

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

In the Matter of:

Claimant,

and

North Los Angeles County Regional Center,

Service Agency.

DDS No. CS0021761

OAH No. 2024101099

DECISION

Nana Chin, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on March 27, 2025, in Lancaster, California.

Claimant was represented by her grandmother. (The names of Claimant and her family are omitted to protect their privacy.)

North Los Angeles County Regional Center (NLACRC or Service Agency) was represented by Stella Dorian, Due Process Officer.

Testimony and documents were received into evidence. The record was closed on March 27, 2025.

ISSUE

Whether Claimant is eligible for regional center services under the Lanterman Developmental Disabilities Services Act based on Intellectual Disability, Autism Spectrum Disorder, or a condition similar to or requiring treatment similar to that required by individuals with intellectual disability.

EVIDENCE RELIED UPON

Documents: NLACRC's Exhibits 1-18.

Testimonial: Sandi Fischer, Ph.D., NLACRC Psychological and Intake Manager; Grandmother.

FACTUAL FINDINGS

Background and Procedural History

1. Before turning three, Claimant received services under the California Early Intervention Services Act (Early Start), Government Code section 95000, et seq. Children under the age of three are eligible for Early Start services if: (1) they have a developmental delay in one or more of the following areas: cognitive development, physical and motor development (including vision and hearing), expressive or receptive communication; social or emotional development; or adaptive development;

(2) they have an established risk condition; or (3) they are at high risk of having a substantial developmental disability due to the combination of biomedical risk factors. (Gov. Code, § 95014, subd. (a).)

2. After Claimant turned three, Claimant was referred to Brigitte Travis-Griffin, Psy.D., an NCLARC-vendored clinical psychologist, to evaluate whether Claimant had a developmental disability under the Lanterman Act.

3. On December 12, 2022, the Service Agency's Interdisciplinary Eligibility Committee (IE Committee or Committee) reviewed Dr. Travis-Griffin's report and Claimant's available medical and social records. A child under the age of five does not need to have a developmental disability to be found provisionally eligible for regional center services if the child has a condition that is not solely physical in nature which significantly limits their functioning in at least two areas of major life activity. (Welf. & Inst. Code, § 4512, subd. (a)(2).) A child who is provisionally eligible must be reassessed before the child turns five. (Welf. & Inst. Code, § 4512, subd. (a)(5).)

4. The Committee found Claimant was provisionally eligible for Lanterman Act services due to her provisional diagnosis of intellectual disability (ID) and substantial limitations in two major life activities, receptive and expressive language, and learning.

5. After her fifth birthday, Service Agency referred Claimant to Alan Golian, Psy.D., another NCLARC-vendored psychologist, to evaluate whether Claimant remained eligible for Lanterman Act services based on a diagnosis of autism spectrum disorder (ASD) or ID.

6. On October 16, 2024, the IE Committee reviewed Dr. Golian's report and Claimant's available social and school records. Based on their review, the Committee

determined Claimant no longer met the criteria for Lanterman Act eligibility. (Exh. 9.) On October 17, 2024, NCLARC issued a Notice of Action (NOA), notifying Claimant that she was not eligible for services under the Lanterman Act. (Exh. 10.) Claimant appealed the NOA on October 25, 2024. (Exh. 1.)

7. On January 16, 2025, the IE Committee reconvened to reconsider its eligibility determination and reviewed a Blue Cross ABA Assessment report prepared by a behavior analyst, Natalie Rioux Tamayo. (Exh. 11.) The Committee concluded that the additional records did not change its earlier determination that Claimant was not eligible for Lanterman Act services.

8. All jurisdictional requirements have been met.

Prior Evaluation

9. Dr. Travis-Griffin conducted a psychological evaluation of Claimant on November 29, 2022, and prepared a report documenting her findings and conclusions. The report was admitted into evidence as Exhibit 4 (Psychological Assessment).

10. As part of the evaluation, Dr. Travis-Griffin reviewed Claimant's Early Start records and a February 10, 2020, referral from the Department of Children and Family Services (DCFS); met with Claimant in person on the date of the evaluation; and administered several standardized assessments. These included the Wechsler Preschool and Primary Scale of Intelligence, Fourth Edition (WPPSI-IV); the Autism Diagnostic Observation Schedule, Second Edition (ADOS-2), Module 1; the Autism Diagnostic Interview-Revised (ADI-R); and the Adaptive Behavior Assessment System, Third Edition (ABAS-3).

