

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

In the Matter of:

CLAIMANT

and

WESTSIDE REGIONAL CENTER, Service Agency.

DDS No. CS0020699

OAH No. 2024090495

DECISION

Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on March 26, 2025, by videoconference.

Sonia Tostado, Director's Representative, represented Westside Regional Center (WRC or Service Agency). Claimant did not appear but was represented by his Mother. (Claimant and Mother are not named to protect their privacy.) It should be noted that many exhibits refer to Mother as Claimant's foster mother, but she stated she recently completed an adoption of Claimant and his two siblings.

Elizabeth Valencia and Ivone Reyes provided interpreter services.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on March 26, 2025.

ISSUE

Whether Claimant continues to be 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.) The parties' focus was whether Claimant is eligible due to Autism Spectrum Disorder (ASD).

EVIDENCE RELIED ON

In making this Decision the ALJ relied on WRC exhibits 2 through 18, and the testimony of Kristen Prater, Psy.D, and Mother.

FACTUAL FINDINGS

Procedural History

1. Claimant is a boy who will turn eight years old in May 2025. He currently receives services from WRC based on a diagnosis made in March 2022 of ASD (Provisional) and Global Developmental Delay; Rule out Reaction Attachment Disorder and Attention Deficit Hyperactivity Disorder (ADHD). (Ex. 6, p. A33.) The Service Agency determined he was eligible on June 8, 2022. (Ex. 7, p. A36.)

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2. In June 2024 Claimant was re-assessed by a psychologist who determined he was not afflicted with ASD or Intellectual Disability (ID), instead diagnosing the boy with Disinhibited Social Engagement Disorder. (Ex. 8.) On July 8, 2024, WRC determined that Claimant was not eligible for services.

3. On August 13, 2024, WRC issued a Notice of Action (NOA) to Claimant, which provided that further eligibility was denied, and that services would be discontinued effective September 30, 2024. (Ex. 4, p. A16.) Claimant appealed the NOA on September 10, 2024. (*Id.*, p. A10.)

4. The parties engaged in mediation but could not resolve the matter. On January 22, 2025, at the outset of a Fair Hearing, Claimant moved to continue the hearing and executed a time waiver. The continuance was granted, the new date being March 26, 2025. (Ex. 3.)

5. All jurisdictional requirements have been met.

Background

6. On March 8, 2022, Claimant underwent a Psychosocial Evaluation conducted by Barbara Linares, LCSW, an intake counselor for WRC; she wrote a report, Exhibit 5. Claimant was then four years, ten months old. At that time, Mother was his foster mother. He and two siblings had been taken from their biological mother due to neglect and placed with Mother; his father was incarcerated. Mother and a social worker wanted to assess Claimant for ASD. (See also Ex. 13, a referral to WRC by the County of Los Angeles Department of Children and Family Services dated December 9, 2021.) Mother reported concerns with behaviors such as aggression, impulsivity, and hyperactivity. (Ex. 5, p. A20.)

7. Mother reported to Linares that Claimant was not then in school. She said Claimant was independent and could do things on his own, but also noted he got mad easily, had a hard time listening, and only wanted to do what he wanted. She described his eye contact as limited, though Linares noted Claimant was able to make eye contact but had difficulty maintaining it due to distraction. Mother described how Claimant would hit and jump on his siblings, and noted he liked playing alone; she described his aggressive conduct in further detail. Claimant was described by Mother as always moving; Linares noted he went from activity to activity and had difficulty focusing. (Ex. 5, pp. A21-22.)

8. Linares stated a clinical impression of speech delays and behavior concerns tied to aggression. She recommended a psychological assessment to rule out a diagnosis of autism. (Ex. 5, p. A23.)

The March 2022 Psychological Assessment

9. Service Agency referred Claimant for assessment to psychologist Naz Bagherzadeh, Psy.D., a WRC vendor. The evaluation took place on March 28 and 30, 2022. Dr. Bagherzadeh wrote a report, Exhibit 6. The assessment was focused on whether or not Claimant had ASD.

10. Dr. Bagherzadeh used three test instruments in her assessment of Claimant: the Developmental Assessment for Young Children—Second Edition (DAYC-2; the Vineland Adaptive Behavior Scales—Third Edition (Vineland-3); and the Childhood Autism Rating Scale, Second Edition (CARS-2). (Ex. 6, p. A27.)

11. Dr. Bagherzadeh found, based on the results of the Vineland-3 testing, that Claimant's overall adaptive functioning was in the low range. The results of the DAYC-2 testing placed his cognitive score in the poor range, his score for the social-

emotional domain was in the very poor range, and his expressive and receptive language score was in the poor range. (Ex. 6, p. A32.)

12. Dr. Bagherzadeh found that Claimant met the diagnostic criteria for ASD, noting Claimant “presents with some repetitive behaviors, social-emotional, communication, and sensory-seeking behaviors that are consistent with Autism Spectrum Disorder. However, considering the mild presentation of symptoms, particularly in the area of social reciprocity and quality of eye contact despite having not received any prior interventions, *the diagnosis will be provided provisionally.*” (Ex. 6, p. A32. Emphasis added.)

