

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

In the Matter of:

CLAIMANT

and

KERN REGIONAL CENTER, Service Agency

DDS No. CS0020811

OAH No. 2024090940

DECISION

Taylor Steinbacher, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter in Bakersfield, California on November 7, 2024.

Kristine Khuu, Assistant Director of Client Services, represented Kern Regional Center (KRC).

Claimant's grandmother (Grandmother), who is Claimant's legal guardian, represented Claimant, who was not present. Names are omitted to protect the privacy of Claimant and his family.

The ALJ received testimony and documentary evidence at the hearing. At the close of the hearing, the ALJ determined the hearing should be continued until November 8, 2024, for Claimant to submit an additional exhibit. KRC's representative stated KRC had no objection to the admission of that exhibit. On November 7, 2024, Grandmother submitted a document, as well as a "letter of explanation," stating she could not find the document she wanted to submit but found another document she wanted to be considered instead. The ALJ marked the document and the letter collectively as Exhibit D and admitted Exhibit D into evidence. The record closed, and the matter was submitted for decision on November 8, 2024.

ISSUE

Is Claimant eligible for regional center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) because he has a qualifying developmental disability?

EVIDENCE RELIED UPON

Documents: KRC Exhibits 1–19; Claimant's Exhibits A–D.

Witnesses for KRC – Joshua Lefler, Psy.D.; for Claimant – Grandmother.

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FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant is a 9-year-old male who lives with Grandmother in the catchment area served by KRC.

2. KRC is a regional center designated by the Department of Developmental Services (DDS) to provide funding for services and supports to persons with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4500 et seq.)

3. Grandmother applied for services from KRC on Claimant's behalf. On September 12, 2024, KRC's interdisciplinary eligibility team found Claimant did not have a qualifying diagnosis and therefore did not meet the eligibility criteria for regional center services under the Lanterman Act. (Ex. 4.) The same day, KRC sent Grandmother a Notice of Action explaining the reasons for the denial. (Ex. 1, pp. A18–A20.)

4. Grandmother filed a fair hearing request with KRC on September 18, 2024. (Ex. 1, pp. A12–A15.) Following an informal meeting with Grandmother on October 16, 2024, KRC did not change its position that Claimant was ineligible for regional center services. (Ex. 2.) This hearing ensued.

Dr. Joshua Lefler

5. Joshua Lefler, Psy.D., a Senior Consulting Psychologist at KRC, testified at the hearing about the requirements for regional center eligibility, the process the KRC interdisciplinary eligibility team uses when determining eligibility, and the reasons why

KRC denied Claimant's request for eligibility. Dr. Lefler has worked for over 11 years as a psychologist at KRC helping diagnose developmental disabilities and making eligibility decisions. (Ex. 10.) Dr. Lefler described the records KRC reviewed and the assessments of Claimant underlying KRC's conclusion that Claimant is not eligible for services. Dr. Lefler also testified about the diagnostic criteria for Autism Spectrum Disorder (ASD) under the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition Text Revision.

Assessments of Claimant

OCTOBER 2023 MULTIDISCIPLINARY ASSESSMENT REPORT

6. In March 2022, Claimant's school district conducted an initial evaluation of Claimant due to concerns about his behavior. (Ex. 6, p. A69.) The initial evaluation concluded Claimant was eligible for special education services under the category of emotional disturbance because Claimant demonstrated: (1) inappropriate behaviors or feelings under normal circumstances; (2) a general pervasive mood of unhappiness or depression; and (3) a tendency to develop physical symptoms or fears associated with personal or school problems which are adversely affecting his educational performance. (*Id.*, p. A70.) Claimant's school district conducted an additional assessment in May 2022 to assess his speech and language skills (*Ibid.*) From the results of that assessment Claimant's school district concluded he "met criteria for speech and language services due to an articulation disorder and scoring below the 7th percentile in receptive and expressive language." (*Ibid.*)

