

**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. CS0020228**

**OAH No. 2024090041**

**DECISION**

Administrative Law Judge (ALJ) Chantal M. Sampogna, Office of Administrative Hearings, State of California, heard this matter on February 19, 2025, via videoconference.

Mother appeared on behalf of Claimant, who was not present. (Titles are used to protect the privacy of Claimant and their family.)

Dana Lawrence, Fair Hearings and Administrative Procedures Manager for North Los Angeles County Regional Center (Service Agency), appeared on behalf of Service Agency.

Testimony and documents were received in evidence. The record closed and the matter was submitted for decision on February 19, 2025.

## **ISSUE**

Whether Claimant has a developmental disability as defined by the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.). (Statutory references are to the Welfare and Institutions Code unless otherwise designated.)

## **EVIDENCE RELIED UPON**

Documents: Service Agency's Exhibits 1 through 13; Claimant's Exhibits B through F.

Testimony: Sandi Fischer, PhD.; Mother.

## **SUMMARY**

Claimant is six years old and lives with her family. Claimant was referred to Service Agency by the Los Angeles Department of Family and Children's Services (DCFS) based on concerns Claimant may have Autism Spectrum Disorder (ASD). After reviewing Claimant's educational, medical, and psychological assessments, Service Agency determined Claimant does not have ASD and is not otherwise eligible under the Lanterman Act. Claimant presented a psychological evaluation completed by an outside agency, but the evaluation was not reliable. Claimant failed to establish she has a qualifying condition under the Lanterman Act. Claimant's appeal is denied.

## **FACTUAL FINDINGS**

### **Jurisdiction**

1. Claimant is six years old and resides with Mother (Claimant's grandmother adopted Claimant in January 2022 and is referenced as Mother), Mother's partner, and Claimant's four-year-old brother and 15-year-old half-brother.
2. On March 27, 2024, Claimant submitted an intake application for regional center services.
3. On July 11, 2024, Jennifer Yeung Chan, Psy.D., conducted a psychological assessment of Claimant on behalf of Service Agency.
4. On August 22, 2024, Service Agency issued a Notice of Action (NOA) informing Claimant she was not eligible for Lanterman Act services.
5. On August 23, 2024, Claimant submitted a timely Request for a Fair Hearing.
6. Jurisdictional requirements have been met.

### **Service Agency's Record Review**

7. Service Agency's Eligibility Committee (Eligibility Committee) assessed Claimant's eligibility for regional center services by reviewing her medical, educational, and psychological records. On August 21, 2024, the Eligibility Committee determined Claimant did not meet Lanterman Act eligibility requirements. After issuance of the NOA, the Eligibility Committee reviewed Claimant's September 2024 additional educational records, including her Individual Education Program (IEP), but the

additional information did not change its determination that Claimant does not meet Lanterman Act eligibility requirements.

### **MEDICAL RECORDS**

8. On May 22, 2024, Carlo DeAntonio, M.D., F.A.A.P., a member of the Eligibility Committee, conducted a review of Claimant's medical records. Claimant's medical records did not suggest the presence of cerebral palsy or epilepsy.

### **EDUCATIONAL RECORDS**

9. The Eligibility Committee reviewed Claimant's school records, consisting of Claimant's attendance and grades, a Psycho-Educational Assessment (educational assessment), and an IEP. The psycho-educational assessment and IEP were completed by the Los Angeles Unified School District (District) on September 26, 2024.

10. Mother initiated the IEP assessment based on her concerns about Claimant, "such as hyperactivity, inattentiveness, difficulty focusing, angry outbursts and its impact of [*sic*] educational progress." (Exh. B, p. B14.) Mother also expressed concerns to the District regarding potential characteristics of ASD due to concerns in Claimant's social communication, sensory sensitivity, and social emotional reciprocity. (*Ibid.*)

11. Claimant's educational assessment was completed by Marcela Lomeli, M.A., Ed.S., school psychologist, and occurred on September 25 and 26, 2024. Ms. Lomeli observed Claimant and interviewed Mother and Claimant's kindergarten and first grade teachers (collectively, interviewees). Throughout the two-day educational assessment, Claimant made appropriate eye contact, began activities without

prompting, understood the role of the examiner, and had appropriate social interactions.

