

**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. CS0022429

OAH No. 2024120028

DECISION

Julie Cabos Owen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on January 6, 2025. Stella Dorian, Due Process Officer, represented North Los Angeles County Regional Center (NLACRC or Service Agency). Claimant was represented by his grandmother (Grandmother). (The names of Claimant and his family are omitted to protect their privacy.)

Testimony and documents were received in evidence. The record closed and the matter was submitted for decision on January 6, 2025.

ISSUE

Does Claimant have a developmental disability entitling him to regional center services?

EVIDENCE

The documentary evidence considered in this case was Service Agency exhibits 1 – 17. The testimonial evidence considered in this case was that of licensed psychologist, Heike Ballmaier, Psy.D.

FACTUAL FINDINGS

Claimant Background

1. Claimant is an eight-year-old male. He seeks eligibility for regional center services based on any qualifying diagnosis including autism spectrum disorder (ASD) and intellectual disability.
2. Claimant and his younger sibling live with Grandmother.
3. Claimant's biological father is deceased. Claimant's biological mother suffers from mental health conditions.
4. When residing with their biological mother, Claimant and his sibling witnessed and suffered domestic violence and other environmental stress factors. The prior home contained a methamphetamine lab, and the children were living in

deplorable conditions. The children were removed by Grandmother due to neglect and mental health problems. Grandmother was awarded custody.

5. Claimant is not yet enrolled in school. He is being homeschooled by Grandmother who is a retired teacher.

Eligibility Determinations

6. In January 2024, Claimant sought regional center eligibility.

7. On February 29, 2024, NLACRC Social Assessment Specialist, Beatriz Osegueda, interviewed Grandmother and documented Claimant's history and functioning in a Social Assessment Summary.

8. In the area of self-care, Grandmother reported Claimant was able to perform self-care needs (dressing, bathing, feeding, toileting, hygiene, and grooming) with reminders to ensure task completion. He had sensory issues with wiping and toilet flushing. Claimant was able to speak in sentences. He occasionally stuttered.

9. In the social/behavioral area, Grandmother reported Claimant lacked age-appropriate social skills and was unable to recognize social cues. However, he was able to share with others and make good eye contact. During the night he would occasionally wake up and run around. He was impulsive, resistant to directives, and had problems adapting to change and transitions. He displayed aggressive behaviors. Claimant rocked when sitting down, and he had sensory issues with sounds. He purposefully urinated in random places, and he placed soiled toilet paper on the floor instead of in the toilet.

10. Grandmother submitted to NLACRC a February 29, 2024 letter from Claimant's UCLA pediatrician, Rebecca Tsevat, M.D. Dr. Tsevat noted:

[Claimant] has a very complex history, including post-traumatic stress disorder leading to severe behavioral disturbance and emotional reactivity. He also has dyslexia, asthma, and seasonal allergies. Due to his history of trauma, he requires significant coordination of care by a host of providers familiar with his severe disease, including psychiatry, therapy, social work, and developmental-behavioral pediatrics. He also requires an allergist to manage his asthma, seasonal allergies, and possible food allergies.

(Exhibit 5, p. A21.)

11. Dr. Tsevat noted Claimant was taking risperidone and attending therapy once per week after graduating from critical trauma therapy.

12. On March 7, 2024, NLACRC Clinician, Carlo DeAntonio, M.D., F.A.A.P., reviewed Claimant's available records and concluded Claimant did not suffer from cerebral palsy or epilepsy.

13. On June 6, 2024, Licensed Clinical Psychologist Anna Levi, Psy.D., conducted a psychological evaluation of Claimant on behalf of NLACRC and issued a report of her findings. Claimant was seven years old at the time of the evaluation. (The first page of Dr. Levi's report contains a typographical error indicating Claimant was four years, three months old. The remainder of the report is accurate.)

14. Dr. Levi noted Claimant's relevant history to include the following:

[Claimant] and his sister experienced extreme physical violence with broken bones, exposure to drugs and emotional breakdown of a parent, neglect (such as being tied down, lack of food or medical care and living in extreme filth), sexual exposure/abuse. [¶] . . . [¶]

He can sustain a conversation and is "gifted" verbally. He does not have repetitive language. No repetitive movement was reported except for hitting himself when upset. When he gets "stuck" on something he does not know how to process or do, he feels angry. He makes good eye contact. He has a variety of facial expressions and uses a range of gestures. He does not follow the routine on his own and usually resists routine.

(Exhibit 7, p. A25.)