7. In October 2023, Claimant's school district issued a Multidisciplinary Assessment Report of Claimant after assessing him in September 2023. (Ex. 6.) (The first page of this report states the assessment occurred in September 2022, but based

this appears to be a typographical error.) This report stated Claimant had been referred for an Educationally Related Mental Health Services assessment because he had been “engaging in anger driven behavior one time a week, which includes screaming, throwing items, and tipping over desks,” which lasts 30 minutes and interferes with Claimant and his classmates’ learning. (*Id.*, p. A67.) The report noted Claimant had previously been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and a mood disorder, and Claimant was taking prescription medications to treat those disorders. (*Id.*, pp. A68, A70.) The report also provided observations from teachers describing him as a “happy, sweet student who generally appears joyful,” and stating Claimant gets angry or aggressive when “tired, hungry, when his confidence drops, and if he feels he cannot accomplish what is being asked of him.” (*Id.*, p. A72.) Another teacher observed that Claimant “follows directions and works hard to complete classwork[.]” (*Id.*, p. A73.)

8. When the school psychologist observed Claimant, Claimant was “fully engaged, attentive, and receptive to the interviewer. [Claimant] provided intermittent eye contact . . . and was oriented to day and place. [Claimant] identified his general and current mood [Claimant] shared he can become angry when presented with challenging work, when he doesn’t get help in class, or when students are mean [to him.]” (Ex. 6, p. A73.)

9. The report concluded that, considering the observation of Claimant and the results of assessments evaluating Claimant’s social and behavioral skills, Claimant “displays externalizing behaviors” and his more impulsive behaviors “may be due to his diagnosis of ADHD.” (Ex. 6, p. A87.) The report did not conclude that any of Claimant’s social or behavioral issues were attributable to ASD. Even so, an Individualized Education Plan (IEP) created for Claimant following this report noted Claimant’s

school's psychologist proposed additional testing to determine whether Claimant also had ASD. (Ex. B, p. B146; Ex. 9 [letter from school psychologist to Grandmother about conducting an additional assessment of Claimant].)

10. According to Dr. Lefler, KRC's interdisciplinary eligibility team relied on the findings of this report in determining that Claimant did not have a qualifying diagnosis making him eligible for regional center services. Dr. Lefler testified that Claimant's demonstration of intermittent eye contact and his interactions with the school psychologist were not consistent with a diagnosis of ASD. Moreover, explanations for Claimant's troubling behaviors such as being, tired, hungry, frustrated with work, or upset with peers, pointed to an alternative explanation for his symptoms other than ASD.

NOVEMBER 2023 ASSESSMENT

11. Nick Garcia, Ph.D., performed an Autism Screening and Comprehensive Diagnostic Evaluation of Claimant in October 2023 and wrote a report containing his findings. (Ex. 7.) Dr. Garcia administered the Autism Rating Scales (ASRS) assessment using reporting from Grandmother. (Ex., 7, p. A92.) According to Grandmother, Claimant

has difficulty using appropriate verbal and nonverbal communication for social contact, engages in unusual behaviors, has problems with inattention and/or motor and impulse control, has difficulty relating to children, has difficulty relating to adults, has difficulty providing appropriate emotional responses to people in social situations, uses language in an atypical manner, engages in

stereotypical behaviors, has difficulty tolerating changes in routine, overreacts to sensory stimulation, and has difficulty focusing attention.

(*Id.*, pp. A92–A93.) Grandmother also reported that Claimant’s mother used alcohol and drugs while pregnant with Claimant, and that Claimant was “physically, emotionally, and mentally abused in his mother’s home” before Grandmother obtained custody and became his guardian. (*Id.*, p. A90.)

12. Based on information from Grandmother, as well as his initial observations of Claimant, Dr. Garcia found Claimant demonstrated “a number of behaviors that were consistent with [ASD].” (Ex. 7, p. A94.) As a result, Dr. Garcia conducted a comprehensive diagnostic evaluation of Claimant to determine whether he has ASD.

