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

## In the Matter of:

## CLAIMANT

## and

## WESTSIDE REGIONAL CENTER, Service Agency.

## DDS No. CS0021018

## OAH No. 2024100295

## DECISION

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

Claimant was represented by his grandmother, who is his authorized representative. Westside Regional Center (WRC or Service Agency) was represented by Ron Lopez, IDEA Specialist. (Claimant's name, and his grandmother's, are not used in the interest of privacy.)

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

## ISSUE

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

## EVIDENCE RELIED ON

In making this Decision the ALJ relied on WRC exhibits 1 through 16, and the testimony of Thompson Kelly, Ph.D., and Grandmother.

## FACTUAL FINDINGS

### Background and Procedural History

1. On a date not made clear from the record, Claimant sought services from WRC.[1] By a letter dated July 31, 2024, WRC informed Grandmother that it had determined Claimant was not eligible for services from WRC. The letter was accompanied by a Notice of Action (NOA). (Ex. 4, pp. A15 & A16-19.) Claimant

[1] A referral by the Department of Children and Family Services (DCFS) indicates a referral start date of October 12, 2023. (Ex. 5, p. A20.) The psychological assessment states that Claimant's DCFS psychiatrist, Dr. Temerova, wrote a referral letter dated April 18, 2024, (Ex. 6, p. A23), which letter is Exhibit 11. The letter post-dates the psychosocial assessment.

appealed the denial of eligibility on September 27, 2024. (*Id.*, p. A11.) All jurisdictional requirements have been met.

2. Claimant is 12 years old and lives with Grandmother, and a younger sister and younger brother. His sister is a consumer of WRC services. The children have been in Grandmother's custody for approximately three years. (Ex. 7, p. 41.) They were in their father's custody for a time, and Grandmother had custody before that. As of April 2024 there was an open DCFS case for the children. As noted in footnote 1, Claimant's DCFS psychiatrist referred Claimant to WRC to rule out possible Intellectual Disability and/or Autism Spectrum Disorder (ASD) due to some of the boy's behaviors. (*Id.*)

## The Psychosocial Assessment

3. In April 2024, a psychosocial assessment of Claimant was conducted by Brigitte Jameson, MSW, PT, an intake counselor with WRC. She wrote a seven-page report dated April 10, 2024, found at Exhibit 7. The report states "there is a very complicated psychosocial history." (Ex. 7, p. A42.) His parents had histories of mental health diagnoses and substance abuse; his father was killed in January 2022. Grandmother reported mental health conditions in the extended family on her side.

4. Claimant was reported to have met developmental milestones, such as saying "mama" and walking at about 12 months. However, his clarity of speech was delayed, and he was not fully potty trained until about 5 years old. Grandmother reported that Claimant was incontinent for urine about one-time per week in the night, and of bowel movements about once per month.

5. Grandmother reported Claimant was timid and slow to warm up to new experiences; at a birthday party he would stay with his grandmother. He was described as sensitive to loud sounds and would be overwhelmed in large crowds. Grandmother

related some of Claimant's behavior to trauma he suffered when in his father's care and custody.

6. Grandmother reported to Jameson that Claimant had a diagnosis of Attention Deficit Hyperactivity Disorder (ADHD), auditory processing difficulties and learning disorders. (Ex. 7, p. A45.) He is easily distracted and has limited attention to non-preferred tasks, having trouble with completing classwork, and needing much structure.

7. Claimant had problems participating in age-appropriate selfcare and activities of daily living. He is a picky eater, for example, picking the herbs out of spaghetti sauce. He has trouble getting ready for school in the morning, and resisted having his hair washed, so it only happened about once per month. He demonstrated problems in completing chores. (Ex. 7, p. A45.)

8. The psychosocial assessment report noted other issues, including rigidity about routines, and some stereotypical and repetitive behaviors. It was determined that a psychological evaluation would be performed.

## The Psychological Evaluation by Dr. du Verglas

9. In May 2024, Gabrielle du Verglas, Ph.D., a clinical psychologist, examined Claimant. Her exam stretched across three days, and she issued a written report found at Exhibit 6.

10. Dr. du Verglas interviewed Grandmother, who reported matters similar to what was reported to Jameson. She noted that Claimant had diagnoses of ADHD, enuresis, and anxiety disorder. It was also reported Claimant was on psychotropic medications for his ADHD and sleep problems. (Ex. 6, p. A23.)

11. Dr. du Verglas reviewed records, observed Claimant, interviewed his grandmother, and assessed him with a number of standardized tests, including the Wechsler Abbreviated Scales of Intelligence, 2d edition (WASI-II); Wide Range Achievement Test-5 (WRAT-5); Adaptive Behavior Assessment System-3 (ABAS-3); the Autism Diagnostic Observation Schedule-2 (ADOS-2), Module 3; and the Autism Diagnostic Interview—Revised (ADI-R).