12. The interviewees provided consistent reports of Claimant's hyperactivity, constant motion, aggression, and struggles with self-control. These accounts were also consistent with Ms. Lomeli's observations and Claimant's educational records which describe Claimant's struggles with her behavior, having been warned regarding inappropriate gestures to her friends and pushing other students.

13. The three interviewees responded differently regarding Claimant's reactions to sensory stimulation and social communication. Mother and Claimant's kindergarten teacher reported Claimant demonstrated sensitivity to different sensory inputs. Mother and Claimant's first grade teacher reported Claimant displayed unusual social emotional reciprocity. Ms. Lomeli did not observe either of these challenges in Claimant's conduct or behavior.

14. Additional relevant findings in the educational assessment include the following:

[Claimant] exhibits strengths in . . . communication with peers and adults. She likes to help her teachers, participates in small and large group activities, can identify ways to cope with her emotions, and can be creative. . . . [Claimant] has a positive attitude towards school, as she enjoys learning. She demonstrates areas of need in self-regulating emotions when she is in the school yard. [Claimant] has been known to use physical responses when angered with peers, making it difficult for her to build relationships with peers. She

needs prompts to begin and stay on task until completed. She has difficulty paying attention for long periods of time in large group settings, staying seated for a long period of time, being organized, using positive communication skills when upset, and following directions. [Claimant] does evidence social, emotional and/or behavioral needs which adversely impact educational access and performance at this time.

(Exh. B, p. B30.)

15. As documented in Claimant's IEP, the District concluded Claimant is eligible for special education services under the category of Other Health Impairment based on Claimant's Attention Deficit Hyperactivity Disorder (ADHD). The District also determined Claimant has challenges in reading fluency but does not have a specific learning disability, and Claimant did not meet the definition of ASD as applicable to the Education Code. (Exh. B, p. B31.) (Notably, the eligibility requirements for special education services based on a diagnosis of ASD, as found in the Education Code and Federal Regulations, are less stringent than eligibility requirements for Lanterman Act services based on a diagnosis of ASD, as found in the Diagnostic and Statistical Manual – 5th Edition (DSM-5).)

## **SERVICE AGENCY ASSESSMENTS**

### **Social Assessment**

16. On May 22, 2024, Service Agency Intake Coordinator (IC) Sandra Henrichson conducted a social assessment of Claimant via a telephone conversation

with Mother. At the time of the social assessment Claimant was five years and 11 months old.

17. Mother explained to IC Henrichson that she is requesting regional center services for Claimant because she believes Claimant has ADHD based on Claimant's difficulties with attention and emotional outbursts. Mother explained Claimant has emotional outbursts almost daily, often consisting of being non-compliant, arguing, and throwing things, as well as being aggressive with her younger brother and children at school.

18. In response to IC Henrichson's questions regarding Claimant's adaptive, social, and communication functioning, Mother provided the following information. Mother explained Claimant requires assistance with toileting, dressing, and brushing of teeth and is a picky eater. She also reported Claimant walks on her toes, lines up her toys, and gets upset if anyone touches her things. In addition, Claimant can get fixated on certain things, for example, at the time of the social assessment Claimant was fixated on a television show that aired on Wednesday nights. Mother finds Claimant's eye contact to be inconsistent and that Claimant can be sensitive to sounds. Finally, Mother has not heard Claimant engage in scripting or echolalia, and Claimant does not wander away.