13. Dr. Garcia administered the Autism Diagnostic Observation Schedule, Second Edition (ADOS-2) to Claimant. (Ex. 7, p. A95.) Claimant obtained scores of 2 in both the Social Interaction and the Stereotyped and Repetitive Behavior sections of the ADOS-2. (*Id.*, pp. A95–A96.) Claimant’s overall score of 4 showed minimal to no evidence of behaviors consistent with a diagnosis of ASD, according to Dr. Garcia. (*Id.*, p. A96.) A total score of 7 is associated with the presence of ASD, while scores of 9 or above are associated with a finding of autism. (See Ex. 8, p. A106.) Dr. Garcia also administered the Adaptive Behavior Assessment System, Third Edition (ABAS-3) to Claimant. (Ex. 7, pp. A99–A100.) Claimant’s ABAS-3 results showed that his adaptive behavior fell in the “Extremely Low” range. (*Ibid.*)

14. Based on Claimant’s interview, testing data, mental status evaluation, and a review of Claimant’s medical records, Dr. Garcia diagnosed Claimant with the

following disorders: (1) disruptive mood dysregulation disorder; (2) ADHD-combined presentation; (3) language disorder; and (4) prenatal alcohol and drug exposure. (Ex. 7, p. A100.) Dr. Garcia did not diagnose Claimant with ASD because although Claimant “used some repetitive language . . . he also evidenced social and emotional reciprocity, reciprocal social communication, showed items, used gestures, directed his facial expressions to others, pointed, and utilized joint attention. [Claimant] did not exhibit hand and finger mannerisms, stereotyped behaviors, or repetitive interests.” (*Id.*, pp. A100–A101.)

15. According to Dr. Lefler, KRC’s interdisciplinary eligibility team relied on Dr. Garcia’s findings and report in determining that Claimant did not have a qualifying diagnosis making him eligible for regional center services.

JANUARY 2024 ASSESSMENT

16. In connection with a triennial review of Claimant’s IEP in January 2024, Claimant’s school district conducted various assessments of Claimant, including those used to determine whether Claimant has ASD. (Ex. A, pp. B103–B109.) The triennial review report noted Dr. Garcia assessed Claimant in October 2023 and declined to diagnose Claimant with ASD at that time. (*Id.*, pp. B78–B79.)

17. Claimant’s school psychologist administered the ADOS-2 to him. (Ex. A, p. B103.) Claimant obtained a score of 3 in the Social Communication section and a score of 1 in the Repetitive Behavior section of the ADOS-2. (*Ibid.*) Claimant’s overall score of 4 showed minimal to no evidence of behaviors consistent with a diagnosis of ASD; this was the same total score obtained by Dr. Garcia. (*Ibid.*; see also Ex. 7, pp. A95–A96.)

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18. Claimant's school psychologist also administered the ASRS, using reporting from Claimant's teacher and from Grandmother. (Ex. A, p. B104.) Claimant's ASRS scores were inconsistent, as reporting from Claimant's teacher showed lower levels of traits associated with ASD, while reporting from Grandmother showed much higher levels of the same traits. (*Id.*, p. B105.) Claimant's school psychologist stated the results from this assessment should be "interpreted with caution due to the inconsistencies in behavioral characteristics being displayed in the home and school setting[s]." (*Id.*, p. B106.) The school psychologist concluded Claimant

has difficulty with routine changes, overreaction to specific sensory experiences, behavioral rigidity, and sensory sensitivity. When analyzing scores obtained on the ASRS, it is essential to factor in his diagnosis of ADHD and the impact it can have on his ability to regulate his emotions and take into account how he learns best within the school setting. When taking into consideration his diagnosis, it appears that his ADHD is impacting his ability to handle strong emotions appropriately, and he is a student who needs that structure and routines to remain on-task in class.

(*Id.*, p. B107.)

19. Claimant's school psychologist also administered the Social Responsiveness Scale, Second Edition (SRS-2). Like the ASRS, the SRS-2 relies on reporting from a teacher and a parent to "identify the presence and severity of social impairment within the autism spectrum and differentiate it from that which occurs in other disorders." (Ex. A, p. B107.) The results of the SRS-2 were also inconsistent, with Grandmother reporting more severe impairments at home setting than Claimant's

teacher reported in school. (*Id.*, pp. B107–B108.) Reporting from Claimant’s teacher resulted in a score of 63, suggesting mild impairment, while Grandmother’s reporting resulted in a score of 85, suggesting severe impairment. Still, even considering the difference in overall scoring, the school psychologist noted that there were areas in which Claimant’s teacher and Grandmother had similar scores that did not suggest severe impairment, such as in the area of social awareness in which both responses fell into the “Normal” range. (*Id.*, p. B108.) The school psychologist noted these inconsistencies and found that the results should be interpreted cautiously as a result. (*Id.*, p. B109.)