12. The results of the IQ test—the WASI-II—showed a full scale IQ of 84 which is in the low average range. Clamant's score on the Perceptual Reasoning Index was 96, in the 39th percentile. The Verbal Comprehension Index score was 78, in the fifth percentile. (Ex. 6, p. A28.)

13. The WRAT-5 assesses academic performance. Claimant was in the fifth grade when he was assessed. His testing showed that he was at grade level in spelling and math, placing in the 40th percentile in spelling and the 50th percentile in math. Word reading placed him at the fourth-grade level, in the 25th percentile. The weakest performance was in sentence comprehension, where Claimant was in the fifth percentile, with a grade equivalent of 2.5. (Ex. 6, p. A29.) Dr. du Verglas noted that Claimant's weakness in verbal comprehension as revealed by the IQ test was confirmed by the low score in sentence comprehension by the WRAT test. (*Id.*, pp. A28-29.)

14. Claimant's adaptive functioning was assessed with the ABAS-3, and his performance indicated substantial deficits in adaptive function. His score on the general adaptive composite was a 54, the percentile rank being 0.1. The other composite scores were also "extremely low," falling between the 0.1 and 0.5 percentiles. (Ex. 6, p. A30.)

15. The ADOS-2, Module 3, was utilized in an effort to determine if Claimant suffers from ASD. During the test Claimant engaged in conversational language and used some gestures in an effort to communicate. His eye contact was described as "somewhat fleeting but not absent." (Ex. 6, p. A33.) He described his interest in sports and how he could engage in sports activities at the park. He had trouble describing emotions, but Dr. du Verglas attributed such to overall language delays. Dr. du Verglas did not observe stereotyped motor movements, or complex motor mannerisms, or excessive interests in specific toys or topics.

16. Dr. du Verglas did not find Intellectual Disability or ASD. Her diagnostic impressions were ADHD, combined type by history; Anxiety Disorder, unspecified by history, enuresis, nocturnal/diurnal, by history; Parental/Foster Child relation problems. (Ex. 6, p. A37.)

## The Psychological Evaluation by Karesha Gayles, Psy. D.

17. On June 7, and June 9, 2025, Claimant underwent a psychological evaluation by Karesha Gayles, Psy. D. According to the testimony of Dr. Kelly, Dr. Gayles was consulted because there was a question about Claimant's processing speed and working memory. In performing her assessment, she reviewed records, interviewed Grandmother, and administered the Wechsler Intelligence Scales for Children, Fifth Edition (WISC-V).

18. Dr. Gayles described Claimant as cooperative and appropriately engaged. He maintained good eye contact, participated in reciprocal conversation, and displayed typical vocal tone, prosody, and mannerisms. He looked, at times, bored and expressed readiness to end the session but he remained compliant with evaluation tasks. (Ex. 9, p. A53.)

19. The WISC-V was used to assess Claimant's Working Memory and Processing Speed. His index score on the Working Memory subtest was 95, in the average range. He obtained the same index score in the Processing Speed subtest. (Ex. 9, p. A54.)

20. Dr. Gayles was clear that her findings did not support a diagnosis of ASD, opining that Claimant's presentation was more consistent with emotional/behavioral dysregulation, oppositional behaviors, and possible trauma-related avoidance. (Ex. 9, P, A55.) Aside from ADHD, she diagnosed Claimant with Oppositional Defiant Disorder. (*Id.*, p. A57.)

## Testimony of Dr. Thompson Kelly

21. Dr. Kelly is a licensed clinical psychologist, and he manages intake psychological services for WRC. He is a member of WRC's eligibility committee. He is familiar with Claimant's case, and with the case of Claimant's sister.

22. Dr. Kelly has reviewed Dr. du Verglas's report, and he agrees with her conclusions and her diagnoses. He knew about Dr. Gayles' report, and he believes it supports the conclusion that Claimant does not suffer from Intellectual Disability, ASD, nor does he suffer from a condition similar to Intellectual Disability or that can be treated in a manner similar to that utilized in treating Intellectual Disability, i.e., "the fifth category."

23. Dr. Kelly noted that school records indicated Claimant had problems with attention in school, and to staying on task. School records indicated Claimant needs much prodding, reminders, and redirection. Dr. Kelly didn't perceive substantial cognitive impairment and perceived that some mental health issues were disabling,

pointing out that anxiety can be a distracting condition. The anxiety, along with Claimant's language issues and ADHD, carries a burden of distraction.

24. Dr. Kelly believes Claimant has language processing deficits, and would likely have trouble with processing oral instructions. On this point Grandmother tended to agree with Dr. Kelly, relating how it took numerous instructions over an eight-hour period for Claimant to get his room cleaned. Dr. Kelly also believes Claimant has indications of a learning disorder. This, along with language disorder and mental health conditions are tending to drag down Claimant's function.