### **Psychological Assessment – Service Agency**

19. On July 11, 2024, Jennifer Yeung Chan, Psy.D., a licensed psychologist, conducted a psychological assessment of Claimant on behalf of Service Agency to determine if Claimant is eligible for services under the Lanterman Act. Dr. Chan has conducted psychological assessments for Service Agency for multiple years. At the time of Dr. Chan's assessment, Claimant was six years and one month old.

20. Dr. Chan administered the Weschler Preschool & Primary Scale of Intelligence – Fourth Edition (WPPSI-IV), the Autistic Spectrum Disorder Observation - Second Edition (ADOS-2), the Adaptive Behavior Assessment System - Third Edition (ABAS-3), via Mother, and the Social Responsive Scale – Second Edition (SRS-2). After reviewing Claimant’s assessment scores and her interviews with Claimant and Mother, Dr. Chan concluded Claimant does not meet the criteria for ASD or Intellectual Disability (ID).

21. During the evaluation, Claimant engaged in imaginative play and was friendly, cooperative, calm, cheerful, and silly, and demonstrated appropriate affect, eye contact, and facial expressions. Dr. Chan learned from Mother that Claimant initiates play with peers and offers comfort to others, for example, if an individual is sad or in pain, and otherwise responds appropriately to social situations. Mother did not report Claimant had any preoccupation or circumscribed pattern of interest.

22. The results of the WPPSI-IV indicate Claimant does not meet the criteria for ID. Claimant’s Full Scale Intellectual Quotient (FSIQ) was calculated and reflected general intellectual functioning in the Average range of intelligence, with an FISQ score of 94.

23. Regarding Claimant’s adaptive functioning, Dr. Chan could not determine Claimant’s Global Adaptive Composite score and percentile because Mother did not submit responses related to Claimant’s conceptual and practical domains. However, based on the results received, Dr. Chan found Claimant did not have difficulty in the social domain of adaptive skills. Similarly, Dr. Chan had to defer the results of the SRS-2, an assessment that identifies the presence and severity of social impairment within the autism spectrum, because Mother did not return a completed form to Dr. Chan.



24. On the ADOS-2, Claimant had a Social Affect score of 5 and a Restricted and Repetitive Behaviors score of 0, for a total score of 5 which is below the Autism cut-off mark of 8. Dr. Chan noted Claimant did not demonstrate "unusual sensory interests or sensory-seeking behaviors . . . [n]o hand, finger, or other complex mannerisms were observed." (Exh. 7, p A61.) Similarly, Dr. Chan did not observe Claimant demonstrate repetitive or stereotyped behaviors or use stereotyped or idiosyncratic words or phrases.

25. In conclusion, Dr. Chan found:

Test data and clinical observation on the current evaluation suggest that [Claimant's] verbal comprehension skills are at expected level for her age. Overall, [Claimant's] cognitive functioning is at expected level when compared to her same age peers. [Claimant] exhibited very slight delays in social communication and reciprocal social interaction and was ultimately classified as "Non-Spectrum" according to the ADOS-2.

(Exh. 7, p. A62.)

### **PSYCHOLOGICAL ASSESSMENT – WILLOWBROOKS**

26. On December 3, 2024, Kimia Taheri, Psy.D., a psychological assistant with Willowbrooks Behavioral Health (Willowbrooks), a behavioral and mental health agency, conducted a remote psychological evaluation of Claimant over Zoom. Dr. Taheri is not a licensed psychologist. Her assessment was approved by Lindsay Wray, Psy.D., a licensed clinical psychologist.

27. Dr. Taheri's assessment was conducted to determine Claimant's current level of functioning and to rule out ASD. During Dr. Taheri's assessment Claimant was home with Mother and the assessment lasted four hours.

28. Dr. Taheri completed the following assessments of Claimant: selected subtests of the Developmental Profile, 4th Edition (DP-4); Childhood Autism Rating Scale 2nd Edition, Standard Form (CARS2-ST); Autism Spectrum Rating Scale (ASRS); ABAS-3, via Mother; and selected subtests of the ADOS-2. Dr. Taheri noted she did not conduct the ADOS-2 in its entirety due to the limitations of telehealth mediums and accordingly, she used the ADOS-2 as a qualitative tool only.