20. The school psychologist concluded

[Claimant] does not meet eligibility under the special education criteria of Autism. Based on scores on the ASRS and SRS, [Claimant’s] teacher and [Grandmother] reported that [Claimant] engages in unusual behaviors[], stereotyped behaviors[], and behavioral rigidity[]. Based on several observations conducted within the school setting, [Claimant] appears to exhibit repetitive expressive language, which leads him to utilize communication learned from speech services. [Claimant] demonstrates the ability to engage in conversation with peers and adults; however, he stops and looks to the side to think about what he is trying to say. He will eventually continue with what he is trying to say and show his ability to engage in conversation appropriately. In addition, during the ADOS assessment, [Claimant] was observed to move from side to side in his

seat. When analyzing the observations conducted during the ADOS assessment, it appeared that the behavior was due to him needing to fidget in his chair and often trying to pop his back. Overall, despite engaging in behaviors associated with Autism, it appears that [Claimant's] diagnosis of ADHD is impacting him within the educational setting.

(*Id.*, p. B121.) When Grandmother asked if Claimant has ASD at the IEP meeting, the school psychologist responded that Claimant has "rigidity with emotions, but not routines. There are some spectrum behaviors, but [the school psychologist] feels they are due to his language deficits." (*Id.*, p. B54.) Based on other assessment results, the school psychologist also recommended changing Claimant's eligibility for special education services from "Emotional Disturbance" to "Other Health Impairment due to [Claimant's] ADHD and Mood Disorder." (*Ibid.*)

JULY 2024 ASSESSMENT

21. In July 2024, Michael Musacco, Ph.D., a contractor for KRC, performed a psychological assessment of Claimant to determine his eligibility for KRC's services. (Ex. 8.) Dr. Musacco noted he had reviewed, among other things, Claimant's school district's triennial review from January 2024 and Dr. Garcia's assessment results from November 2023. (*Id.*, pp. A108–A110.)

22. Dr. Musacco administered the ADOS-2, Module 3, to Claimant. Claimant obtained a score of 8 in the Social Affect section and a score of 1 in the Restricted and Repetitive Behavior section of the ADOS-2, for a total score of 9. (Ex. 8, A106.) This score is associated with a finding of autism. (*Ibid.*) Dr. Musacco observed that Claimant

exhibited overt deficits in his nonverbal communication. His affect was flat throughout the assessment. His eye contact was fair but he never showed any displayed emotion. His speech was a bit stilted. He responded to questions but rarely provided spontaneous elaboration. [Claimant] has very little understanding or awareness of his emotional functioning and his social emotional reciprocity is impaired.

(*Id.*, p. A106.)

23. Dr. Musacco found Claimant “exhibited many symptoms suggestive of [ASD],” based on these results and his observations. But, like Dr. Garcia, Dr. Musacco declined to diagnose Claimant with ASD. Instead, he diagnosed Claimant with: (1) other specified neurodevelopmental disorder (prenatal exposure to drugs and alcohol); (2) ADHD; (3) other specified depressive disorder (mood volatility and anger control difficulties); and (4) learning disorder. Dr. Musacco concluded Claimant

exhibits numerous signs and symptoms suggestive of ADHD, a Mood Disorder, a Learning Disorder, and [ASD]. It is my hypothesis that [Claimant’s] [c]onstellation of symptoms is a product of prenatal exposure to drugs and alcohol (Other Specified Neurodevelopmental Disorder). I also referenced diagnoses of ADHD, Depressive Disorder, and a Learning Disorder. [Claimant] exhibits symptoms which are consistent with each of these conditions. I strongly considered [a] diagnosis [of ASD]. In fact, based on my observations alone, I would have offered this diagnosis. [Claimant] obtained an elevated score on the ADOS-2 and

he presented with overt deficits in his verbal and nonverbal communication. However, my observations are inconsistent with information presented in two school psychologist's [sic] reports as well as a third report completed by Dr. [Garcia]. I believe it would be misplaced for me to ignore the presence[] of three independent evaluations all of whom expressed the opinion that [Claimant] was not exhibiting symptoms of [ASD]. With this said, it is my firm opinion that [Claimant] shows pronounced features of this condition as previously described. It has been my experience that drug exposed children often show a wide array of symptoms which do not neatly or solely fit into one diagnostic category.

