BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

and

ALTA CALIFORNIA REGIONAL CENTER, Service Agency

DDS No. CS0020618

OAH No. 2024090482

DECISION

Hearing Officer Coren D. Wong, an Administrative Law Judge with the Office of Administrative Hearings, State of California, heard this matter by videoconference on December 10, 2024, from Sacramento, California.

Claimant was represented by his mother.

Robin Black, Legal Services Manager, represented Alta California Regional Center (ACRC), the service agency.

Evidence was received, the record closed, and the matter submitted for decision on December 10, 2024.

ISSUE

Is claimant eligible for regional center services and supports based on autism spectrum disorder (ASD)?

FACTUAL FINDINGS

Background

1. Claimant is a nine-year-old boy. He lives with Mother, his younger brother, and three adult roommates. The three adult roommates each have attention deficit hyperactivity disorder (ADHD) and ASD, and two of them receive regional center services and supports. Claimant and his brother have regular overnight visitations with their father.

2. Claimant was born full-term at UCD Davis Medical Center. He was delivered by cesarean section due to Mother's extended labor, which caused him to become distressed. He weighed 7 pounds and 9 ounces and was 21 inches long. Mother received appropriate prenatal care, and claimant was not exposed to any illicit or toxic substances in utero. There were no prenatal or postnatal complications.

3. Mother noticed some developmental challenges prior to age three. Claimant required accommodations to become a "happy baby." He did not like Mother carrying him close to her body and was constantly in his swing during the first year. He was tongue-tied and had difficulty nursing.

4. Mother was worried about claimant's language development, but he began walking and talking within the normal age range, albeit later than Mother had

expected. At approximately three years of age, he began unknowingly making grunting noises and saying "hmm" when watching movies. He continues to do so. Claimant currently also makes sniffling and throat clearing sounds. He occasionally repeats the last syllable of words, e.g., "visited-ed-ed."

History of Mental Treatment

5. Claimant has participated in therapy since 2021. Prior mental health diagnoses include unspecified anxiety disorder; adjustment disorder, unspecified, and adjustment disorder with anxiety. His current diagnosis is ADHD, combined presentation. Claimant manages his ADHD with medication (Concerta 72 mg and Guanfacine ER 4 mg) and therapy. Mother reported medication works well. Claimant is grumpier and more impulsive when he does not take Guanfacine ER, and he has less patience when he does not take Concerta.

Application for Regional Center Services and Supports

APPLICATION

6. Mother completed an Alta California Regional Center Intake Application with the assistance of a family advocate on July 1, 2022.[1] She requested that ACRC determine claimant eligible for regional center services and supports based on a diagnosis of intellectual disability (ID). She described concerns about his ability to

[1] Although the Intake Application was dated July 1, 2022, Mother did not sign the Alta California Regional Center Application Information Sheet until 15 months later. No explanation for the delay was provided. Ultimately, the reason for the delay was irrelevant to claimant's appeal.

learn as, "ADHD - Able to learn at an age app level. Does not want to follow directions or listen at school." She described concerns with his ability to independently perform age-appropriate skills as, "Small household chores are difficult, transitions are difficult, very rigid. Cannot engage in reciprocal conversation."

7. Mother also requested that claimant be determined eligible based on the suspicion he has ASD. She described the following concerns with his communication skills, "Very rigid. Cannot engage in reciprocal conversation. Tends to prefer communicating with adults over his peers." She described his reduced social interest or unusual social interaction as, "Limited socialization due to rigidity. He tends to over share information with strangers (e.g., gives them address/phone number). Shouts to gain attention, does not allow others to have personal space." Repetitive behaviors include "echolalia and vocal stereotypy."

INTAKE AND SOCIAL ASSESSMENT

8. Brandy Stewart performed an intake interview with Mother on May 30, 2023. She noted the Sacramento County Department of Behavioral Health Services documented concerns that claimant may have ASD. Mother reported he has emotional outbursts when transitioning from one activity to another, asked to do something he does not want to do, or not allowed to do or have something he wants. She further described him struggling with answering open-ended questions and experiencing anxiety when having to answer them. He also struggles with completing simple chores without constant reminders. Claimant insists on things being done a certain way, and he makes up his own rules for how things are to be done when there are none. He was attending school online, and Mother was in the process of having him assessed for special education services.