13. Dr. Bagherzadeh further found that Claimant “[Claimant was] currently failing to meet expected developmental milestones in several areas of functioning, hence meets the diagnostic criteria for Global Developmental Delay.” (*Ibid.*)

14. Dr. Bagherzadeh also stated, near the end of her report, “It must be noted that [Claimant] also currently presents with strengths, including a desire to connect with others, curiosity, and a warm relationship with his foster mother. [Claimant] would benefit from speech therapy, Applied Behavior Analysis (ABA) interventions, and occupational therapy. He would also benefit from a psycho-educational assessment through his school district.” (*Ibid.*)

15. The Service Agency’s Eligibility Committee determined Claimant was eligible for services and recommended he be retested in June 2034. (Ex. 7.)

The June 2024 Psychological Assessment

16. Kristen Prater, Psy.D., BCBA, conducted a psychological evaluation of Claimant on June 4 and 13, 2024, approximately one month after his seventh birthday.

Dr. Prater is a WRC contractor. Dr. Prater has approximately 17 years of experience working with WRC.

17. Dr. Prater used five psychological testing instruments to evaluate Claimant. These included the Vineland-3 and the CARS-2, which had been used by Dr. Bagherzadeh. Dr. Prater also utilized the Autism Diagnostic Interview, Revised (ADI-R). To assess Claimant's cognitive ability, Dr. Prater administered the Wechsler Preschool and Primary Scale of Intelligence—Fourth Edition (Wechsler), and academic achievement was assessed with some subtest of the Wide Range Achievement Test, Fifth Edition (WRAT5). (Ex. 8, pp. A37, A42.)

18. Claimant's Full Scale IQ score was 87, which Prater described as in the upper end of the low average range, 100 being the mean. (Ex. 8, p. A41.) Subtest scores showed Claimant was weak in Working Memory, where he was in the borderline range. (*Id.*, p. A42.)

19. Dr. Prater administered three subtests of the WRAT: Word Reading, Spelling, and Math Computation. Claimant scored in the high average range in word reading, and average in the other two subtests. (Ex. 8, p. A42.)

20. Dr. Prater administered the CARS-2 and Claimant did not present with behaviors typical of children with ASD. For example, his eye contact was consistent in play and conversation, he used a variety of objects appropriately and functionally. (Ex. 8, pp. A42-A43.)

21. The Vineland-3 test, based on Mother's feedback, indicated Claimant has significant deficits in adaptive function. His overall score—the Adaptive Behavior Composite Standard Score was 62, deemed low. Daily living skills and communication

were 56 and 49, respectively; the motor skills score was a 51. The highest score obtained was in socialization skills, at 74, in the moderately low range. (Ex. 8, p. A45.)

22. Utilizing the ADI-R, and her observations of Claimant, Dr. Prater determined that he did not meet the diagnostic criteria for ASD, finding he met only one of 10 criteria. That one criteria pertained to deficits in developing, maintaining, and understanding relationships. (Ex. 8, pp. A43-A45.)

23. In her report, Dr. Prater noted that Mother stated Claimant will show interest in other children when at the park, and Dr. Prater observed that he engaged in imaginative play and he shared materials with other children and Dr. Prater. He was able to communicate in full sentences and made requests for items he needed or wanted. He required no prompting to utilize basic conversation skills such as initiating. Claimant used basic gestures to emphasize his statements, and used pleasantries. He was not observed engaging in repetitive behaviors, and his language was not evident of repetitions or scripts. (Ex. 8, p. A43.)

24. In her report's summary, Dr. Prater commented on the low Vineland-3 scores, stating:

During the assessment period, [Claimant] displayed his ability to complete many of the skills that his foster mother stated he does not complete at home. It is possible that [Claimant's] compliance within the home is lower than he displayed during the assessment period. Another alternative is that [Claimant] may not be held to age-appropriate expectations within the home environment. Regardless of

the rationale, [Claimant's Vineland-3] scores should be assessed with caution.

(Ex. 8, p. A47.)

25. Dr. Prater diagnosed Claimant with Disinhibited Social Engagement Disorder. (Ex. 8, p. A48.)

26. On July 8, 2024, the Service Agency determined Claimant was not eligible for services. (Ex. 9.)

The Informal Meeting and Eligibility Redetermination Review

27. After Claimant appealed the NOA, an Informal Meeting and Eligibility Redetermination Review (Review) was conducted for WRC by George J. Meza, LCSW, Ph.D. The evaluation dates were September 24, and October 2 and 3, 2024. In conducting the Review, Dr. Meza reviewed records, met with Mother, interviewed Claimant's teacher and his mental health therapist, and performed a virtual observation of Claimant. (Ex. 10, p. A53.)

