLA Report noted the following:

Expressive: he speaks in full sentences. Speech is mostly clear and easy to understand. He can communicate well, but sometimes has a hard time retelling events from the school day. He does better [when] sharing lots of details about

things that he is interested in. Non verbal communication:
he has a range of gestures and facial expressions to
communicate. No concerns about his eye contact.
Receptive: he can follow 1-step and 2-step directions, but
does not always comply. No concerns about his
understanding of language.

(Ex. 5, p. A39.)

7. With respect to self-care, the UCLA Report stated Claimant is
“independent with toileting, can complete his self-care independently, but does not
always comply.” (Ex. 5, pp. A39–A40.)

8. As for motor skills, Claimant could “walk, run, [and] climb steadily” and
there were no concerns about Claimant’s fine motor skills, although he did not like to
write. (Ex. 5, p. A30.)

9. Claimant’s first grade teacher reported to the assessment team his main
concerns were that Claimant has trouble keeping his hands to himself and needs
constant reminders and redirection to complete assignments. (Ex. 5, p. A38.) That said,
Claimant’s strongest area in school was reading and reading comprehension; Claimant
is also very interested in math and science. (*Ibid.*) Claimant’s teacher said he was “very
smart.” (*Ibid.*)

10. When the assessment team observed Claimant, he “was engaged in
conversation and talkative,” and when asked what he was doing before the visit
Claimant “provided brief answers to these initial questions and did not give much
follow-up without prompting. He then warmed up and was more engaged in
conversation.” (Ex. 5, p. A44.) During multiple observations and testing sessions,

Claimant “easily established rapport” with the observer, and “frequently made comments and remarks to be friendly and engaged.” (*Id.*, pp. A42, A44.)

11. Claimant was administered the Wechsler Intelligence Scale for Children, Fifth Edition, to assess his level of cognitive functioning. (Ex. 5, pp. A45–A46.) This test attempts to measure an individual’s overall learning potential by examining verbal comprehension abilities, visual spatial and fluid reasoning, working memory, and processing speed. (*Id.*, p. A45.) Claimant scored in the: (1) 95th percentile in the verbal comprehension index; (2) 93rd percentile in the visual spatial index; (3) 84th percentile in the fluid reasoning index; (4) 50th percentile in the working memory index; and (5) 37th percentile in the processing speed index. (*Id.*, p. A46.) All these scores were average or above. (*Ibid.*) Claimant scored in the 95th percentile in the overall General Ability Index, and although the test can render an IQ score, no score was provided given the variability in the test results. (*Ibid.*)

12. Claimant was administered the Vineland Adaptive Behavior Scales, Domain-Form, Third Edition, to evaluate the degree to which Claimant is functioning independently. (Ex. 5, p. A46.) In the communication subdomain of the test, Claimant scored in the moderately low range for receptive language, but in the adequate range in the areas of written and expressive language. (*Id.*, p. A47.) Claimant scored in the moderately low range in the rest of the subdomains, including in the daily living and socialization domains. (*Ibid.*)

13. Claimant was administered the Autism Diagnostic Observation Schedule, Second Edition. (Ex. 5, p. A49.) Observations from this test included that:

[Claimant’s] spoken language consisted of spontaneous, fluent, and complex sentences used in largely correct

fashion. The intonation, volume, and rhythm of speech were typical with no evidence of stereotyped/idiosyncratic use of words or phrases. [Claimant] showed challenge with communicating about his own emotional experiences and relationships.

[¶ . . . ¶]

In conversation, [Claimant] elaborated on his own responses for the examiner, but this was limited in flexibility; [h]e was tangential and persisted with topics of interest which impeded his ability to sustain a reciprocal conversation. . . . Overall, the quality of [Claimant's] social responses was somewhat limited (i.e., did not respond to a few conversation bids and play bids).

[¶ . . . ¶]

During the assessment, [Claimant] exhibited difficulties with maintaining conversation, social response, reciprocal social communication, and excessive interests.

(*Id.*, pp. A49–A50.)

14. The UCLA Report concluded Claimant “presents with deficits in social communication and social interaction across multiple contexts, as well as having some stereotyped patterns of behavior. The symptoms have been present since the early developmental period and cause clinically significant impairments in social, occupational, or other areas of current functioning. These impairments are significantly

impacting his daily social, emotional, and adaptive functioning.” (Ex. 5, p. A53.) As a result, the team at UCLA diagnosed Claimant with both ASD (Level 1) and attention deficit hyperactivity disorder (ADHD). (*Id.*, p. A54; Ex. 6, p. A62.)

