

**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. CS0022222

OAH No. 2024110550

DECISION

Cindy F. Forman, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter by videoconference on December 18, 2024.

Paul Mejia, Due Process Officer, appeared and represented North Los Angeles County Regional Center (NLACRC or Service Agency).

Claimant's mother represented Claimant at the fair hearing. (This Decision does not identify Claimant and his mother by name to protect their privacy.) A Spanish interpreter was present during the fair hearing to assist Claimant's mother.

The ALJ received testimony and documentary evidence. At the conclusion of the fair hearing, the ALJ continued the matter until January 29, 2025, to allow the parties to submit additional evidence. On January 15, 2025, Service Agency uploaded to Case Center on Claimant's mother's behalf, a letter to Claimant's mother from The Help Group, dated January 8, 2025, regarding Claimant's therapeutic treatment. The letter was marked for identification as Exhibit 17. The Service Agency did not object to Exhibit 17, and the ALJ admitted Exhibit 17 into evidence.

The record was closed and the matter was submitted for decision on January 29, 2025.

ISSUE

Whether after receiving a psychological evaluation in September 2024, Claimant may obtain a new psychological assessment with a different psychologist to re-assess his eligibility to receive services under the Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code (Code) section 4400 et seq. (Lanterman Act)?

EVIDENCE RELIED ON

Documentary: Service Agency Exhibits 1–17.

Testimonial: NLACRC Senior Clinical Psychologist Specialist Heike Ballmaier, Psy.D., BCBA; Claimant's mother.

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FACTUAL FINDINGS

1. Claimant is a nine-year, 10-month-old boy who lives with his mother, father, two older sisters, and younger brother.

2. Claimant currently attends a public elementary school in the Los Angeles Unified School District (LAUSD). According to an Individualized Education Program (IEP) report of a meeting with school representatives and Claimant's mother held on April 22, 2024, LAUSD found Claimant eligible for special educational support based on symptoms of autism. The IEP provides that Claimant will participate in the general education curriculum of his school but receive resource teacher support and in-class instructional accommodations to assist his learning and focus. (Exhibit 6.) Claimant also received psychological counseling from LAUSD.

3. In 2024, Claimant was diagnosed with Attention-Deficit Hyperactivity Disorder (ADHD) predominantly hyperactive type, with generalized anxiety. At the time of his diagnosis, Claimant's mother declined ADHD medications. (Exhibit 4, p A77.) The Help Group has provided therapeutic treatment to Claimant for his ADHD from January 31, 2024, to the present. Claimant's treatment at The Help Group includes weekly, individual services, and currently focuses on Claimant's worrying, behavioral problems at school, and struggles with managing rules and boundaries. (Exhibit 17.)

Service Agency Assessment

INTAKE APPLICATION

4. On May 6, 2024, Claimant sought regional center services based on the eligibility categories of autism spectrum disorder (ASD) or intellectual disability. In the Intake Application, Claimant's mother did not report significant difficulties with

Claimant's self-care. However, Claimant's mother expressed concerns regarding Claimant's "difficulty participating in social activities, frequent tantrums, difficulty changing activities and adjusting to new activities, difficulty expressing emotions, and low esteem." (Exhibit 2, p. A30.) Claimant's mother also noted Claimant was "sensitive to loud noises, food and clothes textures." (*Ibid.*)

SOCIAL ASSESSMENT

5. On June 20, 2024, on Service Agency's behalf, Nancy Gonzalez, a licensed marriage and family therapist (LMFT Gonzalez), conducted a social assessment of Claimant by speaking with Claimant's mother by telephone. According to the Social Assessment Report prepared by LMFT Gonzalez, Claimant receives weekly therapy sessions from The Help Group, which referred Claimant to NLACRC. Claimant's mother reported to LMFT Gonzalez that Claimant has difficulties in school, is easily distracted, and has poor social skills. Claimant's mother also reported that Claimant has no issues with his motor skills, can groom himself with reminders, and is alert and oriented. Claimant's mother further noted Claimant struggles with socialization, daily tantrums, adjusting to change, and expressing his emotions. Claimant's mother reiterated her concerns in the Early Intake Form about Claimant's sensitivities to food, clothing, and loud noises. Claimant's mother also told LMFT Gonzalez that Claimant was diagnosed with ADHD, generalized anxiety, and fatty liver. (Exhibit 7.) Based on her assessment, LMFT Gonzalez recommended Claimant be evaluated for eligibility for regional center services.