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11. The assessment results were as follows:

A. Claimant's full-scale intelligence quotient (FSIQ) score on the WPPSI-IV was 69, which meets the diagnostic criteria for intellectual disability (ID). Dr. Travis-Griffin noted, however, that this score is not static and could improve with cognitive development and continued exposure to a structured educational setting.

B. Claimant's standardized score on the ABAS-3 was 6, indicating that her functional academic skills were in the low average range.

C. Claimant's scores on the ADOS-2, Module 1 (ASD Score = 4; Comparison Score = 2), the ADI-R (based on Grandmother's report), and the ABAS-3 (Social Skills SS = 66; Communication Functioning SS = 3; General Adaptive Functioning SS = 72) were not consistent with a diagnosis of autism spectrum disorder (ASD).

12. Dr. Travis-Griffin observed that Claimant approached most activities with interest but showed a fleeting attention span and limited ability to follow a self-directed agenda. Dr. Travis-Griffin noted that these underlying attention or cognitive difficulties may indicate underlying cognitive or attention-related challenges relevant to the assessment of intellectual disability. Dr. Travis-Griffin also observed that socially, Claimant responded in an age-appropriate manner, demonstrated awareness of others, engaged in functional communication, and expressed pride when praised. These observations supported age-appropriate social-emotional development and did not indicate autism-related deficits.

13. During the observation, Dr. Travis-Griffin found that though Claimant exhibited notable speech disfluency, she effectively used age-appropriate gestures to support communication. While she had some difficulty maintaining attention and demonstrated increased kinetic activity, she was responsive to redirection, cooperative

in following modeled tasks, and respectful of personal boundaries and testing materials. She did not display stereotyped language, restrictive interests, or repetitive behaviors. These findings were inconsistent with autism spectrum disorder (ASD).

14. Following the evaluation, Dr. Travis-Griffin provided multiple diagnoses, including a provisional diagnosis of intellectual disability. She explained that while Claimant's performance was below the average range at the time of testing, additional evaluation would be needed to confirm the diagnosis. A provisional diagnosis reflects clinical uncertainty and is considered temporary pending further developmental and functional assessment.

Individualized Educational Program

15. To be eligible for special education services, a child must have a disability that falls within one of thirteen qualifying categories, and the disability must adversely affect the child's educational performance. The qualifying categories include autism, ID, speech or language impairment, and others. (34 C.F.R. § 300.8; 5 C.C.R. § 3030.)

16. On April 26, 2022, NCLACRC referred Claimant for an initial assessment by the School District (or District) to determine whether she was eligible for special education services. The District conducted a multidisciplinary assessment to determine if Claimant met the eligibility criteria for special education services under the qualifying category of ID, other health impairment or speech and/or language impairment. A report of the findings was issued on October 4, 2022. (Exh. 3, p. A43-A56.) The assessment included a review of records and developmental history, a parent interview, classroom observations, and administration of the Behavior Assessment System for Children, Third Edition (BASC-3), and the Developmental Assessment of Young Children, Second Edition (DAYC-2).

17. Claimant's cognitive development was found to be in the low average to average range, her socioemotional development was within the average range, and her adaptive skills were a relative weakness and fell in the borderline range.

18. The District found that Claimant qualified for special education services under the category of speech or language impairment and explicitly concluded she did not meet the criteria for services under the classifications of intellectual disability or other health impairment. As of September 25, 2023, Claimant continued to meet the eligibility criteria for special education services due to a speech or language impairment.

Psychological Assessment

19. On September 26, 2024, Claimant was referred to Alan Golian, Psy.D., an NCLARC-vendored psychologist, for an evaluation to assess for ASD and ID.

20. For the evaluation, Dr. Golian reviewed Dr. Travis-Griffin's November 29, 2022 report; a multi-disciplinary team assessment report by the Lancaster School District on August 17 and September 12, 2022; met with Claimant and Grandmother; and administered a series of diagnostic assessments, including the WPPSI-IV; ADOS-2, Module 2; and the Vineland Scales of Adaptive Functioning, Third Edition (VABS-III).