Regional Center Assessments

WRC PSYCHOSOCIAL ASSESSMENT

15. On September 29, 2023, Brigitte Jameson, MSW, PT, an Intake Counselor at WRC, conducted a Psychosocial Assessment of Claimant. The assessment noted that Claimant was diagnosed with ASD and ADHD in July 2023. (Ex. 3, p. A23)

16. As to social-emotional skills, the Psychosocial Assessment noted Claimant has “difficulty with emotional regulation, organization behavior, attention and concentration, and sensory processing. Becomes easily upset and frustrated-crying screaming [*sic*], and difficult to calm.” (Ex. 3, p. A23.) As for communication skills, Claimant “speaks in multiple-word sentences, he has trouble recounting his day or describing to his parents what he has done at school . . . [Mother] reports that even a one-part command is difficult for [Claimant] to follow at times and generally a two-part command is too difficult[.]” (*Id.*, pp. A21–A22.) Claimant’s parents reported his reading and math skills are above grade level, but his writing skills are “less than expected” and he needs constant redirection to complete assignments. (*Id.*, p. A22.)

17. Regarding self-care, Claimant’s parents reported Claimant can use a spoon and fork but prefers to eat with his hands. (Ex. 3, p. A22.) Claimant can undress on his own but he needs help dressing as he has difficulties with fine motor skills needed for fasteners and tying his shoes. (*Ibid.*) When Claimant dresses on his own, he has trouble putting on his shirt or will put it on backward. (*Ibid.*) Claimant will brush his teeth and can wash his hands, but he often does so too quickly. (*Ibid.*)

18. Claimant's parents reported he can walk and run, but he sometimes has difficulties with "motor planning and spatial awareness and [he] tends to bump into things." (Ex. 3, p. A20.) Claimant sometimes has poor body awareness and "often knocks into people in line" and "steps on the toes of family[.]" (*Id.*, p. A21.)

WRC PSYCHOLOGICAL ASSESSMENT

19. Diedre Cook, Psy.D., a licensed clinical psychologist, conducted a psychological assessment of Claimant in November 2023. (Ex. 4.) Dr. Cook conducted the assessment after a referral from WRC. (*Id.*, p. A25.)

20. Dr. Cook consulted Claimant's teacher as part of the assessment. Claimant's teacher reported Claimant "speaks in complete, intelligible sentences. He inconsistently responds to his name and inconsistently responds to praise. . . . He lacks awareness of his body and continually bumps into people around him. Just walking from the back of the room to the front of the room results in "a whole trail of victims[.]" (*Id.*, p. A27.)

21. During Dr. Cook's examination of Claimant he spoke in complete intelligible sentences. . . . He looked briefly at the examiner from time to time but never made eye contact while the examiner was speaking to him or while he was speaking to the examiner. He continually talked about various topics, quickly switching from one idea to the next. He never stopped to include the examiner in the conversation. Even when he asked the examiner questions, he did not stop to allow the examiner an opportunity to answer. . . . Throughout the appointment,

[Claimant] repeatedly had to be reminded to mind the examiner's personal space. He repeatedly climbed onto the examiner's desk and pulled the examiner's laptop toward him so he could see the screen. While sitting across from the examiner at the desk, he climbed atop the desk and moved his head next to the examiner's so he could see the examiner's laptop screen. He grabbed documents from the examiner's hand.

(*Id.*, pp. A27–A28.)

22. Dr. Cook administered the Wide Range Achievement Test, Fifth Edition assessment to Claimant to measure Claimant's academic functioning. (Ex. 4, p. A28.) Claimant scored in the: (1) high average range in math; (2) extremely high range in spelling; (3) very high range in word reading; and (4) high average range in sentence comprehension. (*Ibid.*)

23. Dr. Cook also administered the Vineland Adaptive Behavior Scales – Third Edition assessment to measure Claimant's adaptive functioning. (Ex. 4, pp. A28–A29.) Claimant's overall adaptive abilities showed mild adaptive deficits. (*Id.*, p. A29.) With respect to communication, Claimant scored in the moderately low range and Dr. Cook noted Claimant "clarifies his words by restating his statements, and reads ten words but never understands sarcasm, tells others about routine experiences in detail, or writes ten words from memory." (*Ibid.*) In daily living skills, Dr. Cook found Claimant had mild deficits but he "usually turns on faucets and adjusts the temperature, is careful around hot objects, and understands that money is used to buy things but never cuts easy to cut foods, puts dirty clothing in a hamper, or uses appropriate

manners when eating in restaurants.” (*Ibid.*) Claimant also demonstrated mild deficits in the area of socialization. (*Ibid.*)