MEDICAL ASSESSMENT

6. On July 22, 2024, Carlo DeAntonio, M.D., F.A.A.P., NLACRC Director of Clinical Services, reviewed Claimant's medical records. Dr. DeAntonio did not find

Claimant presented with substantially handicapping cerebral palsy or epilepsy. He noted Claimant's IEP eligibility is based on the autism category. Dr. Antonio recommended a psychological evaluation of Claimant to assist in determining Claimant's eligibility for regional center services. (Exhibit 5.)

PSYCHOLOGICAL ASSESSMENT

7. On September 23, 2024, Anna Levi, Psy.D., conducted a psychological assessment of Claimant on NLACRC's behalf. (Exhibit 8.) As part of her assessment, Dr. Levi reviewed Claimant's IEP, interviewed Claimant's mother, and independently observed Claimant. Dr. Levi also administered the Wechsler Abbreviated Scale of Intelligence – Second Edition (WASI-II) to assess Claimant's intellectual ability; the Autism Diagnostic Observation Schedule – 2, Module 3 (ADOS-2) to assess whether Claimant presented with ASD; and the Adaptive Behavior Assessment System (ABAS-3) to assess Claimant's adaptive functioning.

8. Dr. Levi found Claimant's overall intellectual abilities to be in the average range based on the results of the WASI-II. Claimant scored in the average range in perceptual reasoning and verbal comprehension. Dr. Levi found most of Claimant's individual abilities to be in the average range except for verbal reasoning, in which Claimant's scores were in the superior range. Based on Claimant's average and superior scores, Dr. Levi concluded Claimant did not present with intellectual disability. (Exhibit 8, p. A332.)

9. It was unclear whether Dr. Levi relied on Claimant's mother or both his parents to complete the ABAS-3 to assess Claimant's adaptive functioning. According to Dr. Levi, based on Claimant's parents' responses, Claimant's adaptive skills were in the borderline range as measured by the ABAS-3. The test results indicated Claimant

exhibited conceptual skills and practical skills in the borderline range and overall social skills in the mild deficit range. The test results also indicated Claimant's communication and social skills were in the low average range while his self-direction, home living, and self-care skills were in the average range. (Exhibit 8, p. A332.)

10. Dr. Levi found Claimant's overall score on the ADOS-2 fell below the autism cut-off. However, Claimant's scores were in the autism spectrum range and indicated a moderate level of autism symptoms. According to Dr. Levi, Claimant's "scores were elevated by [Claimant's] impulsive, hyperactive and distracted behaviors that interfered with maintenance of a conversation or play as well as by silly and aggressive content projected into play. The interview with the parent likewise revealed social deficits, but did not indicate any fixated interests, repetitive behaviors or any significant sensory issues." (Exhibit 8, p. A332.)

11. Dr. Levi analyzed whether Claimant presented with ASD based on the criteria stated in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5). (Exhibit 8, p. A333.) Under the DSM-5, an ASD diagnosis requires (1) presentation of persistent deficits in social communication and social interaction in all the following categories: (a) social-emotional reciprocity; (b) nonverbal communicative behaviors; and (c) developing, maintaining, and understanding relationships, and (2) presentation of restricted/repetitive patterns of behavior, interests, or activities in at least two of the following categories: (a) stereotyped or repetitive motor movements, use of objects or speech; insistence on sameness, (b) inflexible adherence to routines or ritualized patterns of behavior; (c) highly restricted, fixated interests that are abnormal in intensity or focus; and (d) hyper-or hypo reactivity to sensory input or unusual interest in sensory aspects of the environment. (Exhibit 11.)