28. Dr. Meza performed the virtual observation of Claimant, and summarized his observations as follows:

During the observation, the child conveyed eye contact, engaged in reciprocal conversation, and enjoyed playing with his brother. He presented with a range of affect and made fake crying sounds to get attention from the foster mother. Although he did exhibit some repetitive behaviors i.e., (*sic*) jumping in circles and flapping his hands, these seemed more the consequence of Attention Deficit

Hyperactivity Disorder rather than Autism. The behaviors seemed to function as a means to release his pent up energy rather than self-stimulation.

(Ex. 10, p. A56.)

29. Dr. Meza interviewed Claimant's second grade teacher, Ms. Perez, on October 2, 2024. She informed Dr. Meza Claimant had an Individual Education Plan for speech and language impairment, and was being pulled out of class for speech therapy and resource support. Dr. Meza went on to report:

Mrs. Perez indicated that academically, [Claimant] is at grade level in most subjects. She described [Claimant] as "antsy" and shared that "He has a hard time sitting still." Mrs. Perez noted that [Claimant] is "friendly" and "talks to everybody." She indicated that "[Claimant] plays well with the other children." Mrs. Perez stated that there are no serious behavior problems and reported that "[Claimant] does not talk back and is not disrespectful." In terms of ASD, the teacher stated, "I see no symptoms of Autism." She indicated that she has had other students with ASD and [Claimant] does not present with any similar behaviors. Mrs. Perez indicated that there are no presentable ASD symptoms such as repetitive movements, echolalia, or perseveration.

(Ex. 10, p. A56.)

30. Dr. Meza also interviewed Claimant's mental health therapist, Veronica Lopez. The salient part of her statement follows:

Ms. Lopez noted that she has recently began to work with [Claimant] and has only seen him twice, in home. She indicated that he is diagnosed with Oppositional Defiant Disorder. Ms. Lopez reported that [Claimant] is "testing boundaries" and requires redirection, however, he responds to the directions provided. The therapist noted her observation that [Claimant] is "very active" and that he moves constantly. She reported that [Claimant] exhibits an appropriate range of emotions, is able to engage in reciprocal play, and gives good eye contact. Ms. Lopez noted that there is an absence of ASD symptoms such as repetitive behaviors, perseveration, tiptoe walking, or echolalia.

(Ex. 10, pp. A56-A57.)

31. Dr. Meza did not diagnose Claimant, but recommended a re-determination of eligibility. (Ex. 10, p. A57.)

Mother's Testimony

32. Mother testified about Claimant's maladaptive behaviors. She stated he has phobias and is afraid of sounds. She also stated that he likes to be isolated from others. He hits his siblings for no reason and Mother considers him a danger to others. She recounted various violent acts toward his siblings or others. She testified Claimant can not be close to animals because he pulls their tails or pokes their eyes.

33. Mother described a trip to the dentist where he touched everything, and he puts things in his mouth. Mother described him chewing on small toy cars and otherwise biting things; she described him as having anxiety. He spills food and liquid from his mouth on his clothes. She has to help with his hygiene. He elopes, goes into the street, and doesn't follow rules.

34. Mother is convinced Claimant has significant problems that she attributes to ASD. She is passionate about getting the best of care for Claimant and his siblings, and seeks further services from WRC.

Diagnostic Criteria

35. 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.

36. Per the DSM, the essential features of ASD 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 18.)

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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. In this case Claimant was made eligible for services based on a provisional diagnosis of an otherwise eligible condition; he was not made “provisionally eligible” within the meaning of section 4512, subdivision (a)(2). That eligibility category is for children under the age of five who show significant functional limitations in two areas of major life activities; they do not have to have a disability listed in section 4512, subdivision (a)(1). Provisional eligibility ends at age five under section 4512, subdivision (a)(5).

3. In these circumstances, WRC can not terminate services unless it can show, by a preponderance of the evidence, that after a comprehensive reassessment, it concluded that the original determination was clearly erroneous. (§4643.5, subd. (b).) The record does not show that WRC concluded that the original diagnosis was clearly

erroneous. However, its determination that Claimant did not have an eligible condition is tantamount to such a conclusion.

4. The Service Agency has performed a comprehensive reassessment through the assessments by Dr. Prater and Dr. Meza. Dr. Prater used accepted test instruments such as the Wechsler and the ADI-R. Dr. Meza observed Claimant and interviewed two professionals who had insight into Claimant's behaviors. While Dr. Meza did not make a diagnosis, Dr. Prater diagnosed Claimant with a condition other than ASD, finding Claimant met only one of ten diagnostic criteria for ASD.

5. The Service Agency established that the initial provisional diagnosis was clearly erroneous; Claimant is not afflicted with ASD. The descriptions of Claimant by Dr. Prater and Dr. Meza are supported by the observations of his teacher and mental health therapist. The teacher's statements as to Claimant's behavior at school, along with the therapist's disclosure that Claimant is diagnosed with Oppositional Defiant Disorder, and Claimant's lack of typical autistic behaviors, are telling.

6. Under all the circumstances, Claimant's appeal must be denied.

ORDER

Claimant's appeal is denied, and the Service Agency may terminate his services 30 days after this decision.

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.