21. Dr. Golian noted that when Claimant arrived with Grandmother she was appropriately groomed, made eye contact, and responded to greetings with socially expected behaviors such as waving and smiling. She communicated nonverbally by nodding and pointing out objects of interest, and she transitioned into testing without difficulty after separating from Grandmother.

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22. During the observation, Dr. Golian noted that though Claimant displayed mild phonological errors (e.g., saying "lellow" for "yellow"), her spoken language lacked the abnormalities typically associated with ASD. Dr. Golian also did not observe any other behaviors associated with ASD in that Claimant maintained appropriate eye contact, used contextually appropriate facial expressions, and employed basic gestures. She was engaged throughout the evaluation, made spontaneous and relevant comments, responded to questions, and understood conversational cues. She completed tasks independently without prompting or redirection.

23. The results of the diagnostic assessments were as follows:

A. Claimant's FSIQ on the WPPSI-IV was 81, placing her in the low average range. Dr. Golian, however, noted that there was significant variability in Claimant's performance across the five composites of measure with her lowest scores being in Fluid Reasoning Index (FRI) (SS=77), placed her in the Borderline range, while her highest score in Working Memory (WMI) (SS=94), placed her in the average range.

B. Claimant's scores on the ADOS 2, Module 2, was classified as "Non-Spectrum."

C. Adaptive functioning, as measured by the VABS-III, showed an Adaptive Behavior Composite score of: 65, which is in the low range and her Daily Living Skills score was: 71, which falls within the moderately low range.

24. Following the evaluation, Dr. Golian prepared a report and diagnosed Claimant with: (1) a phonological disorder; and (2) a rule out diagnosis of attention-deficit/hyperactivity disorder (ADHD).

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Hearing Testimony

25. Sandi J. Fischer, Ph.D., NLACRC's Clinical and Intake Manager, testified on behalf of Service Agency. Dr. Fischer has been a licensed psychologist for over 30 years and has conducted numerous psychological assessments. Her current duties include supervising intake units and participating in the IE Committee but she had previously also conducted evaluations and school-based observations for NLACRC.

26. Dr. Fischer explained that when making an eligibility determination, the IE Committee does not rely solely on psychological evaluations. The IE Committee also reviews available medical records, educational reports, and other relevant documentation.

27. In making its eligibility determination, the Service Agency utilized the *Diagnostic and Statistical Manual of Mental Disorders*, Fifth Edition, Text Revision, (DSM-5-TR), and the *Association of Regional Center Agencies (ARCA) Guidelines for Determining "5th Category" Eligibility*. (ARCA Guidelines). (Exh. 16.)

28. After reviewing Claimant's September 26, 2024 Psychological Assessment, the IE Committee concluded that Claimant did not meet the diagnostic criteria for ASD or ID, or a condition found to be closely related to ID or require treatment similar to that required for individuals with ID, commonly referred to as Fifth Category (Fifth Category).

29. The DSM-5-TR a widely accepted reference manual used by mental health professionals to diagnose developmental disabilities and mental disorders and is used by regional centers to aid in their eligibility determinations.

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30. According to the DSM-5-TR, the essential features of ASD include persistent deficits in reciprocal social communication and social interaction (Criterion A), and restricted, repetitive patterns of behavior, interests, or activities (Criterion B). These symptoms must be present from early childhood and must impair everyday functioning (Criteria C and D). (Exh. 13.) Dr. Fischer testified that the results of testing conducted by Dr. Golian and his observations did not support a diagnosis of ASD. She emphasized that although many individuals may exhibit some behaviors described in the DSM-5-TR, an ASD diagnosis requires that those behaviors be pervasive, persistent, and impairing. The IE Committee found Claimant did not meet that threshold.

31. The DSM-5-TR defines Intellectual Developmental Disorder (intellectual disability or ID) by three diagnostic criteria: (A) deficits in general mental abilities; (B) impairments in adaptive functioning compared to an individual's age, gender, and sociocultural peers; and (C) onset during the developmental period. (Exh. 14.)

A. Criterion A generally results in IQ scores that fall two standard deviations or more below the mean (i.e., 65–75), accounting for measurement error.

B. Criterion B is met when at least one domain of adaptive functioning—conceptual, social, or practical—is significantly impaired enough to require ongoing support in settings such as home, school, and community.