9. Megan Leach interviewed Mother and claimant at their home on June 14, 2023, to perform a social assessment. She documented the following observations and impressions in her social assessment:

> [Claimant] is a cute little boy with light brown hair and hazel eyes. His mother reported his height to be about 52 inches, and his weight to be 59.5 pounds. [Claimant] appeared his stated age. At the time of the meeting, [he] was well-groomed, and dressed appropriately for the weather. When this worker first arrived at the home, [claimant] greeted this worker and made fleeting eye contact before sitting down on the floor once this worker sat on the couch. [He] attended to much of the meeting, adding a lot of details and answering questions about himself. During the interview[,] he went and got coloring materials and sat down again to color and answer questions. [Claimant's] brother regularly interrupted to try and share information about himself which caused [claimant] to grow quite irritated and he began yelling at him and then eventually punched his brother in the side. Even when his mother removed his brother from the room, [claimant] took a long time to stop breathing heavily and baring his teeth. At the end of the interview this reporter said bye to [claimant], and he quickly responded back making eye contact and thanked this worker for visiting at his mother's prompt.

10. Mother described claimant as sometimes being very aggressive with animals. For instance, he throws his chickens over the fence and requires constant monitoring when around them. He throws tantrums when upset, which consists of hitting Mother, throwing things at her, yelling at the top of his lungs, throwing himself to the ground, and kicking his bed or the ceiling. Tantrums generally last around 20 minutes but can last hours if he is unable to calm down. He usually calms himself through exhaustion, but an adult other than Mother sometimes needs to intervene. Claimant is aggressive with his brother, which often results in claimant pushing or hitting him when they are arguing.

11. Claimant has an aversion to food with certain textures, such as mashed potatoes, anything in the shape of a burrito, and refried beans. He does not like loud noises and gets upset when people make noises while eating. He often makes high-pitched noises, but he is intolerant of others who do the same.

12. Claimant described having several best friends. He prefers that others approach him to play, but he will sometimes initiate play. He enjoys playing with Legos and creating his own models, but he will also build the models depicted in the instructions. He also likes playing with his next-door neighbor, reading books, drawing, and riding his bicycle. Mother described claimant as having difficulty reading social cues and oversharing personal information.

13. At the time of assessment, claimant was enrolled in online school through the Ripon Unified School District. He was taking five, one-hour classes Monday through Friday. He can identify facial features, body parts, and animals. He knows the days of the week and how to read analog and digital clocks. He can identify the different coins and their denominations, and he was learning to count money.

Mother explained she was waiting for the results of the school district's assessment of claimant's eligibility for special education services.

14. Claimant can turn on the water for a shower or bath on his own. He does not like having water on his face or soap in his eyes. Mother lowers the showerhead sprayer so he can wash himself without getting water in his eyes. When showering, Mother helps him rinse his hair. When bathing, he rinses his hair by wearing goggles and floating on his back.

15. Claimant dresses himself but requires assistance tying his shoes. He sometimes has difficulty with snaps but can manipulate buttons and zippers. He starts brushing his teeth, but Mother finishes. Claimant uses a fork and spoon, but has yet to learn to use a knife. He cuts his own nails and uses the bathroom independently, but he frequently requires reminders to wash and dry his hands. Claimant sits still for haircuts, but he does not like the sound of the clippers or the itchiness caused by cut hair. Mother cuts his hair because he does not like going to a salon.

16. Claimant is a good verbal communicator, and he speaks in complete sentences. He can engage in reciprocal conversation and express basic emotions appropriately. On a good day, he can follow three-step instructions. Mother believes claimant understands others' gestures but is unable to read their body language.

17. Claimant is mobile and rides his bicycle without concern. He has no difficulty jumping, skipping, or navigating stairs. He will independently start certain tasks but may need multiple prompts to complete them. He frustrates and angers easily. Claimant seems to tolerate the frequent changes in the nonfamily members who live in his home. However, he struggles with changes in his environment, and he

requires significant advance preparation for changes to his normal schedule to prevent tantrums or anxiety.

18. Claimant knows to look both ways before crossing the street, but he has ridden his bicycle in the road and without a helmet. He often mistakes medication or vitamins, especially those in gummy form, for candy and eats them. If lost, he tells someone his name, address, and telephone number with prompting. Claimant knows to: (1) leave the house through the nearest window in the event of a fire; (2) stop, drop, and roll if his clothes catch fire; and (3) cover his mouth with a wet shirt if there is a lot of smoke. Mother does not believe claimant would open the door to a stranger or willingly leave with one. He knows how to safely approach strange animals in the community.

19. Claimant can perform various chores. Every day he makes his bed, feeds the dogs, and cleans the cat's litter box. He helps unload the dishwasher and knows how to do laundry. Claimant knows how to use the microwave and toaster oven to prepare food, and he has made macaroni and cheese and toast and heated up corndogs. He orders his own food at restaurants.

