

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

**In the Matter of:**

**CLAIMANT**

**and**

**NORTH LOS ANGELES COUNTY REGIONAL CENTER,**

**Service Agency.**

**DDS No. CS0019274**

**OAH No. 2024070544**

**DECISION**

Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on December 4, 2024, in Lancaster, California.

Claimant was represented by her grandmother, S.H., who is Claimant's authorized representative. (Names are not used, in the interest of privacy.) North Los Angeles County Regional Center, NLACRC or Service Agency, was represented by Stella Dorian, Due Process Officer.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on December 4, 2024.

## **ISSUE**

Whether Claimant is eligible for services from the Service Agency under the Lanterman Developmental Disabilities Services Act (Lanterman Act), California Welfare and Institutions Code, section 4500 et seq. (All statutory references are to the Welfare and Institutions Code, unless otherwise noted.)

## **EVIDENCE RELIED ON**

Service Agency exhibits 1 through 27; Claimant's exhibits Z-1 through Z-4; testimony of Dr. Heike Ballmaier, testimony of S.H.

## **FACTUAL FINDINGS**

### **Procedural History**

1. Claimant is a seven-year-old girl who seeks services from the Service Agency under the Lanterman Act based on a claim that she suffers from Intellectual Disability, Autism Spectrum Disorder (ASD), or a condition similar to Intellectual Disability or that can be treated in a manner similar to Intellectual Disability.

2. Claimant initially sought services from the Service Agency by an intake application submitted on May 30, 2024. Claimant contends she applied in January 2024, but it appears the Service Agency acted on it in May of that year.

3. On June 14, 2024, the Service Agency's Interdisciplinary Eligibility Committee (IE Committee) determined that Claimant did not have an eligible condition. On that same day the Service Agency issued a Notice of Action, denying eligibility.

4. Claimant submitted a timely appeal, and this proceeding ensued. All jurisdictional requirements have been met.

5. After Claimant appealed, the parties engaged in mediation, which led to Claimant providing medical records that the IE Committee had not seen prior to the denial of eligibility. (Claimant waived the time to conduct the hearing.) On October 7, 2024, the IE Committee again met and after reviewing the matter further, concluded Claimant is not eligible for services. On October 8, 2024, the Service Agency gave Claimant written notice of the IE Committee's decision.

## **Background**

6. On June 11, 2024, Kristine Gutierrez, Intake Coordinator for NLACRC, conducted a social assessment by telephone with Claimant's grandmother. At that time Claimant had been in her grandmother's custody for two years; she was a Department of Children and Family Services (DCSF) placement. It was reported Claimant lived with her grandmother, an adult aunt, and her sister. (Some reports indicate Claimant's great grandmother also lived with her.) Claimant's parents were reportedly incarcerated. S.H. informed Gutierrez that Claimant had cognitive delays and had undergone a multi-disciplinary assessment and a psychological assessment. The assessment report indicates Claimant was referred to the Service Agency by her pediatrician to rule out Intellectual Disability and Fifth Category

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7. Claimant was then in the first grade, and was eligible for special education services, due to a Specific Learning Disability (SLD). She was receiving counseling services from Penny Lane Centers.

## **Assessments**

8. Carlo DeAntonio, M.D., F.A.A.P., is a physician on the NLACRC staff. He reviewed Claimant's medical records, and based on the records he did not find the presence of substantially handicapping cerebral palsy or epilepsy.

9. Alan J. Golian, Psy.D, performed a psychological evaluation of Claimant in November and December 2023, issuing a report dated January 3, 2024, in connection with Claimant's treatment at Penny Lane Centers. He is also a vendor of the Service Agency, but did not perform his assessment on Service Agency's behalf. According to his report, Claimant was referred by her grandmother "for diagnostic clarification due to concerns regarding her irritability, anger outbursts, and withdrawal behavior. Testing has also been requested to assess for a potential intellectual and/or learning disability, as [Claimant} is reported to have difficulty understanding and learning new material." (Ex. 5, p. A19.)

10. Dr. Golian utilized a number of test instruments, including the Wechsler Preschool and Primary Scale of Intelligence, Fourth Edition (WPPSI-IV), an IQ test; the Woodcock Johnson Tests of Achievement, Fourth Edition (WJ-IV); the Behavior Assessment System for Children, Third Edition (BASC-3); the Conners Early Childhood (Conners EC). He also interviewed S.H. and Claimant; performed a Mental Status Exam and Behavioral Observation and he reviewed records.

11. Claimant's Full Scale IQ was 80, in the low average range. Her scores on the Woodcock Johnson tests, which gauge academic achievement, were all in the Very

Low range. For example, the score for Broad Achievement was a 67, in the first percentile. Claimant's scores in Broad Reading, Broad Mathematics, and Broad Written Language were similar, 65, 68, and 69, respectively, all three in the first or second percentile.

