

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

**In the Matter of**

**CLAIMANT**

**and**

**SOUTH CENTRAL LOS ANGELES REGIONAL CENTER**

**DDS No. CS0013031**

**OAH No. 2024030093**

**DECISION**

Thomas Lucero, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on November 4, 2024.

Tami Summerville, Appeals Manager, represented the South Central Los Angeles Regional Center (SCLARC or Service Agency). Claimant was represented by Mother (family titles are used to preserve confidentiality).

This matter is governed by the Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code sections 4500 through 4885 (Lanterman Act).

Documents and testimony were received in evidence. The record closed and the matter was submitted for decision on November 4, 2024.

## **STATEMENT OF THE CASE**

Claimant contends his developmental deficits, affecting especially his speech and language, make him eligible under the Lanterman Act for services and supports. The Service Agency contends Claimant has not been consistently diagnosed with a condition, such as Autism, also called Autism Spectrum Disorder (ASD), that would make him eligible under the law, and in any case, there is insufficient evidence that Claimant is substantially disabled as defined in the Lanterman Act.

## **FINDINGS OF FACT**

1. The Service Agency sent a Notice of Action (NOA) on February 7, 2024, advising Claimant he was ineligible for services. Claimant timely appealed on February 27, 2024.

### **List of Assessments and Evaluations**

2. Claimant was evaluated and received services under the Early Start Program for speech delays. Recently turned six, Claimant “aged out” of the program when he was three years old. SCLARC’s interdisciplinary core staffing team reviewed Claimant’s case on February 6, 2024, and again during the appeal process on April 23, 2024.

3. The Service Agency’s lead psychological consultant, Laurie McKnight Brown, PhD, is a member of the eligibility team. They concluded Claimant does not qualify for services under the Lanterman Act. In reaching their conclusion, as Dr. Brown testified, she and the team considered several documents, each described in more detail below: psychological assessments by clinical psychologist Christopher Cooper,

PhD, on October 4 and 12, 2023; a psychosocial assessment completed by Service Coordinator (SC) Barbara Linares, LCSW, on August 23, 2023; an October 2, 2023 letter from psychologist Ioana Pal, PhD, along with Dr. Pal's assessments performed at Stramski Children's Developmental Center, Miller Children's & Women's Hospital, Long Beach, California, on August 28 and September 29, 2023; as well as letters from one of Claimant's teachers, Laura Ramos, and Speech-Language Pathologist (SLP), Rachel Salem, MS, CCC-SLP.

## **Psychosocial Evaluation**

4. On August 23, 2023, SC Linares, LCSW, conducted the Service Agency's intake meeting and prepared a Psychosocial Evaluation. Claimant is generally in good health, but Mother reported being concerned with Claimant's lack of sensory processing. As Mother stated, Claimant is the youngest of four siblings, all residing with their parents. The oldest has been diagnosed with ASD and is a client of the Service Agency.

5. Mother reported that Claimant is able to run, walk, and go up and down stairs, but trips easily and bumps into objects. He has good motor skills. Claimant is able to prepare himself a snack and picks up after himself. He eats using utensils but prefers to use his hands, and uses the toilet, but he wears a diaper at night. Claimant is able to wash his hands and brush his teeth. He assists, but alone cannot dress himself or don shoes.

6. Asked about social, behavioral, and emotional concerns, Mother reported Claimant makes limited eye contact and is unable to socialize with peers, explaining, Exhibit 2, page A24, "If we go to the park, if other kids approach him he will not play

with them. He will just walk away." Claimant generally prefers to be alone. Rather than play with his siblings, he tells them to leave his room if they approach him.

7. Mother considers Claimant well behaved, but he is always moving, at times with repetitive movements, such as jumping in place. He repeats words. He is able to follow directions but needs prompting. Mother stated that whereas he has some receptive language skills, Claimant's expressive language skills are weak and he is unable to communicate using complete sentences, though she and others are able to understand him.