12. Dr. Levi found Claimant presented with sustained deficits in two of the three categories of social communication and social interaction. (Exhibit 8, pp. A333–A334.) Specifically, Dr. Levi found respondent lacked social-emotional reciprocity based on his teachers’ observations as noted in his IEP, his mother’s observations, and her own observations. However, Dr. Levi maintained Claimant’s reciprocity deficits were due to hyperactive, impulsive, inattentive, and distracted behaviors. Dr. Levi also found respondent had difficulties developing, maintaining, and understanding relationships based on Claimant’s mother’s observations regarding Claimant’s inability to make friends and his difficulty in maintaining personal space as well as the results of the ADOS-2. Dr. Levi did not find Claimant had deficits in nonverbal communicative behaviors as both his parents and Dr. Levi observed Claimant demonstrated good eye contact and made appropriate gestures.

13. Dr. Levi did not find Claimant presented with any repetitive or restricted patterns of behavior, interests, or activities. (Exhibit 8, pp. A334–A335.) Claimant’s mother did not report to Dr. Levi that Claimant made stereotyped repetitive movements, engaged in repetitive play, or repeated sounds or speech, and Dr. Levi did not observe Claimant doing so. Dr. Levi found Claimant transitioned easily between topics and activities, and Dr. Levi reported Claimant’s mother did not describe any nonfunctional routines or unusual reactions. Dr. Levi did not find Claimant had highly restricted fixated interests that were abnormal in intensity or focus. Dr. Levi reported Claimant’s mother’s observations regarding Claimant’s sensitivity to noise, not liking certain kinds of clothes, and not liking vegetables. However, Dr. Levi did not witness Claimant demonstrating sensory sensitivities during the evaluation, and she found many of Claimant’s reported sensitivities reflected his impatience with objects, e.g., his struggling with zippers and his dislike of “wasting time” showering. (*Id.*, p. A335.)

14. Based on Claimant's IEP and test results, her interview with Claimant's mother, and her own observations, Dr. Levi concluded Claimant presented with two sustained deficits in social communication and social interaction, which are insufficient to meet the DSM-5 diagnostic criteria for ASD. (See Factual Finding 11.) Although Dr. Levi found Claimant's social deficits were indicative of ASD, Dr. Levi maintained the deficits stemmed from severe ADHD, not ASD. (Exhibit 8, p. A335.)

15. Dr. Levi diagnosed Claimant with ADHD, combined presentation. She recommended Claimant receive Analytic Behavioral Analysis (ABA) therapy, special education services, classroom accommodations, psychotherapy, and a psychiatric consultation to discuss potential ADHD medications. She also recommended Claimant become involved with a team sport or a physically active group and suggested certain behavioral techniques as well as books for Claimant's parents and Claimant to read. (Exhibit 8, pp. A335–A337.)

SERVICE AGENCY DETERMINATION

16. On October 21, 2024, NLACRC's Interdisciplinary Eligibility Committee, comprised of Dr. DeAntonio; NLACRC Manager of Medical Services Margaret Swaine, M.D.; Dr. Ballmaier; and NLACRC Manager of Psychological & Intake Services Sandi Fischer, Ph.D., met to review Claimant's eligibility request. The Interdisciplinary Eligibility Committee determined Claimant was not eligible for regional center services based on Dr. Levi's ADHD diagnosis and their review of Claimant's available records.

Claimant's Appeal

17. On October 22, 2024, NLACRC sent a Notice of Action to Claimant's mother informing her that Service Agency had determined Claimant was ineligible for regional center services because Claimant did not present with a developmental

disability as defined by California law and regulation. (Exhibit 1, p. A2.) On November 12, 2024, Claimant's mother filed an appeal of the Service Agency's eligibility denial. As the reasons for her appeal, Claimant's mother stated, "My son was denied services. The psychologist completing the evaluation was very discriminating, rude and negative during my son's evaluation." (*Id.*, p. A8.)

18. On November 15, 2024, Service Agency requested the matter be set for mediation and a fair hearing. This fair hearing followed.