12. Dr. Golian described Claimant's behavior during the assessment. She made good eye contact, reciprocated his greeting, and she made spontaneous comments and attempted to share objects of interest that she discovered in the room. She responded to questions and regarding nonverbal communication her eye contact, facial expressions, and gestures were within normal limits. She presented in this manner during both testing sessions, and in both she separated from her grandmother and transitioned to testing without difficulty.

13. Dr. Golian diagnosed Reaction to Severe Stress, Unspecified; Reading Disorder (Provisional); Mathematics Disorder (Provisional); and Disorder of Written Expression (Provisional). It is clear from the report that Dr. Golian saw no evidence of ASD.

14. Claimant's school district conducted a Multidisciplinary Assessment of Claimant, testing her on February 21, March 5, 11, and 14, 2024. The report was issued on April 1, 2024.

15. Distract staff used several testing instruments, including the Cognitive Assessment System, 2d edition (CAS-2), and the Woodcock Johnson Tests of Achievement. They also utilized instruments to assess Claimant's phonological processing, auditory processing, and visual perceptual skills, and staff conducted observations in the classroom and playground.

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16. Scores on various subtests from the CAS-2 ranged from slightly below average to average, with one above average. Considering those test results, and other information, the assessment stated that "based upon all available information gathered through current assessment, it is estimated that [Claimant's] ability is, overall, within the average range." (Ex. 6, p. A42.)

17. Claimant's performance on the Woodcock Johnson tests was similar to her performance for Dr. Golian, that is, ranging from below average to well below average. For example, in math, Claimant scored below average on five of six subparts of the math test.

18. The assessment stated, regarding adaptive skills, "overall based on observations, school performance, her adaptive skills are not an area of concern." (Ex. 6, p. A46.) The report went on to state "[Claimant's] behavior is not impacting her development of academic skills and (*sic*) although they are below grade level. Her behavior is having minimal impact in her social functioning at this time and is not an area of concern." (*Id.*, p. A47.) The assessment concluded Claimant is eligible for special education services because of a Specific Learning Disorder.

19. On November 20, 2024, Marat N. Shamsutdinov, M.D. wrote a letter addressed "to whom it may concern." Dr. Shamsutdinov is identified in the letter as an adult, child, and adolescent psychiatrist with Southern California Permanente Medical Group. In pertinent part, the letter states: "This letter is to confirm that [Claimant] was evaluated and screened by several providers and as a conclusion [Claimant] has severathe (*sic*) following diagnoses: 1. SPECIFIC LEARNING DISORDER W IMPAIRMENT IN WRITTEN EXPRESSION 2. SPECIFIC LEARNING DISORDER W IMPAIRMENT IN MATHEMATICS 3. SPECIFIC LEARNING DISORDER W IMPAIRMENT IN READING. (Ex. Z-1.)(Capitalization in original.)

## Hearing Testimony

20. Heike Ballmaier, Psy.D., BCBA, testified for the Service Agency. She is a clinical psychologist with over 30 years of experience and is Senior Clinical Psychologist Specialist with NLACRC, and a member of the Committee.

21. Dr. Ballmaier explained diagnostic criteria for Intellectual Disability, ASD, and the fifth category, and why Claimant did not meet the diagnostic criteria. On the issue of whether Claimant suffers from Intellectual Disability, Dr. Ballmaier pointed to the low average IQ of 80, noting that some scores were higher than 80, pointing out Claimant's working memory score was 94. Dr. Ballmaier opined that Claimant's IQ scores were inconsistent with Fifth Category eligibility as well. Dr. Ballmaier referred to Dr. Golian's report and his behavioral observations of Claimant as evidence Claimant does not suffer from ASD.

22. Dr. Ballmaier acknowledged that Claimant has a number of issues, including poor auditory processing, and social emotional problems, and several learning disorders. Dr. Ballmaier acknowledged Claimant needs much help, but she maintained her position that Claimant is not eligible for services under the Lanterman Act.

23. Claimant's grandmother testified on Claimant's behalf. She described Claimant as a loving and caring child, very helpful and open to learning. However, Claimant is clingy at times, and is a daydreamer; she struggles with brushing her teeth and tying her shoes. She gets upset when she can't keep up with other children. Claimant is two grades below where she should be. She isn't sleeping well, and thus sleeps in class. Claimant benefits from occupational therapy for a day, the next day, the positive effects are gone.

## Diagnostic Criteria

24. The Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision, commonly known as the DSM-5TR and referenced here as the DSM, is a standard reference manual published by the American Psychiatric Association. It is used by mental health professionals to diagnose developmental disabilities, and various mental disorders. It is utilized by the Service Agency and other regional centers to determine if a person suffers from one of the developmental disabilities that might establish eligibility.