24. Dr. Cook administered the Autism Diagnostic Review-Revised assessment to assess Claimant’s social/emotional functioning. (Ex. 4, p. A29.) Claimant’s scores on that assessment were consistent with a diagnosis of autism. (*Id.*, p. A31.) Dr. Cook found that Claimant

avoids eye contact when others speak to him, but he may make eye contact when he initiates a question. He reciprocates social smiles and shows a range of facial expressions. . . . He incorporates eye contact with gestures and words to communicate with others. . . . He sometimes stares but does not respond when spoken to (he responds to some people but not others). Communication: [Claimant] points, nods to indicate “yes,” shakes his head to indicate “no,” and uses complex gestures. . . . He does not engage in social chat. He does not show echoed speech. He makes inappropriate statements (e.g., he asked a woman in a wheelchair at a store why she is bald). . . . He swings his sweater around and hits others with it (he does not realize this bothers others). He does not realize where hi[s] body is in space. He continually bumps into others.

(*Id.*, p. A30.)

25. Dr. Cook concluded Claimant exhibited no significant cognitive defects suggesting intellectual disability but presented with social deficits and restricted and repetitive behaviors to render a diagnosis of ASD. (Ex. 4, pp. A31–A34.)

Claimant's School Records

NOVEMBER 2023 PSYCHO-EDUCATIONAL REPORT

26. In November 2023, an assessment team from Claimant's school drafted a Multi-Disciplinary Psycho-Educational Evaluation Report (Psycho-Educational Report) after receiving a referral from Claimant's parents. (Ex. 9.) The purpose of the report was to assess Claimant's current level of functioning, educational needs, and to determine whether he meets the eligibility criteria for special education services, and to help guide educational program decisions. (*Id.*, p. A68.)

27. Claimant's teacher reported Claimant is easily distracted and needs constant check-ins to ensure he is following directions and knows what to do. (Ex. 9, pp. A72–A73.) Claimant regressed from the beginning of the year in his ability to follow directions and listen carefully. (*Id.*, p. A73.) Claimant also struggled to transition from one thing to the next. (*Ibid.*)

28. Claimant's teacher shared that Claimant loves literature, can get consumed in a book, and enjoys playing learning games; she said he was very intelligent and "has a lot to add to conversations while learning." (Ex. 9, p. A73.) She characterized Claimant's academic performance as: (1) above grade level in reading; (2) average or above average in spelling; (3) average in written expression; and (4) above average in math. (*Id.*, p. A75.) Claimant's music teacher reported Claimant is a smart student who is not afraid to speak up in class. (*Ibid.*)

29. During a classroom observation, Claimant initiated interactions with students and could have a back-and-forth conversation with them, followed along in the reading, and added relevant comments to what other students shared. (Ex. 9,

p. A77.) On several occasions, Claimant engaged with classmates, making appropriate eye contact with them. (*Id.*, pp. A77–A80.)

30. Claimant sometimes bumps into his classmates and can step on their feet. (Ex. 9, pp. A75, A80.) During observation in the school library, Claimant “pushed and reached over other students who were already looking through books” and would “reach over peers or through his books at the bookshelf almost hitting [his classmates].” (*Id.*, p. A81.) Once, Claimant was swinging his sweater around and accidentally hit a classmate; when the classmate told him to stop, Claimant reacted by pushing and yelling. (*Ibid.*)

31. Claimant’s school conducted various assessments of Claimant in drafting the Psycho-Educational Report. For example, Claimant was given the Cognitive Assessment System-2 to assess his planning, attention, simultaneous processing, and successive processing abilities. Claimant demonstrated: (1) average planning ability; (2) average attention ability; (3) above average simultaneous processing ability; and (4) average successive processing ability. (Ex. 9, p. A83.) In supplemental tests measuring executive function, working memory, and verbal/non-verbal content, Claimant scored in the average or above average range. (*Id.*, p. A83.)

32. Claimant was also given the Wide Range Assessment of Memory and Learning 3 to evaluate his ability to actively learn and memorize various pieces of information. (Ex. 9, p. A84.) Claimant scored in the “average” ability on this test, and the report concluded he has “average to above average cognitive abilities when completing tasks in a one to one setting with limited distractions and when provided with accommodations[.]” (*Id.*, p. A85.)