PSYCHOLOGICAL EVALUATION

20. Haleigh Scott, Ph.D., is a psychologist licensed to practice in California who contracts with ACRC to perform psychological evaluations of consumers. She evaluated claimant for ID and ASD on June 26, 2024. Dr. Scott's evaluation consisted of: (1) interviewing Mother; (2) reviewing Sacramento County Department of Behavioral Health Services, Child and Adolescent Psychiatric Services (CAPS) Clinic's, Consultation and Screening Services Report, One Community Health patient records, and Sacramento County Department of Behavioral Health Service's Core Assessment;

(3) observing claimant; and (4) administering a psychological testing. She documented her findings and conclusions in a written report which she provided to ACRC's eligibility team for consideration.

Behavioral Observations

21. Dr. Scott wrote the following about her observations of claimant:

> [Claimant] arrived in the clinic with his mother and younger brother. He greeted the clinician when introduced and made eye contact. Present for the assessment was Asha Ellman-Kassing, doctoral intern. While the process of the testing and forms were explained, [claimant] listened and responded when asked questions. [His] eye contact was noted to be appropriate and well-integrated with his facial expressions, and gestures. When asked if he was ready to proceed to the testing room, he separated from his mother and brother easily, rose, and followed the clinician. He was cooperative and did his best during the testing process. [Claimant] first completed the cognitive testing portion of the assessment. [He] worked diligently with little need for redirection. Redirection was needed several times as he became distracted and preferred to talk with the clinician. The results should be considered an accurate reflection of his underlying abilities. Following the Wechsler Intelligence Scales for Children, [claimant] transitioned without any rigidity to the ADOS. For more information, please see the Autism Assessment portion of this report. Following the

> ADOS, the clinician learned that [claimant's] mother and brother had left the clinic to run an errand. [Claimant] played a game with the clinician while waiting for his mother and brothers return to the clinic. After they returned, [claimant], his mother, and brother left, and he said goodbye appropriately.

Psychological Testing

22. Dr. Scott administered the Wechsler Intelligence Scales for Children-Fifth Edition (WISC-V) to claimant. The WISC-V is an intelligence test that measures a child's intellectual ability in five cognitive domains that impact performance: verbal comprehension, visual-spatial, fluid reasoning, working memory, and processing speed. Claimant's full-scale intelligence quotient score (FSIQ) was 132 and was in the "Exceptionally High" range. His FSIQ score put him in the 98 percentile, meaning he scored higher than 98 percent of his peers. "[Claimant's] domain scores ranged from Above Average to Extremely High with a personal strength in Visual Spatial Reasoning. His performance [was] an indication of his ability to evaluate details, understand visual [*sic*] spatial relationships, and show[ed] good attention to details."

23. The Vineland Adaptive Behavior Scales-Third Edition (Vineland-3) is a test of those skills one uses to function in everyday life. It covers communication, daily living, and socialization and provides an adaptive behavior composite score. Mother completed the assessment by evaluating claimant's abilities to perform activities of daily living such as walking, talking, getting dressed, going to school, preparing a meal, etc. Claimant's adaptive behavior composite score was in the "Low Average" range and indicated his daily living skills were slightly below his peers. His communication and daily living skills each fell into the "Average" range, indicating his

skills for understanding and responding to others, caring for himself, performing chores, and functioning within his community were age appropriate. Finally, his socialization score was in the "Exceptionally Low" range and indicated he struggled to control his emotions when he did not get his way and he was behind his peers in his ability to connect with others when playing.

24. Last, Dr. Scott administered the Autism Diagnostic Observation Schedule-Second Edition (ADOS-2) to claimant. The ADOS-2 is an activity-based assessment clinicians administer to evaluate communication skills, social interaction, and imaginative use of materials in individuals suspected of having ASD. She described claimant's performance on the ADOS-2 as follows:

> During the ADOS[,] [claimant] had trouble focusing, especially when the tasks were conversation[-]based as opposed to object or task related. This increased in severity throughout the ADOS[,] and it was noted that [he] struggled to stay seated and was often fidgeting and moving around the space.
>
> In terms of social communication, it was noted that [claimant] used appropriate eye contact, facial expressions, and gestures throughout the assessment period. [He] responded to the clinician and engaged in reciprocal conversation, though it was noted that [he] struggled to share the conversation, he tended to talk over the clinician and want to share many details of each topic that he discussed. For example, at one point the clinician and [claimant] were discussing animals and [he] got very excited

and started sharing all the animals at his house and telling the clinician stories about each animal, when the clinician tried to shift the topic [he] said "there are still more animals!" and kept talking. While [claimant] did tend to dominate the conversation with his interests, he was very interactive and frequently initiated social interaction and conversation with the clinician. [He] demonstrated many moments of shared enjoyment, for example, during the Interactive Play he made jokes and shared in creative play with the clinician. [Claimant] demonstrated age-typical understanding of social interactions and relationships though he tended to voice negative thoughts/feelings about friendships.