8. Claimant was in Transitional Kindergarten (TK) at his local public school. Mother declined recommended special education placement for him, but he was receiving speech therapy for 30 minutes twice a week. He was on a waitlist for occupational therapy (OT). Claimant reportedly has difficulty adjusting to change and is sensitive to loud noises. Mother considers him unaware of danger and impulsive.

### **Psychological Evaluation by Dr. Ochoa**

9. Clinical Psychologist Rose Ochoa, PsyD, evaluated Claimant on June 11 and 15, 2021. The Service Agency received her Psychological Evaluation on July 20, 2021. Mother provided much of the information Dr. Ochoa noted, information similar to that in SC Linares's August 23, 2023 psychosocial evaluation.

10. Dr. Ochoa reviewed a developmental evaluation progress report by Speech Source Therapy dated April 9, 2021. Dr. Ochoa noted Claimant's specialized instruction one hour per week via telehealth and results from the Developmental Assessment of Young Children, Second Edition (DAYC-2). Claimant's scores in age equivalencies for various skills were: Cognitive: 33 months, 0% delay; Gross Motor: 32 months, 0% delay; Fine Motor: 29 months, 4% delay; Social Emotional: 32 months, 0%

delay; Adaptive: 33 months, 0% delay; Receptive Language: 32 months, 0% delay; and Expressive Language: 32 months, 0% delay. According to the assessor, as Dr. Ochoa noted, Claimant made adequate eye contact, actively participated in the learning lessons, and transitioned from one activity to another without difficulty.

11. Dr. Ochoa observed Claimant at play on his own and in interactions with her and with Mother. She noted that he maintained eye contact and was cooperative, showing Dr. Ochoa he was finished with a toy or test item by eye contact and a gesture.

12. Dr. Ochoa administered several tests, including:

Five core subtests of the Wechsler Preschool and Primary Scale of Intelligence-Fourth Edition (WPPSI-IV), measuring verbal and nonverbal abilities. The WPPSI-IV yields a Full Scale IQ (FSIQ). For Claimant, this was 93, falling within the Average Range at the thirty-second percentile.

The Visual Spatial Index (VSI), composed of Block Design and Object Assembly subtests, a measure of visual spatial processing, integration and synthesis of part-whole relationships, attentiveness to visual detail, nonverbal concept formation, and visual-motor integration. Claimant's VSI score of 103 placed him in the Average Range at the fifty-eighth percentile.

The Verbal Comprehension Index (VCI), composed of Receptive Vocabulary and Information subtests, a measure of verbal skills in acquired knowledge, verbal reasoning and comprehension, and attention to verbal stimuli. Claimant's VCI score of 93 placed him in the Average Range at the thirty-second percentile.

///

The Adaptive Behavior Assessment System, Third Edition (ABAS-3), using information supplied by Mother and measuring adaptive skills, the everyday skills needed to function in one's environment. Dr. Ochoa found Claimant's communication abilities, including speech, listening, conversation, and nonverbal communication, in the Low Range. He was in the Average Range in performing basic pre-academic skills foundational to reading, writing, and mathematics. She found his abilities to make independent choices, exhibit self-control, and take responsibility when appropriate, were in the Low Range. Leisure skills, those needed for engaging in play and recreational activities, were in the Extremely Low Range. His ability to interact socially, initiate and maintain friendships, and express and recognize emotions Dr. Ochoa found to be in the Low Range. Claimant's ability to function in the community and to express knowledge of and interest in activities outside the home was in the Average Range. His level of functioning inside the home, including helping adults with household chores and taking care of personal possessions, was in the Average Range. The health and safety skills needed to protect his physical well-being and prevent and respond to injuries, including following safety rules and showing caution when necessary, Dr. Ochoa found were in the Low Range. Claimant's ability to perform self-care activities such as eating, dressing, and taking care of personal hygiene was in the Low Range. Claimant's motor abilities, including the basic fine and gross motor skills needed for locomotion and manipulation of the environment, and the later development of skills necessary for more complex activities such as sports, were in the Above Average Range.