33. To test Claimant's social and emotional functioning, the school conducted various tests, including the Autism Spectrum Rating Scales, using Claimant's teacher and Mother as respondents. According to Claimant's teacher, Claimant "appropriately uses verbal and non-verbal communication for social contact, does not engage in unusual behaviors, relates well to children, relates well to adults, provides appropriate emotional responses to people in social situations, uses language appropriately, does not engage in stereotypical behaviors, and tolerates changes in routine well[.]" (Ex. 9, p. A90.) On the other hand, according to Mother, Claimant "appropriately uses verbal and non-verbal communication for social contact, uses language appropriately, and reacts appropriately to sensory stimulation; however, he engages in unusual behaviors, has problems with inattention and/or motor and impulse control, has difficulty relating to children, has difficulty relating to adults, [and] has difficulty providing appropriate emotional responses to people in social situations[.]" (*Ibid.*)

34. Claimant was also administered the Autism Diagnostic Observation Schedule, Second Edition, to assess whether he had ASD. During this assessment, Claimant

used complex speech. . . . When engaged in a social conversation included some spontaneous elaboration[.] Although some conversations lead to some to and fro, most lead to little reciprocal conversation sustained by [Claimant]. [Claimant] followed his train of thought, particularly when talking about a topic of interest. . . . Reciprocal interaction: During social interactions, [Claimant] demonstrated appropriate gaze and directed facial

expressions to his examiner to communicate affective or cognitive states such as being confused or annoyed. His communication was also usually accompanied by subtle and socially appropriate changes in gesture, gaze, and facial expressions. . . . Although there was reciprocal social communication, it was limited, which included interchanges such as chat, comments, [and] remarks given his language. Although he initiated interactions, [Claimant] did not sustain the interaction and became one sided.

(Ex. 9, p. A91.)

35. Regarding his adaptive functioning, the Psycho-Educational Report noted Claimant's

self-help skills were not formally assessed as there were no reports of concerns in this area. Student appears to be able to take care of his basic hygiene needs and is age appropriate in dressing and toileting. [Claimant] has adequate skills in the area of overall language. He can use language to get his basic needs met. [Claimant] can navigate the school environment and transition from class to class independently. Adaptive skills appear age appropriate at this time.

(Ex. 9, p. A91.)

36. When interviewing Mother regarding Claimant's speech and language skills, Mother "reported that she did not have concerns with [Claimant's] receptive and

expressive language skills. Her concerns primarily were centered around [Claimant's] social language and conversational skills." (Ex. 9, p. A94–A95.)

37. Claimant also tested well in the Clinical Evaluation of Language Fundamentals-5th edition to assess his receptive and expressive language skills, scoring in the 75th percentile in formulated sentences, reading comprehension, and word structure, and scoring higher than 90% in word classes and sentence comprehension. (Ex. 9, pp. A95–A98.) Claimant tested in the 87th percentile on the core language section of the test, and in the 99th percentile on the pragmatic language subtest. (*Id.*, pp. A96–A97.) Mother's responses in the pragmatics profile area of the test were very low, in the 2nd percentile, rating Claimant low in rituals and conversation skills, and nonverbal communication skills. (*Id.*, p. A97.) The report concluded Claimant

exhibited difficulty with reciprocal conversation skills such as turn-taking (interrupting), waiting for a reply after asking a question, and maintaining topics of conversation. He would often shift topics of conversation especially if it was a non-preferred topic. His eye contact at times was appropriate and at other times was fleeting. [Claimant] also exhibited difficulty reading nonverbal cues such as facial expression, body language, and vocal intonation. He benefited from reminders to position his face and body toward the speaker during conversational exchanges. Difficulty with pragmatic skills can impact development of peer relationships.

(*Ibid.*)

38. In the Woodcock Johnson-IV Tests of Achievement, used to measure academic achievement, Claimant demonstrated several "superior" scores and no scores below the range of "average." (Ex. 9, p. A92.) Claimant "did not demonstrate a significant weakness of any area of testing that was administered" for this test. (*Ibid.*)

39. The Psycho-Educational Report concluded Claimant "presents with some behavior characteristics of Autism that impacts social interactions and social communication. . . . [A]ssessment consisting of standardized testing, teacher and parent input, as well as observations, and speech and language sample, revealed that [Claimant] has age appropriate expressive and receptive language, articulation, voice, and fluency skills." (Ex. 9, p. A98.)

NOVEMBER 2023 IEP

40. As a result of the findings of the Psycho-Educational Report, an Individualized Education Plan (IEP) was developed to assist Claimant while in school. (Ex. 10.) Goals of the IEP included improving Claimant's: (1) peer interactions by acting appropriately and not with physical aggression when he perceives that a peer has wronged him; (2) participation in class and not engaging in disruptive behavior; (3) work completion; (4) self-regulation/self-control by keeping his body to himself and observing the personal space of others; and (5) pragmatic language skills by understanding conversational rules such as turn taking and maintaining topics of conversation to strengthen peer interactions. (*Id.*, pp. A109–A114.)