[Claimant] did not demonstrate any restricted or repetitive patterns of interest during the ADOS assessment. [He] easily transitioned from task to task, with no instances of reduced flexibility. [He] demonstrated creativity and imaginary play throughout the assessment in a variety of tasks. Overall, [claimant] demonstrated few symptoms and signs that are in line with a diagnosis of Autism Spectrum Disorder and his scores on this assessment (1) were below the cut-off (Autism = 10, Autism Spectrum = 7).

25. Dr. Scott summarized claimant's psychological evaluation as follows:

In order to receive a diagnosis of Autism Spectrum Disorder, three main criteria must be met: (1)

persistent deficits in social communication and social interaction across multiple contexts, (2) restricted, repetitive patterns of behavior, interests, or activities, and (3) symptom presentation beginning in early childhood. During the informal (interactive play) and formal (ADOS) assessments, [claimant] was noted to have typical nonverbal communication skills with appropriate eye contact, gestures, and facial expressions to augment his verbal communication. [He] was noted to frequently initiate social connection and play and engage in reciprocal conversation with the clinician. While [he] did have a negative perspective on social interactions, he demonstrated a clear understanding of social relationships. [Claimant's] mother noted concerns regarding his social skills as he struggles to play interactively with others, however, this tends to be related to [his] controlling the play and making negative assumptions about the motivations of others as opposed to lacking the underlying skills. [Mother] did not share any major repetitive behaviors or restricted patterns of behavior and interest, and none were noted during the evaluation. Based on this evaluation, [claimant] did not meet criteria for Autism Spectrum Disorder.

Eligibility Team

26. Cynthia Root, Ph.D., earned her Doctor of Philosophy in Clinical Psychology from the California School of Professional Psychology. The California Board

of Psychology issued her a license to practice psychology in 2008, and her license has remained active ever since. She has worked for ACRC as a staff psychologist for just over 16 years, as the lead staff psychologist since 2023.

27. Dr. Root is a frequent member of ACRC's eligibility teams. As such, she works with about 40 consulting psychologists who contract with ACRC to evaluate applicants for eligibility for regional services and supports based on ASD and/or ID. Dr. Root has experience performing and interpreting psychological evaluations, including assessments for ASD and ID. She is currently on hiatus from personally performing evaluations, but she estimated she has reviewed "thousands" of them.

28. Dr. Root is familiar with the Lanterman Act's (Welf. & Inst. Code, § 4500, et seq.) criteria for eligibility for regional center services and supports. She explained the applicant must have a developmental disability that: (1) originates before his 18th birthday; (2) is likely permanent; and (3) constitutes a substantial disability for him. "Developmental disability" includes: (1) ID; (2) cerebral palsy (CP); (3) epilepsy; (4) ASD; and (5) conditions closely related to ID or which require similar treatment (Fifth Category).

29. Dr. Root served on claimant's eligibility team. The team evaluated his eligibility for regional center services and supports based on all five qualifying developmental disabilities. No evidence of his eligibility based on CP, epilepsy, or Fifth Category was produced, and Mother did not apply for regional services and supports based on any of those developmental disabilities.

30. The eligibility team reviewed and considered Dr. Scott's June 26, 2024 psychological evaluation determining claimant did not meet the diagnostic criteria for ID for ASD outlined in the Diagnostic and Statistical Manual of Mental Disorders, Fifth

Edition. Dr. Root found Dr. Scott's psychological evaluation was performed properly and had no basis for disagreeing with it. The eligibility team determined claimant was not eligible for regional center services and supports on August 8, 2024.

NOTICE OF ACTION AND APPEAL

31. On August 9, 2024, De Anna Godfrey, a Program Coordinator with ACRC, prepared a Notice of Action notifying claimant of ACRC's decision to deny his application for regional center services and supports. The Notice explained:

> ACRC's multidisciplinary eligibility team reviewed all of the information and records it obtained relating to the applicant and on 8/8/24 determined that [claimant] does not meet the criteria for regional center eligibility as set forth in Welfare and Institutions Code sections [*sic*] 4512(a)(1) and (l) and California Code of Regulations, Title 17, Sections 54000–54010, because they do not have a developmental disability as defined in law.

The Notice also explained claimant's right to appeal ACRC's decision and the steps and timelines for doing so. Claimant timely filed a Fair Hearing Request appealing ACRC's decision.