The Childhood Autism Rating Scale, Second Edition (CARS-2), a behavioral scale to identify children with ASD and distinguish them from developmentally delayed children without ASD, rating behaviors according to the degree of abnormality based on observation and Mother's information. Claimant's score fell in the range of

Minimal-to-No Symptoms of ASD. Mother reported that Claimant speaks in phrases and uses his speech functionally, but Dr. Ochoa noted he minimally spoke during the evaluation. He responds to commands, but inconsistently responds when his name is called. Mother reported that Claimant's eye contact is adequate. Claimant does not point and rather leads Mother by the hand to tell her what he wants. Claimant does point to objects in books and shakes his head for no, but does not nod for yes. Described as an independent child, Claimant does not tend to seek help, but is easily frustrated if he cannot do something on his own and tends not to initiate play. Mother reported Claimant is overwhelmed when around other people and a month before began isolating himself in his room. Mother expressed some concern regarding emotional regulation, as Claimant has 10- to 15-minute tantrums when his demands are not met. Mother reported that transitions were difficult for Claimant, but Dr. Ochoa did not observe that.

TELE-ASD-PEDS (TAP) is a Telehealth Autism Diagnostic Assessment Tool that evaluates children younger than 36 months who may have ASD. Using TAP, Dr. Ochoa observed Claimant did not initiate play. He had several otherwise unremarkable interactions with Mother. Claimant used phrased speech and no unusual vocalizations and was more talkative than usual.

13. Dr. Ochoa's diagnostic impression was F89 Unspecified Neurodevelopmental Disorder. F89 is a code in the International Classification of Diseases (ICD), the medical classifications used by the World Health Organization.

## **Dr. Cooper's Psychological Evaluation**

14. Clinical psychologist Christopher Cooper, PhD, who evaluated Claimant on October 4 and 12, 2023, prepared a Psychological Evaluation. Dr. Cooper

interviewed Mother and reviewed the August 23, 2023 Psychosocial Evaluation by SC Linares and Dr. Pal's September 29, 2023 Psychological Assessment and report and diagnosis based on the Autism Diagnostic Interview – Revised (ADI-R), described below. Regarding his behavioral observations, Dr. Cooper noted, Exhibit 4, page A38, that Claimant "fully participated in the activities of the assessment . . . , exhibited no unusual sensory interests in play materials, [and] displayed no repetitive behaviors."

15. Dr. Cooper reviewed and commented upon several tests: (i) the WPPSI-IV; (ii) the Vineland Adaptive Behavior Scales-Third Edition (VABS-3); (iii) the CARS-2; and the ADI-R. Notable is his comment on the Verbal Comprehension Index portion of the WPPSI-IV, Exhibit 4, pages A39 through A40:

[Claimant's] performance on subtests within the VCI was diverse but overall was low for his age and was an area of relative weakness compared to his overall level of ability . . . . His scores on verbal comprehension tasks were weaker than his performance on tasks that required him to figure things out by looking at them . . . . Additionally, his Verbal Comprehension performance was somewhat weaker than scores obtained on tasks requiring him to hold information in his mind . . . . While variability was seen among verbal comprehension subtests, the overall pattern of scores suggests that [Claimant's] verbal development is currently lagging in comparison to his development of visual spatial reasoning skills and is an area for continued intervention.

///



16. Under the heading on page A46 of Exhibit 4, "Diagnostic Impression," Dr. Cooper wrote: "No Diagnosis or Condition." Dr. Cooper's findings are summarized in more detail on page A45:

[Claimant's] overall FSIQ fell in the Low Average range when compared to other children his age (FSIQ = 82). [Claimant's] overall level of adaptive functioning is described by his score on the Adaptive Behavior Composite (ABC = 54). His adaptive behavior skills fell in the Low range with deficits in communication, daily living skills and socialization. Therefore, [Claimant] does not meet full diagnostic criteria for an intellectual developmental disorder [the fifth category under the Lanterman Act]. . . . [ASD] requires deficits in social communication and social interaction as evidenced by deficits in social-emotional reciprocity, deficits in nonverbal communicative behaviors used for social interaction and deficits in developing, maintaining, and understanding relationships. [Claimant] does not evidence all three of the above criteria.