15. Regarding Claimant's observed speech, language, and conversational skills, Dr. Levi noted:

[Claimant] sustained conversations on different topics, staying on topic well, such as pets and fun places. He volunteered information and details. He described experiences well with appropriate vocabulary and complex sentences. He did not show any repetitive, idiosyncratic or stereotyped speech. He did not demonstrate any repetitive behaviors or repetitive movements. He shared reciprocal smiles. He used a lot of gestures, such as showing how he

folded paper to make a craft. He made excellent eye contact.

[Claimant] did not show any fixated interests and shared a lot of age-appropriate interests. He likes building with big Lego and blocks. [¶] . . . [¶]

He transitioned well between topics and tasks, not showing any resistance or insistence on sameness or ritualistic behavior. He appeared interactive and friendly, flexible, cooperative and shared enjoyment well.

(Exhibit 7, p. A26.)

16. Dr. Levi administered the Wechsler Abbreviated Scale of Intelligence (WASI-II) to assess Claimant's cognitive functioning. Based on the testing results, Claimant's overall intellectual abilities were in the average range, his perceptual reasoning abilities were average, and his verbal comprehension abilities were in the high average range. All his individual abilities were in the average to high average range.

17. To assess Claimant's adaptive skills, Dr. Levi administered the Adaptive Behavior Assessment System (ABAS-3) with Grandmother as respondent. Claimant's overall adaptive skills were in the low-average range. His conceptual, social, practical, communication, and self-care skills were in the low-average range. He had weaknesses in the health and safety area, scoring in the borderline range. He had stronger skills in the areas of community-use, home living, leisure, self-direction, and social areas, scoring in the average range.

18. To test for ASD, Dr. Levi administered the Autism Diagnostic Observation Schedule-2, Module 3 (ADOS-2, Module 3) Interview with Grandmother responding. Claimant's overall score fell below the autism or autism-spectrum range and indicated minimal-to-no evidence of symptoms. Grandmother reported emotional behavioral issues, but no repetitive behavior/interests or autism-spectrum symptoms. Dr. Levi determined Claimant's scores were not indicative of ASD.

19. Dr. Levi analyzed whether Claimant met the criteria set forth in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) for a diagnosis of ASD. (The ALJ takes official notice of the DSM-5 as a generally accepted tool for diagnosing mental and developmental disorders.) Dr. Levi concluded Claimant "has no sustained deficits from the autism spectrum perspective [and] does not meet the DSM-5 criteria for the diagnosis of [ASD]. His previous experiences have impacted on behavioral issues that are reported by [Grandmother]. There is a history of previously reported [Post Traumatic Stress Disorder (PTSD)] diagnosis." (Exhibit 7, p. A29.)

20. Since Claimant's adaptive skills were in the low average range on ABAS-3 and his intellectual abilities were in the average range on WASI-II, Dr. Levi concluded Claimant does not have intellectual disability as defined by the DSM-5.

21. Dr. Levi diagnosed Claimant with PTSD by history.

22. On June 12, 2024, the NLACRC interdisciplinary eligibility team met and determined Claimant was ineligible for regional center services because he did not have a qualifying developmental disability.

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23. On June 13, 2024, NLACRC sent Claimant a Notice of Action (NOA), finding him ineligible to receive regional center services because he did not meet eligibility criteria.

24. After receipt of the NOA, Claimant submitted further records from UCLA Health documenting his PTSD, dyslexia, mild asthma, history of adverse childhood experiences, suicidal ideation, and Reactive Attachment Disorder. According to the records, Claimant was continuing his weekly visits for management of psychiatric medications and symptoms.

25. On November 4, 2024, the NLACRC interdisciplinary eligibility team met again upon review of Claimant's new documentation. The NLACRC interdisciplinary eligibility team again determined Claimant was ineligible for regional center services because he did not have a qualifying developmental disability. The team noted, "UCLA records reviewed, which indicate mental health conditions, including PTSD, reactive attachment disorder. UCLA describes child as having 'extensive history of trauma and mental health issues.' UCLA records do not indicate developmental disability concerns, such as ASD or ID." (Exhibit 10.)

26. On November 20, 2024, Grandmother filed a Fair Hearing Request on Claimant's behalf to appeal the denial of eligibility. This fair hearing was set.

27. Prior to this fair hearing, Claimant submitted additional documentation from the Los Angeles County Department of Children and Family Services and from UCLA.