Claimant's Evidence

CAPS CONSULTATION AND SCREENING SERVICES REPORT

32. Louisa Flynn, M.A., was a clinical intern at CAPS Clinic who evaluated claimant on May 23, 2024. Carlina Wheeler, Ph.D., supervised the evaluation. The evaluation included: (1) interviewing Mother and claimant's therapist; (2) reviewing

clinical records from CAPS and a California Connections Ripon Psychoeducational Report from February and March 2023; and (3) administering psychological tests. Ms. Flynn prepared a Consultation and Screening Services Report summarizing her evaluation.

33. Ms. Flynn documented the following identifying information and reason for the evaluation:

> [Claimant] is a 9-year-old Caucasian, Hispanic, and indigenous male who was referred by his treating provider, Ms. Hannah Poole, M.S., at the CAPS Clinic due to concerns regarding a suspected diagnosis of autism spectrum disorder (ASD). He reportedly exhibits behavioral rigidity, sensory sensitivities (noises, textures), low frustration tolerance, poor eye contact, and social/emotional reciprocity challenges. This testing aims to assess whether [claimant] meets criteria for a diagnosis of ASD and provide appropriate recommendations.

Behavioral Observations and Mental Status

34. Ms. Flynn noted the following about claimant's behavior and mental status during her evaluation:

> [Claimant] is a 9-year-old male who appears his chronological age. He attended one in-person testing session for this evaluation on 4/3/2024. He was able to communicate relatively clearly and logically, and his thought process was linear. He attended the testing session

> in casual clothing. He wore a zipped jacket with his hood up, although he took his hood off for the ADOS-2. He shared that he was tired and wanted to go to school. In the waiting room after the ADOS-2, he exhibited irritation by sighing and telling his parents and the evaluator that he wanted to go to school.
>
> [Claimant] was compliant during testing, but he exhibited some discomfort or anxiety, saying that he was "embarrassed" to complete certain tasks. Overall, he was cooperative and motivated to participate in testing, and he put forth sufficient effort such that results are taken to be an accurate representation of his functioning. Additional behavior observations are included throughout the *Psychological Test Results and Interpretation* section of the report.

(Italics original.)

Psychological Testing

35. Mother completed the Autism Spectrum Rating Scales (ASRS). The ASRS is a standardized assessment tool used to identify symptoms and behaviors associated with ASD in children and adolescents. It utilizes a rating scale to evaluate the frequency with which certain behaviors are seen, which helps determine the severity of ASD symptoms. Mother's responses indicated claimant has many behavioral characteristics often found in those diagnosed with ASD. Specifically, he is insistent on following specific routines and reacts strongly to changes in them. Mother verbally

explained to Ms. Flynn that sleeping, eating, and completing chores are particularly difficult for him. Additionally, he has trouble transitioning between different activities.

36. Mother's explanation was consistent with her responses on the Parenting Stress Index, Fourth Edition (PSI-4). The PSI-4 was a questionnaire she completed to measure the stress levels in her relationship with claimant. It was used to help identify potential behavioral or emotional issues from which he may suffer. Mother also explained claimant repeats certain words or phrases out of context, asks questions unrelated to the current conversation he is having, and becomes fixated on things. He does not make regular contact with others, but he makes facial expressions and shares enjoyment with them. He enjoys playing with other children and wants to befriend them, but struggles with free play.

37. Mother also completed the Adaptive Behavior Assessment System, Third Edition (ABAS-3), a rating scale useful for assessing skills of daily living in people with developmental delays, ASD, ID, learning disabilities, neuropsychological disorders, and sensory or physical impairments. It covers three broad domains – conceptual, social, and practical. It evaluates 11 skill areas within those domains: (1) communication; (2) community use; (3) functional academics; (4) health and safety; (5) home or school living; (6) leisure; (7) self-care; (8) self-direction; (9) social; (10) work; and (11) motor. Using a four-point response scale, the evaluator indicates whether, and how frequently, the individual performs each activity.

38. Mother's responses indicated claimant struggles with adaptive functioning in all three domains, most significantly in social functioning. She described him as usually engaging in fun activities, but explained he never invites others to join him. Although he has friends and recognizes appropriate social cues such as laughing in response to funny comments or jokes and not standing too close when talking to

others, he is unsympathetic when others are sad or upset, does not apologize when he hurts someone else's feelings, and does not say when he is happy, sad, scared, or angry.

39. Claimant scored extremely high in the conceptual domain, which includes those basic skills that are the foundation for academic skills necessary to function independently. He had strong communication skills and was able to use complex sentences and discuss a particular topic for three minutes, but he does not react in an encouraging manner to what others are saying to him, make eye contact, engage in conversations without talking too much or too little, or initiate conversations about topics that others would be interested in.