Hearing Testimony

DR. BALLMAIER

19. Dr. Ballmaier testified on behalf of Service Agency. Dr. Ballmaier is a member of the NLACRC Interdisciplinary Eligibility Committee (Eligibility Committee) that denied Claimant's request for regional center services, and she is familiar with Claimant's medical and educational records. At hearing, Dr. Ballmaier explained the basis for the Eligibility Committee's decision. According to Dr. Ballmaier, the results of testing administered by Dr. Levi showed Claimant presented with average cognitive abilities, and therefore Claimant did not qualify for NLACRC services based on intellectual disability or what is termed "fifth category," i.e., a disabling condition closely related to intellectual disability or requiring treatment similar to that required by an individual with intellectual disability. Additionally, Claimant's medical records as well as Dr. Levi's assessment supported a diagnosis of ADHD, not ASD.

20. Although LAUSD found Claimant eligible for special education under the category of autism, Dr. Ballmaier asserted the school district's finding was not determinative of whether Claimant presented with ASD under the DSM-5. Dr. Ballmaier maintained that LAUSD's findings were based solely on reports by Claimant's teachers

and Claimant's mother. The school district, unlike Dr. Levi, did not administer any formal testing for ASD and did not have a psychologist personally observe Claimant's behavior.

21. Dr. Ballmaier became aware of Claimant's mother's complaints about Dr. Levi when she began her preparations for this hearing. According to Dr. Ballmaier, Dr. Levi has worked with NLACRC for 20 years and is one of 25 psychologists on the NLACRC roster. Dr. Ballmaier acknowledged receiving other complaints over the years about Dr. Levi, but she asserted that NLACRC received complaints about almost all its psychologists. Dr. Ballmaier takes all complaints seriously. Thus, when she learns of a complaint, Dr. Ballmaier directs the complaint to the psychologist and asks for a response.

22. Dr. Ballmaier testified NLACRC did not receive any complaint from Claimant's mother about Dr. Levi either during or immediately after Dr. Levi's assessment of Claimant. NLACRC also never received a formal written complaint from Claimant's mother about Dr. Levi. When Dr. Ballmaier became aware of Claimant's mother's unhappiness with Dr. Levi, Dr. Ballmaier immediately discussed the issue with Dr. Levi. However, Dr. Levi did not remember any details relating to Claimant's assessment or her interactions with Claimant's mother because the assessment had occurred three months earlier. Notwithstanding the passage of time, Dr. Ballmaier, along with Mr. Mejia, urged Claimant's mother to make a formal written rights violation complaint regarding Dr. Levi under Code section 4731.

23. Dr. Ballmaier contended that despite Claimant's mother's dissatisfaction with Dr. Levi, it was too soon to conduct a second psychological assessment of Claimant. Dr. Ballmaier testified the Eligibility Committee had closely reviewed Dr. Levi's report in their consideration of Claimant's eligibility request, and the Eligibility

Committee found no issue with Dr. Levi's presentation or analysis. Dr. Ballmaier also asserted the Eligibility Committee would question the validity of another evaluation administered so soon after Dr. Levi's evaluation because Claimant would be familiar with the testing process. Dr. Ballmaier acknowledged another psychologist could use different testing instruments in a reassessment. She maintained, however, that the results of those tests would not be as convincing as the initial testing because Claimant would likely have less motivation to cooperate and use his best efforts so soon after Dr. Levi's testing. Dr. Ballmaier stated the Eligibility Committee would recommend another psychological assessment only if Claimant had additional educational, medical, or psychological records supporting an ASD diagnosis.

TESTIMONY BY CLAIMANT'S MOTHER

24. Claimant's mother testified regarding her dissatisfaction with Dr. Levi's assessment of Claimant and described her uncomfortable experience with Dr. Levi during the assessment process. Claimant's mother found Dr. Levi to be unprofessional, racist, rude, and unkind. Claimant's mother described how Dr. Levi first assumed she did not speak English and then refused her request for an English interpreter for herself. Claimant's mother told Dr. Levi that she understood English but wanted an interpreter to assist her with understanding medical terminology.