32. Dr. Fischer noted that Claimant's IQ score of 81 was well above the cutoff for ID and that her cognitive scores were highly variable, ranging from a low of 77 in fluid reasoning and a high of 94 in working memory. This variability suggests Claimant has a learning disability. In contrast, individuals with ID typically show uniformly low

scores across domains. The IE Committee therefore, found Claimant did not have an ID.

33. The Fifth Category is not a clinical diagnosis recognized in the DSM-5-TR but rather a legal classification under the Lanterman Act. To assess Claimant's eligibility under this category, the IE Committee used the ARCA Guidelines.

34. The ARCA Guidelines provide the following relevant considerations:

A. As IQ increases above 70, individuals are less likely to be considered similar to those with ID.

B. Borderline intellectual functioning must demonstrate consistency over time. Due to variability in Claimant's test scores, the guidelines caution against making a Fifth Category determination.

C. Adaptive deficits must not be primarily attributable to psychiatric conditions (e.g., ADHD, PTSD, or anxiety disorder), socio-cultural deprivation (e.g., abusive parents or foster care instability), or motivational issues (e.g., focus and attention deficits).

D. person qualifying under the Fifth Category must require treatment or services similar to those provided to individuals with ID.

35. Dr. Fischer noted Claimant's IQ of 81, as seen in Claimant's case, placed in in the low average range. Further, her IQ was not consistent and had increased dramatically from 69 when Dr. Travis-Griffin assessed her in 2022. These factors led to the IE Committee finding that Claimant was not eligible for services under the Fifth Category.

Grandmother's Testimony

36. Grandmother testified on Claimant's behalf, expressing her concerns regarding Claimant's behavior, emotional responses, and developmental progress.

37. Grandmother suspects Claimant to have ASD because she frequently fidgets, rocks back and forth, and avoids making direct eye contact. She also described Claimant as being highly sensitive, refusing to wear certain items of clothing and shoes, and being particular about food textures. These traits are traits Grandmother has also observed in Claimant's sister, who is diagnosed with ASD.

38. Grandmother also suspects Claimant may have ID because she does not know the alphabet and often refers to all four-legged animals as either a cat or a dog, suggesting possible delays in cognitive or language development.

39. Grandmother described additional challenges, including poor physical coordination. She noted that Claimant sometimes walks pigeon-toed and holds her arms in an awkward position, which affects her balance and causes frequent falls.

40. Grandmother described other behavioral concerns, including limited emotional expression, bedwetting, frequent physical altercations with her sister and classmates, and a recent behavior where Claimant began eating from the trash, prompting Grandmother to lock the trash can for safety.

41. Grandmother acknowledged that Claimant has not received a formal diagnosis of ASD or ID from a medical provider. Nonetheless, she remains concerned and believes Claimant requires additional support. After seeking help from various resources, she was referred to the regional center. However, she expressed concerns with Dr. Golian's evaluation. Grandmother estimated the entire visit lasted less than 25

minutes. During the evaluation, Dr. Golian asked to speak to Claimant alone while Grandmother filled out paperwork in the waiting room. According to Grandmother, Dr. Golian spoke with Claimant for no more than five minutes before returning which she described as a “huge red flag.”

42. Grandmother’s testimony was credible, detailed, and heartfelt. Her concerns were grounded in direct observation and personal experience. She did not appear to exaggerate Claimant’s difficulties or misrepresent her developmental challenges.

LEGAL CONCLUSIONS

Jurisdiction

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, § 4500 et seq.) An administrative hearing to determine the rights and obligations of the parties is available under the Lanterman Act to appeal a contrary regional center decision. (Welf. & Inst., §§ 4700-4716.) Claimant requested a hearing to contest NLACRC’s denial of Claimant’s eligibility for services and supports under the Lanterman Act and therefore jurisdiction for this appeal was established.

Standard and Burden of Proof

2. When a person seeks to establish eligibility for government benefits or services, the burden of proof is on that individual. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) As no other statute or law specifically applies to the

Lanterman Act, the standard of proof in this case is a preponderance of the evidence. (See Evid. Code, §§ 115, 500.)

3. Service Agency's initial eligibility determination was that Claimant was provisionally eligible for services under the Lanterman Act. Provisional eligibility terminates when a child turns five years old. (Welf. & Inst. Code, §, 4512, subd. (a)(2).) As Claimant is now seeking eligibility, alleging she is a consumer with an eligible developmental disability, the burden is on Claimant to demonstrate that Service Agency's decision is incorrect by a preponderance of the evidence.