25. Per the DSM, the essential features of autism spectrum disorder are persistent impairment in reciprocal social communication and social interaction (Criterion A), and restricted, repetitive patterns of behavior, interests, or activities (Criterion B). These symptoms are present from early childhood and limit or impair everyday functioning (Criteria C and D). (Ex 15, p. A119.)

26. (A) The essential features of intellectual developmental disorder (intellectual disability) are deficits in general mental abilities (Criterion A) and impairment in everyday adaptive functioning, in comparison to an individual's age, gender, and socioculturally matched peers (Criterion B). Onset is during the developmental period (Criterion C). The diagnosis of intellectual developmental disorder is based on both clinical assessment and standardized testing of intellectual functions, standardized neuropsychological tests, and standardized tests of adaptive functioning. (Ex 16, p. A132)

(B) Individuals with intellectual developmental disorder have scores of approximately two standard deviations or more below the population mean, including



a margin for measurement error (generally +5 points). On tests with a standard deviation of 15 and a mean of 100, this involves a score of 65-75. (*Id.*)

(C) Criterion B is met when at least one domain of adaptive functioning--conceptual, social, onset may be or practical--is sufficiently impaired that ongoing support is needed in order for the person to perform adequately across multiple environments, such as home, school, work, and community. (Ex 16, p. A136.)

27. What is often referred to as the fifth category is not a diagnostic criteria recognized in the DSM, but instead is creature of the Lanterman Act. The Service Agency relied on The Association of Regional Center Agencies Proposed Guidelines for Determining "5<sup>th</sup> Category" Eligibility (Guidelines). (Ex. 18.) The Guidelines were drafted with reference to mental retardation, which diagnostic category has been replaced by Intellectual Disability, though broadly similar to each other.

28. The Guidelines provide that as IQ rises above 70 it is more difficult to find them similar to a person with mental retardation, pointing out that an IQ of 79 is closer to low average, as Claimant scored. And, adaptive skills need to be similar to those of a person with intellectual disability, and related to the person's low intelligence.

## **LEGAL CONCLUSIONS**

1. Section 4512, subdivision (a)(1), provides:

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

constitutes a substantial disability for that individual. . . . this term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability, but shall not include other handicapping conditions that are solely physical in nature.

2. To establish eligibility, Claimant must prove, by a preponderance of the evidence, that she suffers from an eligible condition, i.e., Autism, Intellectual Disability, Cerebral Palsy, Epilepsy, or disabling conditions found to be closely related to Intellectual Disability or to require treatment similar to that required for individuals with an Intellectual Disability. She must also prove that she has a substantial disability as a result of his eligible condition, within the meaning of section 4512, subdivision (1)(1). This Conclusion is based on section 4512, subdivision (a)(1), and Evidence Code section 500. A preponderance of the evidence means "'evidence that has more convincing force than that opposed to it.' [Citation.]" (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

3. Section 4512, subdivision (1)(1), provides:

"Substantial disability" means the existence of significant functional limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person:

(1) Self-care.

(2) Receptive and expressive language.

(3) Learning.

(4) Mobility.

(5) Self-direction.

(6) Capacity for independent living.

(7) Economic self-sufficiency.

4. There is no evidence Claimant suffers from Epilepsy or Cerebral Palsy. (Factual Finding 8.) The evidence does not support a conclusion that she suffers from ASD. Dr. Golian did not mention the possibility, and his description of her interactions with him do not describe a child with ASD. Likewise, the school district found no indications of ASD. There is no persistent impairment in reciprocal social communication and social interaction, nor has evidence offered that Claimant demonstrates restricted, repetitive patterns of behavior, interests, or activities. (Factual Findings 12, 21, 24, 25.)

5. Claimant has not met her burden of proving she suffers from Intellectual Disability. Her IQ of 80 places her in the low average range. While Dr. Golian did not administer adaptive function testing, the school district noted no problems with adaptive skills. (Factual Findings 11, 16-18, 21, 24, 26.)

6. Claimant has not met her burden of proving she is eligible under the fifth category, for much of the same reasons she could not establish Intellectual Disability. Her IQ of 80 places her in the low average range. And the school district noted no problems with adaptive skills. (Factual Findings 11, 16-18, 21, 24, 26.)

7. The weight of the evidence shows Claimant suffers from three learning disorders. (Factual Findings 13, 18, 19.) These are not eligible conditions.

8. Based on all the foregoing, Claimant's appeal must be denied.

### **ORDER**

Claimant's appeal is denied, and she shall not be eligible for services from the Service Agency pursuant to the Lanterman Act. This will not bar her from seeking reassessment after one year.

DATE:

JOSEPH D. MONTOYA

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 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.