[Claimant] does try to interact with peers. He can imitate words, sounds and movements without difficulty. [Claimant] uses descriptive, conventional and instrumental gestures in order to communicate with others. [Claimant] displays appropriate body and object use. He demonstrates appropriate interest in and use of toys and other objects. Per report, [Claimant] has a best friend. He is interested in

other children and engages in pretend play with peers. Furthermore, the criteria for [ASD] requires two of the following: restricted, repetitive patterns of behavior, interests or activities as evidenced by stereotyped or repetitive motor movements, use of objects or speech, insistence on sameness, inflexible adherence to routines or ritualized patterns of verbal or nonverbal behavior. Additional criterion may include highly restricted interests that are abnormal in intensity or focus and hyper- or hypo-reactivity to sensory input or unusual interest in sensory aspects of the environment. [Claimant] exhibits no unusual preoccupations or circumscribed interests. [Claimant] exhibits no excessive hand or finger movements. He has displayed occasional tippy toe walking. [Claimant] displays no unusual sensory interests in objects. Per report, he has demonstrated uncommon sensory interest in persons. [Claimant's] vision and hearing responses are within normal limits. He occasionally tolerates changes in routine and schedule. Although [Claimant] presents with some characteristics of Autism, he does not meet full diagnostic criteria for [ASD].

## **Dr. Pal's Evaluations**

17. Dr. Pal observed Claimant and administered the Autism Diagnostic Observation Schedule, Second Edition (ADOS-2). on August 28, 2023. She found Claimant was reserved at first but spoke more and explored his surroundings as he

became more comfortable. She observed no tantrums or negative behaviors. Dr. Pal summarized, Exhibit 5, page A49:

On this administration of the ADOS-2, [Claimant] scored in the low range of autism spectrum related symptoms (3 out of 10) which suggests little evidence toward an . . . ASD classification. Currently, the ADOS-2 classifies results into autism, autism spectrum and non-spectrum brackets. [Claimant's] results fall in the NON-SPECTRUM classification.

18. Dr. Pal evaluated Claimant again on September 29, 2023, using the ADI-R. Mother and Father answered two additional questionnaires for the ADI-R. Dr. Pal stated in Exhibit 5, page A52, the reasons that prompted her to revise her evaluation:

According to the information provided by his mother, [Claimant] struggled to respond correctly and in a timely manner to pain, he has difficulties understanding and navigating social relationships, prefers to play on his own and tends to engage in more repetitive play and activities. His mother showed this clinician many videos at different ages, supporting her answers about [Claimant] engaging in pacing, some hand gesturing, playing on his own even when his siblings are playing around him, preferring specific toys and preferring to be without many articles of clothing on him. These behaviors were not observed during the ADOS-2 administration. [Claimant's] mother provided examples regarding

minimal social reciprocation, poor initiation and lack of pretend play, although he does seem to engage in creative way with specific toys.

The “many videos at different ages” Dr. Pal mentioned in her hearing testimony as well, but they were not offered as evidence. Dr. Pal wrote further, Exhibit 5, page A52 through A53:

Based on the information provided through this interview and supported by other relevant questionnaires and accounts as well as parent provided videos, [Claimant] partially meets criteria for [ASD] (F84.0) without apparent cognitive delays, with social-emotional difficulties, requiring support (level 3).