28. On December 30, 2024, the NLACRC interdisciplinary eligibility team met again upon review of Claimant's new documentation. The NLACRC interdisciplinary eligibility team again determined Claimant was ineligible for regional center services

because he did not have a qualifying developmental disability. The team noted, "Additional records were reviewed and reflected treatment for severe mental health conditions and not a developmental disability." (Exhibit 17.)

Evidence at Fair Hearing

29. Licensed psychologist, Heike Ballmaier, Psy.D., testified at the fair hearing. She presented as a credible witness.

30. Dr. Ballmaier reviewed Dr. Levi's psychological assessment and the information Claimant submitted. Dr. Ballmaier concurred with Dr. Levi's conclusion that Claimant did not meet the DSM-5 diagnostic criteria for intellectual disability or ASD. Dr. Ballmaier explained why none of Claimant's diagnoses constituted a qualifying developmental disability.

31. The Association of Regional Center Agencies (ARCA) has published Guidelines for Determining "5th Category" Eligibility for regional center services. These guidelines were used to inform NLACRC's eligibility analysis. Given Claimant's intellectual functioning in the average range and his adaptive skills in the low-average range, NLACRC determined Claimant does not function in a manner similar to a person with ID or require treatment similar to that required by individuals with ID. Consequently, NLACRC determined Claimant did not fall within the fifth category of eligibility. (See Legal Conclusions, below.)

32. Grandmother did not testify or present any witnesses at hearing. She stated Dr. Ballmaier adequately explained why Claimant is not eligible for regional center services, and she had "nothing else to say."

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LEGAL CONCLUSIONS

Jurisdiction and Burden of Proof

1. An administrative hearing to determine the rights and obligations of the parties is available under the Lanterman Developmental Disabilities Services Act (Lanterman Act) to appeal a regional center decision. (Welf. & Inst. Code, §§ 4700-4716.) Claimant timely requested a hearing following the Service Agency's denial of eligibility, and therefore, jurisdiction for this appeal was established.

2. When a party seeks government benefits or services, he bears the burden of proof. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits].) Where a change in services is sought, the party seeking the change bears the burden of proving that a change in services is necessary. (Evid. Code, § 500.) The standard of proof in this case is a preponderance of the evidence because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.)

3. In seeking eligibility for regional center services, Claimant bears the burden of proving by a preponderance of the evidence that he meets all eligibility criteria. Claimant has failed to meet his burden of proof in this case.

Determination of Claimant's Eligibility under Lanterman Act

4. To be eligible for regional center services, a claimant must have a qualifying developmental disability. As applicable to this case, Welfare and Institutions Code section 4512, subdivision (a), defines "developmental disability" as:

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. . . [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 an intellectual disability, but shall not include other handicapping conditions that are solely physical in nature.

5. A claimant must show that his disability fits within one of the five categories of eligibility set forth in Welfare and Institutions Code section 4512. The first four categories are specified as: intellectual disability, epilepsy, autism, and cerebral palsy. The fifth and last category of eligibility is listed as "Disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with intellectual disability." (Welf. & Inst. Code, § 4512.)

6. Although the first four categories of eligibility are very specific, the disabling conditions under the residual fifth category are intentionally broad to encompass unspecified conditions and disorders. However, this broad language is not intended to be a catchall, requiring unlimited access for all persons with some form of learning or behavioral disability. The Legislature requires the fifth category qualifying condition to be "closely related" to intellectual disability (Welf. & Inst. Code, § 4512) or "require treatment similar to that required" for individuals with intellectual disability (Welf. & Inst. Code, § 4512). The definitive characteristics of intellectual disability include a significant degree of cognitive and adaptive deficits. Thus, to be "closely related" to intellectual disability, there must be a manifestation of cognitive and/or adaptive deficits which render that individual's disability like that of a person with

intellectual disability. However, this does not require strict replication of all the cognitive and adaptive criteria typically utilized when establishing eligibility due to intellectual disability. If this were so, the fifth category would be redundant. Eligibility under this category requires an analysis of the quality of a claimant's cognitive and adaptive functioning and a determination of whether the effect on his performance renders him like a person with intellectual disability. Furthermore, determining whether a claimant's condition "requires treatment similar to that required" for persons with intellectual disability is not a simple exercise of enumerating the services provided and finding that a claimant would benefit from them. Many people could benefit from the types of services offered by regional centers (e.g., counseling, vocational training, living skills training, speech therapy, or occupational therapy). The criterion is not whether someone would benefit. Rather, it is whether someone's condition requires such treatment.