JANUARY 2024 IEP AMENDMENT

41. In January 2024, after discussions with Claimant's parents, Claimant's IEP was updated to add detail and specificity to his IEP goals (Ex. 11.) Claimant's school

also recommended conducting a Functional Behavior Assessment (FBA), Special Circumstances Instructional Assessment, and Occupational Therapy Assessment to address new concerns brought up by Claimant's parents. (*Id.*, p. A131.)

MARCH 2024 FBA AND IEP AMENDMENT

42. The FBA recommended in Claimant's January 2024 IEP amendment was completed in March 2024. (Ex. D [first draft of the assessment]; Ex. I [final assessment].) The school's Board Certified Behavioral Analyst (BCBA) observed Claimant three times throughout the month to conduct the assessment. (Ex. I, pp. B179–B186.) Based on those observations, the BCBA noted three behaviors of concern: (1) noncompliance and off-task behaviors; (2) physical aggression; and (3) mouthing (putting his fingers and inedible objects in his mouth). (*Id.*, p. B186.) The BCBA concluded these three problem areas could be impeding the learning of Claimant's peers, and that Claimant could impede his own learning if "the noncompliance/off-task behaviors persist without intervention." (*Id.*, p. B193.) The BCBA concluded a behavior intervention plan would be helpful for Claimant to support his "replacement behaviors while reducing his challenging behaviors[.]" (*Ibid.*) The BCBA also concluded engaging a Special Circumstance Instructional Assistant to help Claimant was warranted to "implement individual behavioral strategies to support educational performance and to meaningfully participate in the curriculum considering there are still reports of challenging behaviors such as physical aggression, and off-task behaviors." (*Ibid.*) The FBA noted Claimant was described at school "as a student who is brilliant in all academic areas." (*Id.*, p. B174.)

43. Based on the results of the FBA and other assessments of Claimant, his IEP was amended again to add additional therapy, a behavior intervention plan, and support from a Special Circumstances Instructional Assistant. (Ex. A, pp. B1–B2.)

MAY 2024 SCHOOL AIDE RECORDS AND DISCIPLINARY INCIDENT

44. Beginning in late May 2024 and continuing through June 2024, Claimant was provided with a full-time, one-on-one aide while at school. The aide provided a daily, written log of her observations of Claimant, which were translated into graphs showing how the aide affected Claimant's behavior. (Exs. B, E.) Generally, the presence of the aide resulted in a trend of fewer incidents of physical aggression and noncompliance/off-task diversions per hour. (Ex. E, pp. B86–B87.) But instances of compliance with adult instructions remained flat, even while requests for adult attention increased slightly. (*Id.*, pp. B88–B89.)

45. Claimant had trouble transitioning to having a one-on-one aide. (Ex. C.) On May 31, 2024, Claimant's teacher sent him to another room to take a reading test. When the aide found Claimant and asked what he was doing there, Claimant got angry he was being disturbed during the test and stabbed the aide in the thigh with a pencil—the pencil was not sharp and did not break the skin. (*Ibid.*; Ex. B, p. B37.) Claimant's response following the incident was to ask if he could get a prize for finishing his exam. (Ex. B, p. B37.)

JUNE 2024 IEP AMENDMENT

46. Claimant's IEP was amended in June 2024 with progress updates on his IEP goals. (Ex. H.) Claimant did not meet a behavior goal relating to noncompliance/off-task activities. (*Id.*, p. B155.) Claimant nearly met a behavior goal to request adult attention rather than resorting to physical aggression. (*Id.*, p. B156.)

JUNE REPORT CARD

47. Claimant's end-of-year report card for the second grade stated he has "exceptional reading maturity" and "easily applies vocabulary and comprehension skills to gain meaning of a variety of higher-level reading material[.]" (Ex. G.) Claimant quickly grasped various math concepts and "continues to be a good writer." (*Ibid.*) Claimant's teacher noted he needs to improve on behavior and citizenship skills. (*Ibid.*) Although Claimant had grades between B+ and A in all scholastic areas during the year, he had grades of "Needs to Improve" or "Unsatisfactory" in work and study habits (including listening and following directions), and citizenship (such as limiting talking to appropriate times, following school/playground rules, and respecting the rights/property of others). (*Ibid.*) His marks in nearly all these areas did not improve throughout the year—his marks in completing homework on time and respecting the rights/property of others regressed. (*Ibid.*)

Dr. George Meza

48. Dr. George Meza is a Consulting Psychologist for WRC and was WRC's sole witness at the hearing. Dr. Meza is not on WRC's multidisciplinary team that makes eligibility determinations—Dr. Meza also does not help make eligibility decisions more generally. Rather, Dr. Meza's role with respect to Claimant was to conduct an informal meeting with Claimant's parents to "gather more information about [Claimant] and his developmental functioning, before the formal appeal hearing." (Ex. 13, p. A143.) As part of that information gathering, Dr. Meza reviewed Claimant's records, met with Claimant's parents, conducted interviews with Claimant's teacher and his school Behaviorist, and observed Claimant. (*Id.*, pp. A138–A142.)