19. Dr. Pal wrote an October 2, 2023 letter with comments similar to those following her use of the ADI-R. She summarized on page A47 of Exhibit 5:

Based on information provided outside of the ADOS-2 administration, it did appear that testing did not pick up on his usual presentation and typical behaviors mother is used to seeing. Therefore, the ADI-R was completed with [Claimant’s] mother. She also showed this clinician many videos collected in various settings over the past few years, showing stereotyped behaviors, poor social interactions, repetitive movement, sensory seeking behaviors, rigidity to specific sibling interactions and interruptions, and repetitive

vocal sounds. Based on all available information, it does appear that [Claimant] meets criteria for:

Autism Spectrum Disorder, F84.0

-without accompanying intellectual impairment, with communication difficulties, with anxiety

-requiring some support (Level 2 with respect to social communication, Level 1 with respect to restricted, repetitive, behaviors)

## **SLP Salem's Letter**

20. SLP Salem wrote a March 26, 2024 letter regarding Claimant's evaluation and twice weekly, one-to-one therapy sessions with her since they started in June 2023. In the most recent evaluation she performed, in December 2023, SLP Salem administered Claimant the Preschool Language Scales, Fourth Edition (PLS-4). It showed mild delay and below average skill in receptive language, such as weakness in understanding expanded sentences and the passive voice. SLP Salem noted that Claimant's difficulty in understanding longer and more complex sentence structures, impeding his ability to communicate. Informally observing Claimant, SLP Salem noted inappropriate responses during conversation and difficulty answering longer questions.

21. SLP Salem concluded there was moderate delay in Claimant's expressive language, with weakness in describing similarities, and in using qualitative concepts and adjectives. She noted Claimant's vague language and word-finding difficulties, his pauses or asking "What's the word?"

22. SLP Salem found Claimant's social communication skills adequate, including basic social language such as conversational turn-taking, maintaining a topic, and offering appropriate greetings. Nevertheless she noted significant deficits in Claimant's ability to use language to express a variety of social functions, such as asking for assistance, asking for more information, expressing his emotions, and social problem-solving. Though Claimant was able to identify others' emotions in a picture or social scenario, he was unable to generalize and, instead of verbalizing his emotional state, might leave the room, put his head down, or cry or refuse to speak. He had inconsistent joint attention and eye contact and weakness in interpreting others' body language, making it hard to make friends.

23. SLP Salem noted some self-stimulating behavior, also called stimming, and repetitive movements, such as rocking, moving up and down from his chair or bed rather than staying in one place, with an increase in such activity when Claimant seemed not to know an answer to a question or when asked to talk about something against his preference. Claimant was easily distracted and often said his family was being too loud. But he could also calm himself at times.

24. SLP Salem summarized, Exhibit 6, page A55: Claimant "presents with a mild receptive language disorder and moderate expressive language disorder, characterized by deficits in his semantic knowledge, syntax, expressive vocabulary, and social communication abilities secondary to his diagnosis of [ASD]."

25. Claimant's TK teacher, Laura Ramos, wrote an April 8, 2024 letter. Like SLP Salem, she observed that Claimant is sometimes distracted. She has seen him rocking and spinning on the floor. He has trouble answering questions, even after he raises his hand to answer, and has trouble learning new words. She observes that Claimant likes being alone and rarely socializes with peers. When Ms. Ramos has the

class singing, Claimant sometimes objects that they are too loud. He tries to instruct other children and becomes frustrated when they do not do as he says. Ms. Ramos concludes, Exhibit 6, page A57: "I can see the importance and benefits from receiving speech therapy services . . . that . . . would help improve [Claimant's] expressive language and his social communication skills."

26. Claimant's Individualized Education Program (IEP) in the record was prepared following a meeting on September 16, 2022. It noted that Claimant follows one- and two-step directions and knows much more than his expressive skill indicates. The IEP states, Exhibit 7, page A60, that Claimant's "limited expressive language may impact his involvement and progress in the general education classroom and impact his ability to access the curriculum."