(Ex. 8, p. A110.) (Dr. Musacco's report erroneously suggests that Dr. Garcia's report was instead written by a Doctor Harville. Although Barbara Harville also signed Dr. Garcia's report, she is listed as a Coordinator of Assessment services, while Dr. Garcia conducted the assessment and wrote the report.)

24. According to Dr. Lefler, it is a good practice to consider all sources of information when making a psychological diagnosis, as Dr. Musacco did. Moreover, according to Dr. Lefler, if Dr. Musacco had diagnosed Claimant with ASD, Dr. Musacco would have needed to explain why Dr. Garcia and Claimant's school psychologist were mistaken in their diagnoses. Given that Dr. Musacco declined to diagnose Claimant with ASD, Dr. Musacco likely did not feel as though he had sufficient evidence to refute those diagnoses, finding instead that Claimant's "constellation" of disorders provided an adequate explanation for his symptoms and behaviors. The KRC eligibility

team relied on Dr. Musacco's diagnosis in determining that Claimant was not eligible for regional center services.

25. Dr. Lefler conceded Claimant is substantially disabled in multiple major life activities, including receptive and expressive language, learning, and self-direction. That said, Dr. Lefler explained that it was KRC's position that those areas of substantial disability were not caused by a qualifying diagnosis, like ASD, such that Claimant was eligible for regional center services.

Claimant's School Records

26. Claimant's school district has drafted several IEPs for him since 2022, including in May 2022 (Ex. C), March 2023 (Ex. 3), October 2023 (Ex. B), January 2024 (Ex. A, pp. B30–B60), and May 2024 (Ex. A, pp. B1–B29). Claimant's school district has never provided him with special education services based on a diagnosis of ASD. Rather, it has only provided services primarily due to "emotional disturbance" or "other health impairment" from his ADHD and mood disorder, and secondarily due to "speech or language impairment." (Ex. 3, p. A25; Ex. A, pp. B1, B30; Ex. B, p. B124; Ex. C, p. B173.)

Grandmother's Testimony

27. Grandmother provided credible testimony about Claimant's ASD-like symptoms. Grandmother confirmed Claimant was exposed to drugs and alcohol while during pregnancy. Grandmother explained Claimant has been taking medication to treat his ADHD and has responded well to that medication. According to Grandmother, once ADHD is excluded as an explanation for Claimant's behaviors due to the effectiveness of that medication, a diagnosis of ASD is the only other logical

explanation. Grandmother has another grandchild who has been diagnosed with ASD, and thus she can recognize the symptoms of ASD.

28. Grandmother observed Claimant has problems with communication skills, connecting with peers, and is “emotionally disturbed.” Claimant has difficulty socializing with peers because they find him strange due to his behaviors. Claimant cannot wipe himself and cannot brush his teeth. Claimant lacks self-direction and needs constant guidance and supervision. Claimant also lacks self-awareness. For example, if he is showering and the water is too hot, Claimant will not alert Grandmother to the temperature of the water or take action to fix it himself.

29. Claimant also has trouble expressing his feelings. He sometimes overreacts by screaming, throwing chairs, or growling. Claimant often cannot express independent thoughts and has difficulty changing his routine. Certain sounds upset Claimant, as do certain food textures.

30. Grandmother is seeking services from KRC because she believes Claimant can benefit from them.

LEGAL CONCLUSIONS

Jurisdiction

1. The Lanterman Act governs this case. (Welf. & Inst. Code § 4500 et seq.; all further undesignated statutory references are to the Welfare and Institutions Code.) The Legislature enacted the Lanterman Act to provide an “array of services and supports . . . sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage

of life and to support their integration into the mainstream life of the community.” (§ 4501.) The purpose of the statutory scheme is twofold: To prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.)

2. DDS is the state agency charged with implementing the Lanterman Act. (§ 4416.) DDS, in turn, may contract with private, non-profit community agencies called “regional centers” to provide developmentally disabled persons with access to the services and supports best suited to them throughout their lifetime. (§ 4620.)