49. Dr. Meza confirmed WRC does not dispute Claimant has ASD, a qualifying diagnosis for receiving regional center services under the Lanterman Act. But Dr. Meza explained that, in addition to a qualifying diagnosis such as ASD, the symptoms of that diagnosis must cause significant impairments in at least three of the following areas: (a) self-care (sometimes referred to as “self-help” by Dr. Meza); (b) receptive and expressive language (sometimes referred to simply as “communication” by Dr. Meza); (c) self-direction, (d) learning; (e) mobility; (f) capacity for independent living; and (g) economic self-sufficiency.

50. As for self-care, Dr. Meza explained a substantial disability would mean a person requires assistance with feeding, toileting, brushing teeth, and dressing—things a typical eight-year-old could do without much assistance. Although Claimant has been diagnosed with enuresis (bedwetting), Dr. Meza stated this diagnosis is not connected to Claimant’s ASD, and thus is irrelevant to whether Claimant is substantially disabled in the area of self-care. In Dr. Meza’s opinion, Claimant does not suffer from a substantial disability in this area.

51. As for receptive and expressive language, Dr. Meza explained this factor concerns both what a person can understand and their ability to respond in kind using language. A person with a substantial disability in the area of receptive language—and with a diagnosis of ASD—would have trouble deciphering instructions, following a conversation, and having a normal “to and fro” conversation. Similarly, a person with ASD and a substantial disability in the area of expressive language would struggle to participate in a conversation by expressing thoughts, feelings, and ideas; they would not use appropriate grammar and syntax.

52. Dr. Meza noted that although Claimant may make inappropriate comments, he is nevertheless an appropriate communicator and could express himself

during Dr. Meza's observation. Claimant receives schooling in a traditional classroom and afterschool program, rather than in a special education setting. On the other hand, Dr. Meza admitted Claimant has trouble interacting with his peers: when they get too close to him or enter his personal space, he reacts with violence rather than communicating that they need to give him space. In Dr. Meza's opinion, Claimant does not suffer from a substantial disability in this area.

53. As for substantial disability in learning, Dr. Meza testified this would involve a person being unable to understand, learn, and assimilate classroom concepts appropriate to their grade level, such as basic addition, reading, and writing. Dr. Meza conceded a high IQ is not necessarily dispositive of a lack of substantial disability in learning, but explained there would need to be a significant deficiency in a specific subject (such as high scores in reading and writing, but low scores in math) to suggest a substantial disability.

54. Dr. Meza opined that, in light of Claimant's high intelligence testing scores during assessments at UCLA and with Dr. Cook, Claimant was not substantially disabled in this area. People with high intelligence testing scores and IQs have high adaptability, flexibility, and can adjust quickly to learn new concepts, all of which undermine the suggestion Claimant has a substantial disability in this area. Claimant also had not shown a significant deficiency in a specific academic area such that he may still be substantially disabled despite otherwise high intelligence testing scores.

55. Dr. Meza explained that a person who could not navigate their environment and move around obstacles successfully in the home, school, or the community—or someone who gets lost easily and is unable to retrace their steps due to their qualifying diagnosis, has a substantial disability in the area of mobility.

Claimant does not suffer from a substantial disability in this area, according to Dr. Meza.

56. In the area of self-direction, a child would have a substantial disability if they could not understand what the next step in a process is, or if they engaged in behaviors that required significant, frequent supervision and redirection to age-appropriate behaviors. Dr. Meza conceded Claimant has a substantial disability in this area: Claimant shows several behaviors that require constant supervision such as aggression, disruptive behaviors, and pica (eating unusual objects such as pencils, staples, and highlighter ink). Claimant requires a one-on-one aide at school to supervise and direct him to more appropriate behaviors.

57. Dr. Meza testified that the two remaining factors, capacity for independent living and economic self-sufficiency, are not relevant for eight-year-olds given their age.

Claimant's Evidence

MOTHER'S TESTIMONY

58. Mother credibly testified at the hearing. Mother testified that both her and Father began seeking services and supports for Claimant immediately after his ASD diagnosis in 2023.

59. In the area of expressive and receptive language, Mother believes Claimant has a substantial disability in this area. Until very recently, Mother and Father were unaware of Claimant's more "cringeworthy" behaviors attributable to his ASD diagnosis. She worries Claimant's deficits in these areas, as well as his fallback to aggression when these behaviors are pointed out to him, has resulted in an inability to

connect with his peers and harms Claimant's ability to work effectively in a team. Mother pointed to deficits in non-verbal behavior and inability to stay on topic as further evidence of a substantial disability.