40. Claimant showed difficulty in the practical domain, particularly with the skill of self-care. He does not bathe daily, needs assistance tying his shoes, usually wears the same or similar clothes each day, and eats a limited variety of food.

41. Lastly, Mother completed the Child Sensory Profile 2, a standardized questionnaire that helps identify a child's sensory processing patterns and how these patterns may affect their participation in daily activities. Claimant puts things in his mouth and engages in unsafe movement and climbing activities. He is fascinated by the visual details of objects and requires heavy blankets to sleep. He does not like unexpected or loud noises. He used to have difficulty using public restrooms because of the echoing of the sound of a toilet flushing and the hand dryer. Claimant is accident-prone and frequently ambivalent to his surroundings.

42. Ms. Flynn administered the ADOS-2 to claimant. She documented its administration as follows:

The ADOS-2 is a semi-structured, standardized assessment of communication and social interaction. The ADOS-2 consists of standard activities and interview topics that allow the evaluator to observe behaviors that have been identified as important to the diagnosis of ASD. Module 3, which is designed for individuals with an expressive language level of at least four years, was given. [Claimant's] total score on the ADOS-2 was in the high range, similar to children on the autism spectrum. The results of the assessment indicate that [claimant] shows many behaviors that are consistent with the diagnosis of ASD.

In the area of language and communication, [claimant] spoke using full sentences and was able to share complex thoughts. He did not exhibit echolalia, and he did not use stereotyped words or phrases. He exhibited appropriately varying intonation, reasonable volume, and normal rate of speech. He spoke in a soft volume at times, but it did not typically interfere with the evaluator's ability to hear or understand him. He spontaneously used a couple of gestures, including pointing and shrugging. He did not use descriptive gestures, even when explicitly prompted to do so, such as when the evaluator requested that he show and tell how he completes a routine daily task like brushing his teeth or washing his hands. He got caught up in the details of the task, like where the imaginary toothbrush was supposed to be on the table. He could not complete the

task, even with multiple prompts and opportunities. When instructed to stand and retell a story without the explicit request to "show" the story, he did not use any gestures either. He put his hands in his pockets and appeared nervous (e.g., picked at his fingers) when the evaluator asked him to remove his hands.

[Claimant] spontaneously offered information, especially around his interest in video games, and he occasionally asked the evaluator about her thoughts, feelings, or experiences. He responded to most of her conversational leads. He frequently interrupted the evaluator to finish saying what he wanted to say, though. He was able to verbally describe a routine event with prompts from the evaluator but was unable to demonstrate a routine task when asked to teach her the task. He exhibited some rigidity and hyper fixation on details during the demonstration activity, and it was challenging for him to use imaginary objects to help teach the routine task. He initially shared that he was "confused" and then stated that he was "embarrassed" to complete the task.

Regarding the area of reciprocal social interaction, [claimant] showed interest in getting or holding the evaluator's attention, although the attempts were typically comments he made related to his interests. He seemed to be interested in aspects of the administration, as evidenced

by him smiling and laughing, and he sometimes indicated his pleasure to the evaluator. He did not sustain eye contact throughout the evaluation. He frequently sat at an angle directed away from the evaluator and looked in that direction or down instead of at her.

He showed some understanding of his own emotions and insight into social relationships with prompts from the evaluator, but they were slightly limited compared with children his age. He sometimes answered direct questions saying, "I don't know," and expanded with time or with additional questions from the evaluator. He shared that he has multiple friends from school and his neighborhood with whom he likes to play video games. He expressed that he knew he had friends because they explicitly asked each other to be friends but did not know how a friend is different from someone with whom you go to school. He shared that he has never had problems getting along with people at school, has never been teased or bullied, and does not think others get teased or bullied. He also reported that he has never been lonely and does not think others get lonely. He initially stated that he never gets in trouble and then shared that he sometimes steals candy or has food in his room when he is not supposed to. When the evaluator asked him questions about his own emotions, he gave examples of what made him feel happy, scared, angry, and sad but had a hard time describing how it feels in his

body when he experiences emotions. He was able to identify a couple of emotions in a character in a book, saying that they were “scared” and “confused.”

Regarding his play and imaginative behaviors, [claimant] did not spontaneously participate in make-believe or joint interactive play. He independently interacted with the ADOS-2 play materials through functional play, (e.g., rolling an airplane and car) and labeled objects. He did not respond to the evaluator’s prompts to play together. When asked to create a story using five items after the evaluator created her own story using five different items, he said that it was really “hard.” After the evaluator waited and prompted [claimant], he told a short story using three of the five items. He used the items functionally (e.g., using a car as a car). He exhibited creativity in saying that the feather could be a blanket but did not exhibit that creativity in his use of objects in the story.