3. Under the Lanterman Act, an administrative proceeding, also known as a “fair hearing,” is available to determine the rights and obligations of the parties, including regional center decisions to which the claimant disagrees. (§§ 4700–4717.) Claimant timely requested a fair hearing, and jurisdiction for this case was established. (Factual Findings 1–4.)

Standard and Burden of Proof

4. The party asserting a condition that would make the individual eligible for a benefit or service has the burden of proof to establish he or she has the condition. (*Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 160–161.) Here, Claimant bears the burden of proving by a preponderance of the evidence that he has a developmental disability as defined by the Lanterman Act and is eligible for regional center services. (Evid. Code, § 115.) This standard is met when the party bearing the burden of proof presents evidence that has more convincing

force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

Lanterman Act Eligibility Requirements

5. Section 4501 outlines the state's responsibility for persons with developmental disabilities and the state's duty to establish services for those individuals. A person must have a developmental disability that is substantially disabling, as defined by the Lanterman Act and its implementing regulations, to be eligible for regional center services. (*Ronald F. v. State Dept. of Developmental Services* (2017) 8 Cal.App.5th 84, 94–95.)

6. A developmental disability is a disability that originates before an individual turns 18 years old and is expected to continue indefinitely. Developmental disabilities are limited to the specific conditions of autism, cerebral palsy, epilepsy, intellectual disability, or a disabling condition found to be closely related to intellectual disability or to require treatment similar to that required for an individual with intellectual disability. (§ 4512, subd. (a).) Developmental disabilities do not include other handicapping conditions that are solely physical in nature, or which are solely psychiatric disorders or learning disabilities. (*Ibid.*; Cal. Code Regs., tit. 17, § 54000.)

7. Along with the requirements listed above, the condition must also constitute a substantial disability for the individual. (§ 4512, subd. (a)(1).) In this context, "substantial disability" means:

(1) A condition which results in major impairment of cognitive and/or social functioning, representing sufficient impairment to require interdisciplinary planning and

coordination of special or generic services to assist the individual in achieving maximum potential; and

(2) The existence of significant functional limitations, as determined by the regional center, in three or more of the following areas of major life activity, as appropriate to the person's age: (A) Receptive and expressive language; (B) Learning; (C) Self-care; (D) Mobility; (E) Self-direction; (F) Capacity for independent living; (G) Economic self-sufficiency.

(Cal. Code Regs., tit. 17, § 54001, subd. (a).)

8. Section 4643, subdivision (b), provides:

In determining if an individual meets the definition of developmental disability contained in subdivision (a) of Section 4512, the regional center may consider evaluations and tests, including but not limited to, intelligence tests, adaptive functioning tests, neurological and neuropsychological tests, diagnostic tests performed by a physician, psychiatric tests, and other tests or evaluations that have been performed by, and are available from, other sources.

9. It is undisputed that Claimant does not suffer from the developmental disabilities of cerebral palsy, epilepsy, intellectual disability, or a disabling condition that is closely related to intellectual disability or which requires treatment similar to

what is required for an individual with an intellectual disability. Accordingly, the legal analysis of eligibility is limited to the developmental disability of autism.

Diagnosing Autism Spectrum Disorder

10. The Diagnostic and Statistical Manual of Mental Disorders (DSM) “is a classification of mental disorders that was developed for use in clinical, educational, and research settings[.]” (*In re N.R.* (2023) 15 Cal.5th 520, 541.) The “primary purpose” of the DSM “is to assist trained clinicians in the diagnosis of mental disorders as part of a case formulation assessment that leads to an informed treatment plan for each individual.” (*Ibid.*)

11. According to the most recent version of the DSM, the DSM-5-TR, the diagnostic criteria for ASD consists of two parts. The first set of criteria, Part A, requires persistent deficits in social communication and social interaction across multiple contexts, as manifested by all the following: (1) deficits in social-emotional reciprocity; (2) deficits in nonverbal communicative behaviors used for social interaction; and (3) deficits in developing, maintaining and understanding relationships. The second set of criteria, Part B, requires restrictive, repetitive patterns of behavior, interests, or activities, as manifested by at least two of the following: (1) stereotyped or repetitive motor movements, use of objects, or speech; (2) insistence of sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behaviors; (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. (Ex. 11, pp. A120–A121.)