60. With the area of self-care, Mother testified Claimant's self-care challenges are significant. He often needs assistance with bathing, reminders to use the toilet, and assistance to complete toileting. Claimant will wear clothing backwards if not noticed and adjusted by his parents. Claimant needs help to eat as he cannot use utensils. Claimant is often unaware that he needs to wipe his nose—Mother says that Claimant's personal grooming and self-care needs are "beyond challenging" for Mother and Father.

61. As for learning, Mother believes Claimant has a substantial disability in this area because he often needs redirection and is off task. Although Claimant's academic potential is widely recognized, Mother remains concerned that his lack of social skills will inhibit his ability to have a career that in part requires good social skills and teamwork, rather than solely knowledge or academic ability. Mother also noted Claimant receives letter grades not only in subjects such as reading and math, but also in classroom citizenship and behavior. During the second grade, Claimant's citizenship and behavior grades regressed in some areas.

62. As to mobility, Mother contends Claimant has a substantial disability in this area. Claimant often runs into people and is unaware of it, and he often breaches others' personal space.

63. One of Mother's overarching concerns is that, while Claimant's natural scholastic ability has carried him through the second grade, once concepts become more complex as school goes on, Claimant will be unable to master those concepts as

easily because he lacks the organizational skills and focus to understand and retain them.

64. Mother does not want Claimant pigeonholed into a career where his intelligence is valued, but he is forced into a “back room” because he lacks the social skills to interact and supervise others. Mother is seeking regional center services because she believes Claimant is worth investing in and because he has shown the ability to improve once he has received help; Mother and Father would not be seeking help if they did not think Claimant would benefit from it.

FATHER’S TESTIMONY

65. Father briefly testified to reiterate that Mother and Father would not be asking for regional center services if they did not think Claimant would benefit from that help. Father worries that Claimant has potential that may be hindered if he does not receive assistance to address his issues.

LEGAL CONCLUSIONS

Jurisdiction

1. The Lanterman Act governs this case. (Welf. & Inst. Code § 4500 et seq.) (All further statutory references are to the Welfare and Institutions Code, unless otherwise stated.) Under the Lanterman Act, an administrative proceeding, also known as a “fair hearing,” is available to determine the rights and obligations of the parties, including regional center decisions to which the claimant disagrees. (§§ 4700–4717.) Claimant timely requested a fair hearing, and jurisdiction for this case was established. (Factual Findings 1–4.)

Standard and Burden of Proof

2. The party asserting a condition that would make the individual eligible for a benefit or service has the burden of proof to establish he or she has the condition. (*Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 160–161.) Here, Claimant bears the burden of proving by a preponderance of the evidence that he meets the eligibility requirements under the Lanterman Act to receive regional center services. (Evid. Code, § 115.) This standard is met when the party bearing the burden of proof presents evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

The Lanterman Act

3. The Legislature enacted the Lanterman Act to provide a pattern of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. The purpose of the statutory scheme is twofold: To prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.)

4. DDS is the state agency charged with implementing the Lanterman Act; DDS, in turn, may contract with private, non-profit community agencies called “regional centers” to provide developmentally disabled persons with access to the services and supports best suited to them throughout their lifetime. (§§ 4416, 4620.)

Lanterman Act Eligibility Requirements

5. Section 4501 outlines the state's responsibility for persons with developmental disabilities and its duty to establish services for those individuals. A person must have a developmental disability that is substantially disabling, as defined by the Lanterman Act and its implementing regulations, to be eligible for regional center services.

6. A developmental disability is a disability that originates before an individual turns 18 years old and is expected to continue indefinitely. Developmental disabilities do not include other handicapping conditions that are solely physical in nature, or which are solely psychiatric disorders or learning disabilities. (§ 4512, subd. (a); Cal. Code Regs., tit. 17, § 54000.) ASD is one of five specific conditions making someone eligible for regional center services. (§ 4512, subd. (a).)

7. Along with the requirements listed above, the condition must also constitute a substantial disability for the individual. (§ 4512, subd. (a)(1).) In this context, "substantial disability" means:

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

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

(B) Learning; (C) Self-care; (D) Mobility; (E) Self-direction;
(F) Capacity for independent living; (G) Economic self-sufficiency.

(Cal. Code Regs., tit. 17, § 54001, subd. (a).)

8. 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.