## Grandmother's Case

25. Grandmother described various aspects of Claimant's condition, both in colloquy with Dr. Kelly and in her testimony. When Dr. Kelly opined that Claimant is likely functioning like an eight or nine-year old, Grandmother confirmed that was happening. When Dr. Kelly testified that Claimant would likely have problems with processing oral instructions, and explained a strategy for providing such, Grandmother noted that was how she finally got Claimant to clean his room, as noted in Factual Finding 24.

25. While Grandmother appeared to have an understanding of the assessments, she could not point to any that indicated Claimant has an eligible condition.

///

///

///

## Diagnostic Criteria

### INTELLECTUAL DISABILITY

26. Official notice is taken of a standard text, the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, commonly known as the DSM-5. It is relied upon by mental health practitioners and others for diagnostic criteria.

27. (A) The DSM-5 defines Intellectual Disability as "a disorder with onset during the developmental period that includes both intellectual and adaptive functioning deficits in conceptual, social, and practical domains." (DSM-5, p. 33.) The following three criteria must be met to establish that a person suffers from Intellectual Disability:

> A. Deficits in intellectual functions, such as reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience, confirmed by both clinical assessment and individualized, standardized intelligence testing.
>
> B. Deficits in adaptive functioning that result in failure to meet developmental and socio-cultural standards for personal independence and social responsibility. Without ongoing support, the adaptive deficits limit functioning in one or more activities of daily life, such as communication, social participation, and independent living, across multiple environments, such as home, school, work, and community.

///

C. Onset of intellectual and adaptive deficits during the developmental period.

(B) Thus, the definitive characteristics of Intellectual Disability include deficits in general mental abilities (Criterion A) and impairment in everyday adaptive functioning, in comparison to an individual's age, gender, and socio-culturally matched peers (Criterion B). To meet the diagnostic criteria for Intellectual Disability, the deficits in adaptive functioning must be directly related to the intellectual impairments described in Criterion A. Onset is during the developmental period (Criterion C). A diagnosis of Intellectual Disability should not be assumed because of a particular genetic or medical condition. Any genetic or medical diagnosis is a concurrent diagnosis when Intellectual Disability is present. (DSM-5, pp. 39-40.)

28. The authors of the DSM-5 have indicated that "[i]ntellectual functioning is typically measured with individually administered and psychometrically valid, comprehensive, culturally appropriate, psychometrically sound tests of intelligence. Individuals with intellectual disability have scores of approximately two standard deviations or more below the general population mean, including a margin for measurement error (generally +5 points). On tests with a standard deviation of 15 and a mean of 100, such as the CTONI-2, this involves a score of 65-75 (70 $\pm$ 5)." (DSM-5, p. 37.) At the same time, the authors of the DSM-5 recognize that "IQ test scores are approximations of conceptual functioning but may be insufficient to assess reasoning in real-life situations and mastery of practical tasks." Thus, "a person with an IQ score above 70 may have such severe adaptive behavior problems in social judgment, social understanding, and other areas of adaptive functioning that the person's actual functioning is comparable to that of individuals with a lower IQ score." (*Id.*)

///

29. According to the DSM-5, "[a]daptive functioning is assessed using both clinical evaluation and individualized, culturally appropriate, psychometrically sound measures. Standardized measures are used with knowledgeable informants (e.g., parent or other family member; teacher; counselor; care provider) and the individual to the extent possible. Additional sources of information include educational, developmental, medical, and mental health evaluations." (*Id.*) Whether it is intellectual functioning or adaptive functioning, clinical training and judgment are required to interpret standardized measures, test results and assessments, and interview sources.

## AUTISM SPECTRUM DISORDER

30. Per the DSM-5, 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).

## FIFTH CATEGORY

31. What is often referred to as the fifth category is not a diagnostic criteria recognized in the DSM, but instead is creature of the Lanterman Act. Under the Lanterman Act, a person can be eligible if they have 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.

///

///

## LEGAL CONCLUSIONS

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

2. 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.

///

3. Claimant has not carried his burden of proving he suffers from an eligible condition. His full-scale IQ score of 84 is in the low average range, and intellectual disability is typically defined by an IQ of 70 or below. He does not show deficits in general mental abilities, though he does show deficits in adaptive function. Claimant did not carry his burden of proving he suffers from ASD; Dr. du Verglas did not find ASD, and Dr. Kelly supports her findings. Finally, his IQ of 84 tends to bar the conclusion that Claimant is eligible under the fifth category.

4. It is plain that Claimant has a number of issues, but they do not make him eligible for services. Dr. Kelly gave a cogent explanation of how mental health issues such as anxiety and ADHD, along with a likely learning disability, impact Claimant so that he is not functioning at an optimum level. In all the circumstances of the case, Claimant's appeal must be denied.

## ORDER

Claimant's appeal from the decision by Westside Regional Center that he is not eligible for services is denied.

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.