Evaluation

4. In order to be eligible to receive regional center services, an individual must have a qualifying developmental disability. Welfare and Institutions Code section 4512, subdivision (a), defines a "developmental disability" as:

[A] disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for that individual. . . . [T]his 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 intellectual disability, but shall not include other handicapping conditions that are solely physical in nature.

(2) (A) A child who is under five years of age shall be provisionally eligible for regional center services if the child

has a disability that is not solely physical in nature and has significant functional limitations in at least two of the following areas of major life activity, as determined by a regional center and as appropriate to the age of the child:

(i) Self-care.

(ii) Receptive and expressive language.

(iii) Learning.

(iv) Mobility.

(v) Self-direction.

5. California Code of Regulations, title 17, (CCR) section 54000 similarly defines "developmental disability" as a disability attributable to intellectual disability, cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for intellectually disabled individuals. The disability must originate before age 18, be likely to continue indefinitely, and constitute a substantial handicap.

6. Pursuant to CCR section 54000, subdivision (c), developmental disabilities do not include conditions that are: "(1) Solely psychiatric disorders where there is impaired intellectual or social functioning which originated as a result of the psychiatric disorder or treatment given for such a disorder . . . [¶] (2) Solely learning disabilities. A learning disability is a condition which manifests as a significant discrepancy between estimated cognitive potential and actual level of educational performance and which is not a result of generalized mental retardation, educational

or psycho-social deprivation, psychiatric disorder, or sensory loss. [¶] (3) Solely physical in nature”

7. For an individual with a developmental disability to qualify for regional center services, the qualifying developmental disability must also function as a "substantial disability." A "substantial disability" means there are "significant functional limitations in three or more of the following areas of major life activity, as determined by a regional center, and 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., § 4512, subd. (j)(1); see also CCR, § 54001, subd. (a)(2).)

Analysis

AUTISM

8. Claimant did not present any evidence that she has ever been formally diagnosed with ASD. While Grandmother described some behaviors—such as fidgeting, rocking, and avoiding eye contact—that is often associated with ASD, those behaviors were not consistently observed across settings. For a diagnosis of ASD, such characteristics must be pervasive and persistent across environments.

9. In addition, assessments conducted by Dr. Travis-Griffin and Dr. Golian did not identify persistent deficits in social communication or interaction, nor restricted or repetitive behaviors, interests, or activities, that would support a diagnosis of ASD. Based on the evidence presented, Claimant has not established eligibility for regional center services based on ASD by a preponderance of the evidence.

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INTELLECTUAL DISABILITY

10. Claimant did not present any evidence that she has received a diagnosis of ID or that she demonstrates significant cognitive impairments. The most recent psychological evaluation concluded that Claimant did not demonstrate deficits in cognitive functioning. This conclusion is supported by findings from Claimant's IEP, which noted cognitive functioning within the average range. Based on the available information, Claimant has not established eligibility for regional center services based on intellectual disability.

FIFTH CATEGORY

11. To qualify under the Fifth Category, the condition must be "closely related to intellectual disability" or require "treatment similar to that required for individuals with an intellectual disability." (Welf. & Inst. Code, § 4512, subd. (a)(1).) Eligibility requires evidence of cognitive and/or adaptive impairments that resemble those of a person with intellectual disability.

12. In this matter, Claimant did not present evidence demonstrating significant cognitive impairment or that she requires services similar to those provided to individuals with intellectual disability. Instead, the record reflects that Claimant's challenges in intellectual or adaptive functioning may be associated with a psychiatric condition or learning disability. These conditions, on their own, do not meet the criteria for a developmental disability under the Lanterman Act. Based on the record, Claimant has not demonstrated eligibility under the Fifth Category by a preponderance of the evidence.

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13. Based on the forgoing, Claimant's has not met her burden of proving by a preponderance of the evidence that she has a developmental disability, making her eligible for regional center services under the Lanterman Act.

ORDER

Service Agency's determination that Claimant is not eligible for regional center services is sustained. Claimant's appeal of that determination is denied.

DATE:

NANA CHIN

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision. Each party is bound by this decision. Either party may request a reconsideration 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.