### **Dr. Brown**

27. Dr. Brown, the Service Agency's lead psychological consultant, noted that she and the other members of the Service Agency's eligibility team have reviewed Claimant's case three times. Claimant's diagnosis of unspecified neurodevelopmental disorder does not make him eligible for services under the Lanterman Act. To supplement the records the team reviewed, the Service Agency offered to send an Educational Specialist to observe Claimant at school, a natural environment that could change or deepen understanding of Claimant's condition and behavior as he moved through an environment likely more comfortable for him. Mother, however, had concerns that such an observation could disrupt Claimant's learning and otherwise affect him adversely and did not allow it.

28. Dr. Brown and the eligibility team took into account Claimant's evaluations by Dr. Pal, but Dr. Brown considers them focused on ASD, rather than

comprehensive. Dr. Brown noted that, according to the records the team reviewed, Claimant has language skills, though his expressive skill may be hindered at times by shyness or anxiety. She noted that Claimant is able to make himself a snack and pick up after himself, abilities relevant to self-care ability. Claimant's expressive ability speaks to his self-direction, including social skills, self-regulation, and initiative. Dr. Brown saw little of concern regarding possible learning deficits and no concerns for Claimant's mobility. Capacity for independent living is usually considered after a consumer is at least five years old, but there is some indication of this ability in Claimant given the absence of significant safety concerns, such as eloping or other dangerous or risky behavior. Dr. Brown recommended that parents should ask for an updated IEP and continue to work with Claimant's school. She considered that even if Claimant has ASD, the evidence of his substantial disability is insufficient.

29. In closing remarks, Mother argued that the evidence abundantly shows an eligible condition, one that she and the family, left alone and without assistance, are unable to handle adequately, to Claimant's continued future detriment.

## **LEGAL CONCLUSIONS**

### **PRINCIPLES OF LAW**

1. The party that asserts a claim or seeks to change the status quo generally has the burden of proof in administrative proceedings. (Cal. Administrative Hearing Practice (Cont. Ed. Bar 2d ed. 1997) § 7.50, p. 365.) Claimant bears the burden of proof in these proceedings. Under Evidence Code sections 115 and 500, the evidentiary standard Claimant must meet is proof by a preponderance of the evidence, meaning



Claimant must show that the evidence makes it more likely than not that he should prevail.

2. A claimant may be eligible for services if the claimant has one of the five conditions categorized in Welfare and Institutions Code section 4512, subdivision (a)(1), and if in addition the claimant is substantially disabled and meets a few other criteria. Accordingly at issue here initially is whether Claimant has any one of three of the five qualifying conditions: ASD, ID, or, in the fifth category, "disabling conditions found to be closely related to [ID] or to require treatment similar to that required for individuals with" ID. There was no evidence that Claimant has or has had cerebral palsy or epilepsy, the other two conditions that might make a claimant eligible for services.

3. Section 54000 of title 17 of the California Code of Regulations states that eligibility depends not only on whether a person's disability comes within one of the Lanterman Act's five categories, but also on characteristics such as whether the disability is likely to last indefinitely and is substantially disabling. The regulation's provisions parallel provisions in Welfare and Institutions Code section 4512.

4. To be substantial, a disability, under section 54001, subdivision (a)(1), of title 17 of the California Code of Regulations, must result in major impairment of cognitive or social functioning. Subdivision (a)(2) of the regulation states that for a finding of substantial disability there must exist:

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. Section 54010 of title 17 of the California Code of Regulations describes procedures for a Service Agency's decision on eligibility following intake and assessment, and how the decision may be appealed.

6. No witness explicitly referenced the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), a standard reference work, but the psychologists who observed and evaluated Claimant use the DSM-5's terms and concepts. The DSM-5 description of ASD, Exhibit 8, page A80, begins thus: "Persistent deficits in social communication and social interaction across multiple contexts . . . ." Contexts include failure to interact with others, such as in conversation, poor verbal and nonverbal communication, and deficits in developing, maintaining, and understanding relationships, such as friendships.