25. Claimant's mother asserted Dr. Levi discounted her descriptions of Claimant's behaviors. According to Claimant's mother, Dr. Levi ignored or rejected her comments or responded with dismissive facial gestures. Claimant's mother also felt Dr. Levi rushed Claimant's assessment as Dr. Levi also did during her assessment of Claimant's brother. Claimant's mother contended Dr. Levi took a comic book that Claimant had created from Claimant and refused to return it to him. Additionally,

although Dr. Levi was aware Claimant drew to release his stress, Dr. Levi refused his request for paper to draw on while Dr. Levi interviewed Claimant's mother.

26. Claimant's mother also found Dr. Levi's office to be unsuitable for evaluating small children. According to Claimant's mother, Dr. Levi's office was in her garage, and the office was small with an unpleasant odor. When Claimant's mother was in the waiting room, she could overhear the conversations between Dr. Levi and Claimant in Dr. Levi's office, and she heard Dr. Levi speak rudely to Claimant. After Dr. Levi finished her observation of Claimant and Claimant's mother went into the office, Claimant hugged Claimant's mother, acted scared, and asked her to take him away because he no longer wanted to be in the office with Dr. Levi.

27. Claimant's mother asserted she did not complain about Dr. Levi during or immediately after Claimant's assessment because she believed it would be unprofessional to do so. Claimant's mother believes Claimant was unable to show his true character during Dr. Levi's assessment because of the way Dr. Levi treated him and the office environment where the assessment took place. Claimant's mother maintained she is entitled to a second opinion because of the way Dr. Levi treated Claimant and because Dr. Levi's conclusions may have been wrong.

28. Claimant's mother acknowledged reviewing Dr. Levi's report of the assessment. Claimant's mother did not find fault with Dr. Levi's reporting of Claimant's mother's observations regarding Claimant, even though their conversation was in English. Claimant's mother did not identify any factual inaccuracies in Dr. Levi's report. Claimant's mother, however, asserted that Dr. Levi did not focus sufficiently on Claimant's problems with social cues, his inappropriate touching, his sensitivity to clothing, his inappropriate noises, his refusal to take a shower, and his difficulties making friends.

Other Evidence

29. In a letter dated November 27, 2024, Claimant's pediatrician requested NLACRC to perform another evaluation to determine whether Claimant presents with ASD. The letter states in pertinent part: "Patient is at risk of neurodevelopmental delay and social and functional impairment. We feel that he would benefit significantly from receiving another evaluation as soon as possible. Please take this into account when considering his behavioral and service needs." (Exhibit 10.)

LEGAL CONCLUSIONS

Applicable Law

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act. (Code, § 4500 et seq.) The purpose of the Lanterman Act is to rectify the problem of inadequate treatment and services for the developmentally disabled and to enable developmentally disabled individuals to lead independent and productive lives in the least restrictive setting possible. (Code, §§ 4501, 4502; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.)

2. To be eligible for regional center services and supports, claimants must demonstrate they have a qualifying developmental disability. As defined by the Lanterman Act, a developmental disability is "a disability that originates before an individual attains 18 years of age; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for that individual." The term "developmental disability" includes intellectual disability, cerebral palsy, epilepsy, autism, and what is commonly referred to as the "fifth category." (Code, § 4512, subd.

(a)(1).) The “fifth category” includes disabling conditions found to be closely related to intellectual disability or to require treatment like that required for individuals with an intellectual disability.” (*Ibid.*)

3. A “developmental disability” as defined in the Lanterman Act excludes solely physical conditions as well as conditions that are solely psychiatric disorders or learning disabilities. (Code, § 4512, subd. (a)(1); Cal. Code. Regs., tit. 17, § 54000.) Therefore, someone whose conditions originate from the excluded categories (psychiatric disorder, physical disorder, or learning disability, alone or in some combination) and who does not have a developmental disability is not eligible for Lanterman Act services and supports.

4. The Lanterman Act charges regional centers with the responsibility of carrying out the state’s responsibilities to the developmentally disabled under the Lanterman Act. (Code, § 4620, subd. (a).) The Lanterman Act mandates that “Any person believed to have a developmental disability . . . shall be eligible for initial intake and assessment services in the regional centers.” (Code, § 4642, subd. (a).) An assessment may include “collection and review of available historical diagnostic data, provision or procurement of necessary tests and evaluations, and summarization of developmental levels and service needs.” (Code, § 4643, subd. (a).)