[Claimant] was observed to display stereotyped behaviors and repetitive interests during the ADOS-2. He referenced video games numerous times, but he was also able to talk about other subjects. He also flipped the car over and watched the wheels spin. He played with the zipper on his jacket, moved his zipper up and down against the table, and rubbed his hands against the table. He exhibited mild signs of anxiety or self-consciousness and clearly exhibited signs

> of overactivity/agitation. While he stayed seated, he touched objects throughout the evaluation in a way that was mildly disruptive. He had candy in his pocket that he took out at various times during the evaluation, and he played with one of the wrappers under the table.
>
> In addition to the demonstration task mentioned above, there were other times during the administration when he exhibited rigidity and difficulty understanding instructions. When the evaluator said that she was going to show him a cartoon and then ask him to retell it without looking at the cards, he looked away as soon as the first card was placed on the table and said that he did not know if he could look at the card. The evaluator clarified the instructions, and he then looked at the card.
>
> Overall, [claimant] exhibited a variety of strengths during the ADOS-2 and had some clear challenges regarding communication, social interaction, play, and restricted and repetitive behaviors/interests. He shows similarities with other children who have a diagnosis of ASD.

43. Ms. Flynn concluded, "[Claimant] meets criteria for diagnosis of **299.00 (F84.0) autism spectrum disorder (ASD)**. (Bolding original.) She also diagnosed him with ADHD, combined presentation, by history. Although she described him as having challenges with receptive and expressive language, self-care, mobility, and self-direction, she did not quantify the extent of any of those challenges. Nor did she

identify any major life activity that claimant's ASD significantly limits. Additionally, claimant's functional academic skills were rated "Above Average" on the ABAS-3.

RICHELLE LONG, PH.D.

44. Richelle Long, Ph.D., is a child psychologist. She works at CAPS Clinic as a clinical supervisor for assessments and therapy. At CAPS Clinic, most assessments and therapy are provided by clinical interns who are in their final year of training before receiving their doctoral degrees in psychology. They are supervised by licensed psychologists, such as herself. Dr. Wheeler exercised overall supervision over Ms. Flynn's evaluation of claimant, but Dr. Long supervised the administration of the ADOS-2. Therefore, Dr. Wheeler's name is on the Consultation and Screening Services Report.

45. Dr. Long's understanding based on conversations with claimant's therapist, Ms. Poole, and different clinical interns was that ACRC was taking so long to have claimant assessed for eligibility that ACRC was willing to accept an assessment by CAPS Clinic. That was why Ms. Flynn evaluated claimant. Dr. Long had no knowledge of Dr. Scott contacting CAPS Clinic for claimant's records when she performed her psychological evaluation.

MOTHER'S TESTIMONY

46. Mother described claimant as struggling with loud sounds and echolalia through childhood. She first raised concerns about him showing signs of ASD during his four-year checkup with his pediatrician in April 2019. The pediatrician saw no signs of ASD and shared as much with Mother. The following year, claimant began displaying troubling behaviors. For example, he struggled transitioning from one

activity to another. His kindergarten teacher suggested Mother seeks services from CAPS Clinic.

47. In November 2021, CAPS Clinic evaluated claimant and diagnosed him with ADHD. He was prescribed medication, which managed his ADHD symptoms well. But Mother felt he still struggled with behaviors beyond ADHD. She presented claimant to CAPS Clinic for a Core Assessment on June 24, 2022. The Assessment did not include any medical diagnoses.

48. An advocate with CAPS Clinic referred Mother to ACRC for services and supports. While awaiting evaluation, Ms. Poole contacted ACRC and was told ACRC was agreeable to deciding claimant's eligibility based on CAPS Clinic's assessment. When Mother brought claimant to the appointment with Dr. Scott in June 2024, she did not know it was for another assessment of his eligibility. When Dr. Scott explained she was performing a psychological evaluation, Mother explained it was not necessary and provided a copy of Ms. Flynn's Consultation and Screening Services Report. Dr. Scott was not aware of that assessment, agreed to consider it, but explained she was going to perform her own assessment.

Analysis

49. To qualify for regional center services and supports, claimant must have a qualifying developmental disability that constitutes a "substantial disability." A "substantial disability" is a disability that causes significant functional limitations in three or more of the following: (1) self-care; (2) receptive and expressive language; (3) learning; (4) mobility; (5) self-direction; (6) capacity for independent living; or (7) economic self-sufficiency. He bears the burden of proof by a preponderance of the evidence.