9. There is no dispute that Claimant suffers from the developmental disability of ASD. The only dispute is whether Claimant's ASD causes him to suffer from a substantial disability in at least three of the following areas of major life activity: (A) receptive and expressive language; (B) learning; (C) self-care; (D) mobility; (E) self-direction; (F) capacity for independent living; or (G) economic self-sufficiency. There is ample evidence Claimant is substantially disabled in the area of self-direction, and WRC's sole witness Dr. Meza concedes as much. (Factual Findings 16, 27, 40, 42–46, 56, 61.) Thus, Claimant is eligible for regional center services if the evidence proves he is substantially disabled in at least two other major life activities.

Analysis of Substantial Disability

10. Receptive and expressive language. The weight of the evidence does not show Claimant is substantially disabled in this area. Claimant can carry on a conversation and be an effective communicator for someone of his age, including using fluent, complex speech. (Factual Findings 6, 10, 12–13, 16, 20–21, 24, 29, 33–34, 36–37, 39, 51–52.) Although Claimant may have conversational deficits, such as interrupting others while in conversation, focusing conversations on his interests, or sometimes making inappropriate comments, these alone do not constitute a substantial disability in receptive and expressive language. (Factual Findings 14, 23–24, 37, 40, 52, 59.)

11. Learning. The weight of the evidence does not show Claimant is substantially disabled in this area. Claimant shows high scholastic achievement, high scores in intelligence testing, and has been characterized as a “brilliant” student. (Factual Findings 9, 11, 16, 22, 25, 28, 31–32, 38, 42, 47.) As explained by Dr. Meza, Claimant also does not suffer from difficulties in a specific school subject such that his otherwise high grades and high intelligence testing scores might conceal a substantial disability. (Factual Finding 53–54.) Mother noted her concern that Claimant receives letter grades in areas other than academic subjects, such as citizenship and other soft skills, and Claimant’s grades in these areas have stayed the same or regressed as Claimant progressed through the second grade. (Factual Finding 61.) But Claimant’s low grades in these non-academic areas are not indicative of a substantial disability in the area of learning—they are more fairly addressed in the area of self-direction, for which Claimant undisputably has a substantial disability.

12. Mobility. The weight of the evidence does not show Claimant is substantially disabled in this area. Claimant can walk, run, and climb without serious

issues. (Factual Findings 8, 18.) There is no evidence he cannot navigate obstacles at home, school, or in the community. (Factual Finding 35.) Although Claimant often breaches the personal space of others and runs into others and does not realize it (Factual Findings 20–21, 24, 30, 40, 62), neither constitutes a substantial disability in this area. (Factual Finding 55.)

13. Self-Care. Neutral parties have observed Claimant is “independent with toileting” and can “complete his self-care independently” although he does not always comply. (Factual Finding 7.) Claimant’s parents reported he can participate in brushing his teeth and washing his hands, but he often does so too quickly. (Factual Finding 17.) Claimant can turn on faucets and adjust the water temperature and is careful around hot objects. (Factual Finding 23.) The Psycho-Educational Report noted Claimant appears to be able to take care of his basic hygiene needs and is “age appropriate in dressing and toileting.” (Factual Finding 35.) Mother reports Claimant often will put his clothing on backward or his clothing will need to be adjusted, he needs frequent reminders to use the toilet or to wipe his nose, and he prefers to eat with his hands instead of with utensils. (Factual Finding 60.) But the weight of the evidence shows that, although Claimant may have deficits in this area, none is substantially disabling. (Factual Finding 50.)

14. Capacity for Independent Living/Economic Self-Sufficiency. As explained by Dr. Meza, neither of these factors applies to an eight-year-old. (Factual Finding 57.)

15. In sum, Claimant did not demonstrate he is substantially disabled in two areas of major life activity in addition to self-direction. Even if Mother’s testimony about Claimant’s self-care needs was enough to overcome the other evidence about a lack of substantial disability in the area of self-care, Claimant would still fall short of showing three areas of substantial disability.

Conclusion

16. Claimant did not prove by a preponderance of the evidence he is eligible for regional center services.

17. Mother and Father's concerns about their son are understandable. Claimant has been diagnosed with ASD for less than a year; Mother and Father's response to this no doubt distressing diagnosis was to immediately seek and obtain resources to help Claimant. Claimant's parents are also troubled that Claimant may be regressing or that the symptoms of his ASD may become more acute in the future—so much so that his excellent academic achievement to date may be imperiled. (See Factual Findings 62, 64–65.) But at this time, Claimant does not meet all the requirements of California law and regulation to receive services under the Lanterman Act. If Mother is proven correct that Claimant's deficits become more acute as he ages, Claimant can reapply for regional center services.

ORDER

Claimant's appeal is denied.

DATE:

TAYLOR STEINBACHER
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.