29. Little weight is given to Dr. Taheri's assessment. Initially, no information was provided regarding Dr. Taheri's training or experience or the level of supervision or oversight provided by Dr. Wray of Dr. Taheri's assessment of Claimant. Further, Dr. Taheri completed partial assessments of Claimant, most notably not completing a full ADOS-2 assessment, thereby not completing a reliable assessment of whether Claimant presents with ASD. Finally, the quality of Dr. Taheri's assessment is further limited by the virtual mode of the assessment and her failure to support her conclusions with observations.

30. Throughout her assessment, Dr. Taheri commented that Claimant did not make eye contact with her, was difficult to engage, and showed poor compliance. For example, Claimant would walk away from the computer and go to other parts of the house. However, it is uncertain how on Zoom Dr. Taheri could determine where or at what Claimant was actually looking, given the variance in computer or phone cameras and the multiple Zoom box placements that can occur during a Zoom meeting. It was also uncertain what training Dr. Taheri had in engaging a six-year-old child in an ASD assessment over Zoom.

31. Because Claimant was home during Dr. Taheri's assessment, she was able to move freely to her toys or other locations in the home. As Dr. Taheri noted, the results of the evaluation should be interpreted with caution for these reasons, because Claimant did not have to adapt to any novel experiences or materials, and because the evaluation was conducted virtually. The limitations of Dr. Taheri's assessment resulted in her conclusions relying heavily on Mother's input and not on Dr. Taheri's observations of Claimant in a non-familiar context.

32. Despite these numerous limitations of her assessment, Dr. Taheri concluded Claimant's social overtures reflected "odd, stereotyped responses that were restricted in range or were inappropriate to the context." (Exh 12, p. A109.) Dr. Taheri also concluded Claimant "showed minimal stereotyped behaviors and restricted interests during the video observation. Several possible sensory interests were observed including looking away from the examiner or engaging in minimal hand movements." (*Ibid.*) Regarding adaptive skills, Dr. Taheri concluded Claimant showed significant impairment in communication and self-care. Dr. Taheri wrote "[Claimant] shows relative weakness in community use, home living, leisure, social, and motor skills. She shows relative strengths in functional pre-academics, health and safety, and self-direction skills." (*Id.*, p. A113.) However, Dr. Taheri included limited to no information in her assessment supporting these conclusions.

### **TESTIMONY OF SANDI FISCHER, PH.D.**

33. Sandi Fischer, Ph.D., testified at hearing. Dr. Fischer has been a licensed psychologist since 1990 and has worked for Service Agency since 2011, most recently as Service Agency's Clinical and Intake Manager. Dr. Fischer's duties for Service Agency include providing expert testimony, participating on the Eligibility Committee,

conducting psychological evaluations, and working closely with psychologists who vendor with Service Agency.

34. Dr. Fischer explained the Lanterman Act eligibility requirements: Claimant must have a qualifying condition (cerebral palsy, epilepsy, ID, ASD, or what is commonly referred to as 5th category, i.e., a condition found to be closely related to ID or to require treatment similar to that required for individuals with ID); Claimant must be substantially disabled in at least three areas of daily life functioning as a result of a qualifying condition; and the qualifying condition must have developed within the developmental period before Claimant was 18 years of age.

35. Dr. Fischer reviewed Dr. Chan's assessment, found it valid, and agreed with Dr. Chan's conclusions. Dr. Fischer identified concerns with the reliability of Dr. Taheri's assessment based on the reasons provided in Factual Findings 29 through 32. Dr. Fischer added that a child's eligibility for Applied Behavior Analysis (ABA) services does not mean or establish the child has ASD as defined by the DSM-5.