7. A claimant's disability must not be solely caused by an excluded condition. The statutory and regulatory definitions of "developmental disability" (Welf. & Inst. Code, § 4512; Cal. Code. Regs., tit. 17, § 54000) exclude conditions that are solely physical in nature. California Code of Regulations, title 17, section 54000, also excludes conditions that are solely psychiatric disorders or solely learning disabilities. Therefore, a person with a "dual diagnosis," that is, a developmental disability coupled either with a psychiatric disorder, a physical disorder, or a learning disability could still be eligible for services. However, someone whose conditions originate only from the excluded categories (psychiatric disorder, physical disorder, or learning disability, alone or in some combination) and who does not have a developmental disability would not be eligible.

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8. In addition to falling within an eligibility category, a claimant must show he has a "substantial disability." Pursuant to Welfare and Institutions Code section 4512, subdivision (1)(1):

"Substantial disability" means the existence of 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.

9. Additionally, California Code of Regulations, title 17, section 54001 states, in pertinent part:

(a) "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.

10. Claimant does not suffer from epilepsy, cerebral palsy, or intellectual disability. Additionally, Claimant failed to establish his disability is "closely related to intellectual disability" or required "treatment similar to that required for individuals with an intellectual disability."

11. The Lanterman Act and its implementing regulations contain no definition of the qualifying developmental disability of "autism." Consequently, when determining eligibility for services based on autism, that qualifying disability has been defined as congruent to the definition of ASD set forth in the DSM-5.

12. The DSM-5, section 299.00 discusses the diagnostic criteria which must be met to provide a specific diagnosis of ASD, as follows:

A. Persistent deficits in social communication and social interaction across multiple contexts, as manifested by the following, currently or by history (examples are illustrative, not exhaustive):

1. Deficits in social-emotional reciprocity, ranging, for example from abnormal social approach and failure of normal back-and-forth conversation; to reduced sharing of interests, emotions, or affect; to failure to initiate or respond to social interactions.

2. Deficits in nonverbal communicative behaviors used for social interaction, ranging, for example, from poorly integrated verbal and nonverbal communication; to abnormalities in eye contact and body language or deficits in understanding and use of gestures; to a total lack of facial expressions and nonverbal communication.

3. Deficits in developing, maintaining, and understanding relationships, ranging, for example from difficulties adjusting behavior to suit various social contexts; to difficulties in sharing imaginative play or in making friends; to absence of interest in peers. [1] . . . [1]

B. Restricted, repetitive patterns of behavior, interests, or activities, as manifested by at least two of the following,

currently or by history (examples are illustrative, not exhaustive):

1. Stereotyped or repetitive motor movements, use of objects, or speech (e.g., simple motor stereotypies, lining up toys or flipping objects, echolalia, idiosyncratic phrases).
2. Insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior (e.g., extreme distress at small changes, difficulties with transitions, rigid thinking patterns, greeting rituals, need to take same route or eat same food every day).
3. Highly restricted, fixated interests that are abnormal in intensity or focus (e.g., strong attachment to or preoccupation with unusual objects, excessively circumscribed or perseverative interests).
4. Hyper- or hyporeactivity to sensory input or unusual interests in sensory aspects of the environment (e.g., apparent indifference to pain/temperature, adverse response to specific sounds or textures, excessive smelling or touching objects, visual fascination with lights or movement). [1] . . . [1]

C. Symptoms must be present in the early developmental period (but may not become fully manifest

until social demands exceed limited capacities, or may be masked by learned strategies in later life).

D. Symptoms cause clinically significant impairment in social, occupational, or other important areas of current functioning.

E. These disturbances are not better explained by intellectual disability (intellectual development disorder) or global developmental delay. Intellectual disability and autism spectrum disorder frequently co-occur; to make comorbid diagnoses of autism spectrum disorder and intellectual disability, social communication should be below that expected for general developmental level.

(DSM-5, at pp. 50-51.)

13. As noted by Dr. Levi and by Dr. Ballmaier, Claimant failed to meet the criteria under the DSM-5 for a diagnosis of ASD.

14. The preponderance of the evidence established Claimant is not eligible to receive regional center services because he does not have a qualifying developmental disability as defined by the Lanterman Act.

15. Given the foregoing, NLACRC's denial of Claimant's eligibility to receive regional center services was appropriate.

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ORDER

Claimant's appeal is denied. North Los Angeles County Regional Center's denial of Claimant's eligibility to receive regional center services is upheld.

DATE:

JULIE CABOS OWEN

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 may appeal the decision to a court of competent jurisdiction within 180 days of receiving the final decision.