7. The DSM-5, Exhibit 8, page A89, describes ID, also defines Intellectual Developmental Disorder, as "a disorder . . . that includes both intellectual and adaptive functioning deficits . . . ." Three criteria must be met: A. Intellectual deficits, such as in reasoning and academic learning, confirmed by both clinical assessment and 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,” such deficits limiting functioning in daily life; and C. Onset of intellectual and adaptive deficits during the developmental period.

## **ANALYSIS**

8. Dr. Pal diagnosed Claimant with ASD, but the diagnosis is subject to some doubt. Following her evaluation in August 2023 Dr. Pal found insufficient basis to diagnose ASD. A month later she changed her diagnosis and did find ASD, in substantial part based on videos supplied by mother. The content of the videos is not described in any detail and the videos themselves were not in evidence. Even if all the evidence that Dr. Pal considered were clearly laid out, however, her second, September 2023 diagnosis need not be accepted. The court in *Kearl v. Board of Medical Quality Assurance* (1986) 189 Cal.App.3d. 1040, 1052, noted that “one credible witness may constitute substantial evidence.” But also pertinent here is the observation by the court in *Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 890, that a finder of fact may reject the testimony of a witness, even an expert, even when the witness is not contradicted.

9. Just as significant here, however, is that Dr. Pal’s diagnosis is contradicted by other experts, Dr. Ochoa, Dr. Cooper, and Dr. Brown. The battery of tests that both Dr. Ochoa and Dr. Cooper administered is described in detail. The discussion by each of testing results balances many things that they and others have observed, both those indicative and those not indicative of ASD. This balancing that Dr. Ochoa and Dr. Cooper and others have done, balancing the facts that support and those that do not support a finding of ASD, is an indication that the question whether Claimant has ASD is a close one, such that a decision could fall on either side. No doubt Mother’s assertion is correct, that services and supports from the Service Agency would

substantially assist Claimant and all his family. On the whole, Mother presents a sympathetic case. But the question here is a factual one, whether the facts, though to some extent ambiguous, fit for the most part the requirements of the Lanterman Act and the regulations that implement it. That is not quite clear. It must be noted here that Claimant bears the burden of proof. Because a conclusion of ASD is not clear, it must be concluded that Claimant has not carried his evidentiary burden regarding the ASD related category of Welfare and Institutions Code section 4512.

10. Claimant likewise did not carry his evidentiary burden regarding ID or a condition like ID in the fifth category. No one has diagnosed Claimant with ID or a similar condition. Here the question is not so close as that concerning ASD. Perhaps most telling is that Claimant's FSIQ was measured at 93, in the Average Range. There is little evidence that Claimant is deficient intellectually, as opposed to social and other skills adversely affected when ASD is present. It is clear that Claimant struggles significantly because of difficulties with language and speech, but the evidence does not show that the cause is intelligence greatly below average.

11. Dr. Brown's point is also well taken, that the evidence does not demonstrate substantial disability, whether or not one accepts that Claimant has a qualifying condition of the three, ASD, ID, or a condition in the fifth category, under Welfare and Institutions Code section 4512.

12. The observations and evaluations of Claimant performed do not indicate major impairment of Claimant's cognitive or social functioning or significant functional limitations under section 54001, subdivisions (a)(1) and (a)(2) of title 17 of the California Code of Regulations. The exception is that Claimant shows deficits in expressive language. But that is only one type of deficit, not at least three types that, among the seven types of deficits listed in section 54001, must be shown for eligibility.

Claimant thus does not meet the requirement for substantial disability. In light of all the evidence, a conclusion that Claimant is eligible for services and supports from the Service Agency is not warranted.

13. Claimant failed to meet his burden to establish that he has ASD, ID, Cerebral Palsy, Epilepsy or is a person who qualifies for regional center services under the fifth category of eligibility as someone who has a condition closely related to ID or requires similar treatment. Moreover, Claimant failed to demonstrate deficits in three of the seven factors considered when determining substantial disability.

## **ORDER**

Claimant's appeal is denied.

DATE:

THOMAS LUCERO

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.