### **Claimant's Evidence**

36. Mother believes Claimant is eligible for services under the Lanterman Act under the category of ASD. She presented evidence that ABA services are pending with their health insurance provider. She described in detail Claimant's struggles with behavior at home and at school, emotional breaks, and physical aggression with others.

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## **LEGAL CONCLUSIONS**

### **Jurisdiction**

1. The Lanterman Act governs this case. An administrative “fair hearing” to determine the rights and obligations of the parties is available under the Lanterman Act. (§§ 4700-4716.) (Factual Findings 1-6.)

### **Burden and Standard 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 they have the condition. (*Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 160-161.) In this case, Claimant bears the burden of proving by a preponderance of the evidence Claimant has a developmental disability as defined by the Lanterman Act and is eligible for regional center services. (Evid. Code, § 115.)

### **Lanterman Act Eligibility Requirements**

3. A developmental disability is a disability that originates before an individual turns 18 years old. This disability must be expected to continue indefinitely and must constitute a substantial disability for the individual. Developmental disabilities are limited to cerebral palsy, epilepsy, ASD, ID, or 5th category. 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.)

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## **DSM-5 DEFINITIONS OF AUTISM SPECTRUM DISORDER AND INTELLECTUAL DISABILITY; DEFINITION OF 5TH CATEGORY**

### **Autism Spectrum Disorder**

4. The DSM-5 defines ASD as having the following four essential features. First, an individual must have persistent impairment in reciprocal social communication and social interaction (Criterion A), as manifested either currently or historically by all of the following: (1) deficits in social-emotional reciprocity, (2) deficits in nonverbal communication behaviors used for social interaction, and (3) deficits in developing, maintaining, and understanding relationships. Second, the individual must have restricted, repetitive patterns of behavior, interests, or activities (Criterion B), as manifested by at least two of the following: (1) stereotyped or repetitive motor movement, use of objects or speech, (2) insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior, (3) highly restricted, fixated interests that are abnormal in intensity or focus, and (4) hyper- or hypo-reactivity to sensory input or unusual interest in sensory aspects of the environment. Third, these symptoms must be present in early childhood (Criterion C). Fourth, these symptoms must limit or impair everyday functioning (Criterion D). (Exh. 8, p. A70.)

5. The evaluations, assessments, and other evidence presented at hearing did not establish Claimant has ASD. Claimant's scores on the ADOS-2 fell below the cut-off mark to meet the criteria of ASD. In addition, there was no evidence showing Claimant has deficits in social-emotional reciprocity or restricted, repetitive patterns of behavior, interests, or activities. (Factual Findings 7-36.)

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## **Intellectual Disability**

6. The DSM-5 provides an individual must meet the following three criteria to be diagnosed with ID. (Exh. 19, p. A188):

First, an individual must have deficits in intellectual functions, such as reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience, confirmed by both clinical assessment and individualized, standardized intelligence testing (Criterion A). Individuals with ID have Full-Scale Intelligence Quotient (IQ) scores between 65 to 75, including a five-point margin for measurement error. The DSM-5 cautions that IQ tests must be interpreted in conjunction with considerations of adaptive function. The DSM-5 explains a person with an IQ score above 70 may have such severe challenges in adaptive behavior, such as problems with social judgment or social understanding, that the individual's actual functioning is comparable to that of individuals with a lower IQ score.

Second, the DSM-5 definition of ID requires individuals with ID to have deficits in adaptive functioning that fail to meet developmental and socio-cultural standards for personal independence and social responsibility, and which, without ongoing support, limit functioning in one or more activities of daily life, such as communication, social participation, and independent living, across multiple environments, such as home, school, work, and community (Criterion B). This criterion is met when at least one domain of adaptive functioning – conceptual, social, or practical – is sufficiently impaired such that the individual requires ongoing support to perform adequately in one or more life settings at school, at work, at home, or in the community. The levels of severity of ID are defined based on adaptive functioning, and not IQ scores, because adaptive functioning determines the level of supports required.