50. There is conflicting evidence whether claimant has a qualifying developmental disability: Ms. Flynn opined he has ASD; whereas Dr. Scott opined he does not. Dr. Scott's opinion is more persuasive. Dr. Scott is a practicing psychologist and holds her doctoral degree. Her opinion is well-reasoned and supported by psychological testing. For example, claimant's FSIQ score was in the 98th percentile of his peers and corroborated by his score for the conceptual domain on the ABAS-3. Dr. Root reviewed, and agreed with, Dr. Scott's psychological evaluation. Dr. Root holds a doctorate in clinical psychology and has been practicing psychology for more than 16 years.

51. On the other hand, Ms. Flynn was not a licensed psychologist but a student in her last year of a doctoral program. Although she was supervised by Dr. Wheeler, a practicing psychologist who holds a doctorate, there was no evidence of the extent of the supervision. Additionally, all but one of the psychological tests Ms. Flynn relied on were based on Mother's subjective observations and descriptions of claimant's behaviors.

52. In addition to the persuasive evidence establishing claimant does not have ASD, there is no evidence he has a "substantial disability." Neither Ms. Flynn nor anyone else identified three or more major life activities with which claimant has significant functional limitations. Therefore, claimant did not meet his burden of establishing he qualifies for regional center services and supports.

LEGAL CONCLUSIONS

Applicable Burden/Standard of Proof

1. Claimant has the burden of proving he is eligible for regional center services and supports based on ASD. (*In re Conservatorship of Hume* (2006) 140 Cal.App.4th 1385, 1388 [the law has "a built-in bias in favor of the status quo," and the party asking a court to do something has the burden "to present evidence sufficient to overcome the state of affairs that would exist if the court did nothing"].) The applicable standard of proof is preponderance of the evidence. (Evid. Code, § 115.) This evidentiary standard requires claimant to produce evidence of such weight that, when balanced against evidence to the contrary, is more persuasive. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.) In other words, claimant must prove it is more likely than not he is eligible for regional center services and supports based on ASD. (*Lillian F. v. Super. Ct.* (1984) 160 Cal.App.3d 314, 320.)

Applicable Law

CARE FOR THE DEVELOPMENTALLY DISABLED

2. Under the Lanterman Act, the State of California accepts responsibility for persons with developmental disabilities and pays for the majority of the "treatment and habilitation services and supports" to enable such persons to live "in the least restrictive environment." (Welf. & Inst. Code, § 4502, subd. (b)(1).) The State Department of Developmental Services is charged with implementing the Lanterman Act and is authorized to contract with regional centers to provide the developmentally disabled access to the services and supports needed. (Welf. & Inst. Code, § 4620, subd. (a); *Williams v. State of Cal.* (9th Cir. 2014) 764 F.3d 1002, 1004.)

ELIGIBILITY FOR REGIONAL CENTER SERVICES AND SUPPORTS

3. Eligibility for regional center services and supports is dependent on the person having a "developmental disability" that: (1) originated before his 18th birthday; (2) is likely to continue indefinitely; and (3) constitutes a substantial disability. (Welf. & Inst. Code, § 4512, subd. (a)(1); Cal. Code Regs., tit. 17, § 54000, subd. (b)(1)–(3).) Under the Lanterman Act, "developmental disability" includes ID, CP, ASD, epilepsy, and Fifth Category. (Welf. & Inst. Code, § 4512, subd. (a)(1); see Cal. Code Regs., tit. 17, § 54000, subd. (a).) Developmental disability does not include disabling conditions that are solely psychiatric in nature. (Cal. Code Regs., tit. 17, § 54000, subd. (c)(1).) Nor does it include conditions that are "solely learning disabilities" or "solely physical in nature." (*Id.* at subd. (c)(2) & (3).)

4. A "substantial disability" is one that causes the person "significant functional limitations in three or more of the following areas of major life activity . . . , as appropriate to the age of the person: [¶] (A) Self-care. [¶] (B) Receptive and expressive language. [¶] (C) Learning. [¶] (D) Mobility. [¶] (E) Self-direction. [¶] (F) Capacity for independent living. [¶] (G) Economic self-sufficiency." (Welf. & Inst. Code, § 4512, subd. (l)(1); see Cal. Code Regs., tit. 17, § 54001, subd. (a)(2)(A)–(G).)

Conclusion

5. Claimant did not prove he has ASD and it causes significant functional limitations in three or more major life activities as discussed in Factual Findings 49 through 52. Therefore, he did not prove his eligibility for regional center services and supports, and his appeal should be denied.

ORDER

Claimant's appeal from Alta California Regional Center's August 9, 2024 Notice of Action determining him not eligible for regional center services and supports is DENIED.

DATE: December 18, 2024

COREN D. WONG
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.