Burden and Standard of Proof

5. Where a claimant seeks to establish eligibility for regional center services or a new service, including a new assessment, the burden is on the claimant to demonstrate by a preponderance of the evidence the Service Agency’s decision denying eligibility or a new assessment is incorrect. (Evid. Code, § 115.) The term preponderance of the evidence means “more likely than not.” (*Sandoval v. Bank of Am.*

(2002) 94 Cal.App.4th 1378, 1388.) Claimant has not met his burden of proof in this case.

Analysis and Disposition

6. Claimant did not establish he presents with intellectual disability or with a fifth-category condition. Claimant's intelligence was found to be in the average or superior range. Claimant's cognitive skills or social functioning deficits are not closely related to intellectual disability or require treatment like that required for individuals with an intellectual disability. (Factual Finding 8.)

7. Claimant did not establish he presents with ASD. Neither the Lanterman Act nor any of the Lanterman Act's implementing regulations define autism or ASD. However, the established authority for this purpose is the DSM-5, "a standard reference work containing a comprehensive classification and terminology of mental disorders." (*Money v. Krall* (1982) 128 Cal.App.3d 378, 384, fn. 2.) Claimant did not meet the criteria for ASD set forth in the DSM-5. He did not demonstrate pervasive and sustained deficits in the three required categories of social communication and social interaction or in two of the four categories of restricted, repetitive patterns of behavior, interests, or activities as required by the DSM-5. Specifically, while Claimant demonstrated sustained deficits in developing and maintaining social relationships and social-emotional reciprocity, he did not demonstrate deficits in nonverbal communication. Claimant also did not demonstrate stereotyped or repetitive motor movements, use of objects or speech; insistence on sameness, inflexible adherence to routines or ritualized patterns of behavior; highly restricted, fixated interests that are abnormal in intensity or focus; or hyper- or hypo reactivity to sensory input or unusual interest in sensory aspects of the environment. Additionally, in her analysis, Dr. Levi

persuasively attributed many of the deficits she observed to Claimant's ADHD. (Factual Findings 10–16.)

8. The evidence demonstrated Claimant presents with ADHD and generalized anxiety. (Factual Findings 3, 10–15.) The Lanterman Act considers ADHD and generalized anxiety to be psychiatric disorders, not developmental disabilities. Claimant therefore is not eligible for regional center services based on his ADHD and anxiety diagnoses.

9. Claimant's request for an immediate reassessment of Claimant based on Dr. Levi's conduct is denied. It was Claimant's burden to show NLACRC's determination was faulty, Dr. Levi's assessment was inadequate, or new evidence warranted a reassessment. Although Claimant's mother found Dr. Levi to be rude, dismissive of her concerns, unkind to Claimant, and racist, and Dr. Levi's office to be unsuitable for young children, Claimant's mother did not specify how these shortcomings affected Dr. Levi's assessment of Claimant. Claimant's mother did not identify any factual inaccuracies in Dr. Levi's report or any misrepresentations Dr. Levi made when documenting Claimant's mother's statements. In her report, Dr. Levi also addressed each of Claimant's behaviors that Claimant's mother described at the hearing. (Factual Findings 24–28.)

10. Additionally, the Eligibility Committee found Dr. Levi's assessment to be complete and reliable. (Factual Finding 16.) Claimant's mother offered no additional evidence supporting her belief that Claimant presents with ASD. Neither Claimant's pediatrician nor The Help Group provided evidence to support a new psychological evaluation of Claimant at this time. If Claimant's mother locates additional evidence to support her contention that Claimant presents with ASD, Claimant's mother is entitled to request a new assessment.

ORDER

Claimant's appeal is denied. The Service Agency's determination that Claimant is not eligible for regional center services and supports is upheld.

Claimant's request for an immediate reassessment is denied. Claimant may reapply for regional center services in the future if he obtains new evidence to support his eligibility claim.

DATE:

CINDY F. FORMAN

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.