Third, individuals with ID must experience the onset of these symptoms during the developmental period (before reaching 18 years of age) (Criterion C).

7. The DSM-5 includes descriptions of the three severity levels of ID, mild, moderate, and severe. Mild ID presents as follows (Exh. 9, p. A88):

Conceptual Domain: For school-age children, there are difficulties in learning academic skills involving reading, writing, arithmetic, time, or money, with support needed in one or more behaviors in an age-appropriate fashion. There is a somewhat concrete approach to problems and solutions compared with age-mates.

Social Domain: Compared with typically developing age-mates, the individual is immature in social interactions. For example, there may be difficulty in accurately perceiving peers' social cues. Communication, conversation, and language are more concrete or immature than expected for this age. There may be difficulties regulating emotion and behavior in an age-appropriate fashion; these difficulties are noticed by peers in social situations. There is limited understanding of risk in social situations; social judgment is immature for age, and the person is at risk of being manipulated by others (gullibility).

Practical Domain: The individual may function age-appropriately in personal care. Individuals need some support with complex daily living tasks in comparison to peers. In adulthood, supports typically involve grocery shopping, transportation, home and child-care organization, nutritious food preparation, and banking and money management. Recreational skills resemble those of age-mates, although judgment related to well-being and organization around recreation requires support. In adulthood, competitive employment is often seen in jobs that do not emphasize conceptual skills. Individuals generally need support to make health care



decisions and legal decisions and to learn to perform a skilled vocation competently. Support is typically needed to raise a family.

8. The evaluations, assessments, and other evidence presented at hearing did not establish Claimant has ID. Initially, Claimant's FISQ score is 94, above the five-point margin for error allowed by the DSM-5 to meet the criterion for ID. Further, Claimant did not demonstrate deficits in adaptive functioning as required by the DSM-5. (Factual Findings 7-36.)

### **Fifth Category**

9. Under the 5th category of eligibility, the Lanterman Act provides assistance to individuals with "disabling conditions found to be closely related to [ID] or to require treatment similar to that required for [individuals with ID]," but does "not include other handicapping conditions that are solely physical in nature." (§ 4512, subd. (a); see *Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, 1129 (*Mason*)). The 5th category is not defined in the DSM-5.

10. On March 16, 2002, in response to the *Mason* case, the Association of Regional Center Agencies (ARCA) approved the Guidelines for Determining 5th Category Eligibility for the California Regional Centers (Guidelines). These Guidelines list the following factors to be considered when determining eligibility under the 5th category: whether the individual functions in a manner similar to that of a person with ID; whether the individual requires treatment similar to that required by an individual who has ID; whether the individual is substantially handicapped; and whether the disability originated before the individual was 18 years old and is it likely to continue indefinitely. In *Samantha C. v. State Department of Developmental Services* (2010) 185 Cal.App.4th 1462 (*Samantha C.*), the court cited with approval to the ARCA Guidelines

and recommended their application to those individuals whose “general intellectual functioning is in the low borderline range of intelligence (I.Q. scores ranging from 70-74)” for 5th category eligibility. (*Id.* at p. 1477.)

11. The evidence does not establish Claimant is eligible for services under the 5th category. Initially, Claimant’s FSIQ did not fall within the range provided by the court in *Samantha C.* as her FSIQ scored above 74. (Factual Finding 22.) In addition, the evidence did not establish Claimant functions in a manner similar to that of a person with ID. (Factual Findings 7-36.)

## **Analysis**

12. Claimant did not establish she is eligible for services under the Lanterman Act. Claimant does not have a qualifying condition; Claimant does not have cerebral palsy, epilepsy, ASD, or ID, and is not eligible under the 5th category. Claimant’s appeal is denied.

## **ORDER**

Claimant is not eligible for regional center services under the Lanterman Act. Claimant’s appeal is denied.

DATE:

CHANTAL M. SAMPOGNA  
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 under Welfare and Institutions Code section 4713, subdivision (b), 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.