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Evaluation of Evidence of Eligibility Under Diagnosis of ASD

12. Dr. Musacco stated he would have diagnosed Claimant with ASD absent the opinions of other medical professionals previously declining to make that diagnosis. But Dr. Musacco also believed “it would be misplaced for [him] to ignore the presence[] of three independent evaluations all of whom expressed the opinion that [Claimant] was not exhibiting symptoms of [ASD].” (Factual Finding 23.) Dr. Lefler gave persuasive testimony that Dr. Musacco’s hesitancy to diagnose Claimant with ASD was appropriate under the circumstances. (Factual Finding 24.) If Dr. Musacco diagnosed Claimant with ASD, he also would have needed to provide a suitable explanation about why his opinion differed from Dr. Garcia and Claimant’s school psychologist. Dr. Musacco appears to have lacked the necessary medical evidence to disagree with those opinions and found a credible, alternative explanation that fit the medical evidence which he adopted instead.

13. In sum, despite being assessed on multiple occasions, no medical or mental professional has diagnosed Claimant with ASD. Instead, Dr. Garcia, Dr. Musacco, and Claimant’s school psychologist all concluded Claimant’s symptoms are caused by a complex interplay of several different disorders, including ADHD, emotional disturbance, and language disorder, which all may have been exacerbated by Claimant’s exposure to alcohol and drugs during his mother’s pregnancy. (Factual Findings 9, 14, 20, 23.) Moreover, Claimant’s school has never found that he is eligible for special education services due to a diagnosis of ASD. (Factual Finding 26.) Although all the professionals who have assessed Claimant agree he exhibits some characteristics of ASD—including those identified in Grandmother’s testimony—Claimant has not met his burden to show the unanimous opinion of these medical professionals is incorrect.

Conclusion

14. The evidence indicates Claimant has a "constellation" of serious psychological and mental health issues that require further monitoring and support. But on this record, Claimant did not prove he has a developmental disability as defined by the Lanterman Act that makes him eligible for regional center services.

ORDER

Claimant's appeal is denied.

DATE:

TAYLOR STEINBACHER
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.

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

In the Matter of:

CLAIMANT,

and

KERN REGIONAL CENTER,

Service Agency.

DDS No. CS0020811

OAH No. 2024090940

ORDER DENYING CLAIMANT'S APPLICATION FOR RECONSIDERATION

An Administrative Law Judge from the Office of Administrative Hearings issued a final decision in this matter on November 20, 2024. The final decision was served on the parties on November 21, 2024.

On November 27, 2024, the Office of Administrative Hearings, which is the hearing office responsible for issuing the final decision, received an application from Claimant's authorized representative requesting reconsideration of the decision.

The undersigned Administrative Law Judge, who did not hear the matter or write the decision for which reconsideration is requested, was assigned to decide the application.

Here, Claimant's authorized representative applies for reconsideration on the ground that additional evidence should be considered and attaches documentation, consisting of a three-page document from an evaluator, to support a different final decision than the one issued in this matter by the hearing Administrative Law Judge.

ANALYSIS

Pursuant to Welfare and Institutions Code section 4713, subdivision (b), a party has 15 days of the date of the final hearing decision to apply for reconsideration to: (1) correct a mistake of fact or law; (2) correct a clerical error in the decision; or (3) address the decision of the original hearing officer not to recuse themselves following a request pursuant to Welfare and Institutions Code section 4712, subdivision (g). (Undesignated statutory references are to the Welfare and Institutions Code.)

The language of section 4713, subdivision (b), as well as the expedited deadline for deciding an application, make clear that the mistake of fact or law in question must be apparent from the decision, such as an obvious mathematical error in calculating hours of service, an order that fails to accurately encompass the legal conclusions, the citation to the wrong statute, or reliance on a law that is no longer in effect. In such instances, the hearing office can either correct the mistake if the resolution is apparent from the decision or order the matter to be reheard if the error is not apparent. There is nothing in section 4713 suggesting an application for reconsideration contemplates

the hearing office reopening the record to permit Claimant to submit additional evidence after the hearing has been concluded and the final decision issued.

For these reasons, the application must be denied.

ORDER

Claimant's application for reconsideration of the final decision is DENIED.

IT IS SO ORDERED.

DATE:

IRINA TENTSER

Administrative Law Judge

Office of Administrative Hearings