

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

**In the Matter of:**

**CLAIMANT**

**vs.**

**SAN GABRIEL/POMONA REGIONAL CENTER,**

**Service Agency.**

**DDS No. CS0022872**

**OAH No. 2024120510**

**DECISION**

Chris Ruiz, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by Zoom videoconference on January 27, 2025.

Rosa Fernandez, Appeals and Regulations Specialist, represented San Gabriel/Pomona Regional Center (RC or service agency).

Claimant's mothers, C.B. and T.R., represented Claimant. Initials are used to protect the privacy of Claimant's family.

Testimony and documents were received as evidence. The record closed and the matter was submitted for decision on January 27, 2025.

## **ISSUE**

Is Claimant eligible to receive services and supports from RC pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act)?

## **EVIDENCE RELIED ON**

Exhibits 1-9; Testimony of C.B. and T.R.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. Claimant is a 9-year-old female who has requested services from RC.
2. On November 20, 2024, RC sent a "Notice of Action" letter to Claimant notifying her she was found ineligible for RC services. RC concluded Claimant does not have a qualifying diagnosis which could potentially make her eligible to receive RC services. Specifically, RC found that Claimant does not meet the criteria for a diagnosis of Autism Spectrum Disorder (ASD) or Intellectual Disability (ID). RC recommended Claimant be assessed to rule out Attention Deficit and Hyperactivity Disorder (ADHD) and Anxiety.
3. On December 9, 2024, Claimant appealed RC's decision to deny eligibility and requested a fair hearing. All jurisdictional requirements have been met.

## **Kaiser Permanente Medical Group's Medical Report**

4. On December 19, 2023, and February 2, 2024, Priscilla Hsieh (Hsieh), Psy.D., a licensed clinical psychologist at a Kaiser Permanente (Kaiser) medical facility, evaluated Claimant. Hsieh determined Claimant's intellectual skills fell within the average range of functioning. Hsieh concluded, however, in her report (Exhibit 4), based on her observations, and the history of Claimant's behaviors provided by Claimant's mothers, that Claimant's overall symptoms and mannerisms were consistent with a diagnosis of ASD. Claimant relied on Hsieh's report to establish Claimant's diagnosis of ASD, which could potentially qualify Claimant for RC services.

5. At hearing, RC contended Hsieh's report was insufficient to establish that Claimant has ASD.

6. Hsieh administered the Autism Diagnostic Observation Schedule, Second Edition (ADOS-2) to Claimant. The ADOS-2 is a diagnostic instrument that incorporates a variety of activities designed to obtain information in the areas of communication, social interactions, and repetitive behaviors. Hsieh acknowledged that the publisher of the ADOS-2 had issued a statement regarding validity concerns of the ADOS-2 when Covid-19 safety measures were utilized, as was the case during the assessment of Claimant. Hsieh administered the ADOS-2 to Claimant, but it was not scored, as is customary. Further, Hsieh acknowledged, "[D]ue to the current Covid-19 safety measures, the administration of the ADOS-2 was altered as the examiner wore a face mask." (Exhibit 4, A23-24.)

7. After RC received Hsieh's report, RC determined Hsieh did not administer the ADOS-2 testing as is customary, because Hsieh wore a face mask and the ADOS-2 was not scored. As a result, on May 9, 2024, RC determined that further assessment of

Claimant was required, which should include ADOS-2 testing and an adaptive assessment (Dr. Rebecca Perez's note, Exhibit 5, page A26.)

## **Medical Report of Urennaya Okoro**

8. On November 1 and 4, 2024, RC consultant Urennaya Okoro (Okoro), PsyD., Registered Psychological Associate, and Jasmine Reed, PsyD., Clinical Psychologist, performed a psychological evaluation of Claimant. Okoro found that Claimant's full-scale intelligence is in the high-average range and her level of adaptive behavior is in the low range. Claimant's scores on the ADOS-2 testing administered by Okoro resulted in Okoro classifying Claimant as being in the "Non-ASD" category.

9. Under the Diagnostic and Statistical Manual of Mental Disorders, 5<sup>th</sup> Edition (DSM-5), Okoro determined Claimant did not meet the criteria for a diagnosis of ASD in six of the 10 diagnostic criteria of the DSM-5. Okoro opined that Claimant does not meet the criteria for a diagnosis of ID or ASD. Okoro found that Claimant's behavioral issues may be the result of ADHD and that Claimant should be assessed for this disorder.

## **Evaluation of Claimant by Claimant's Charter Schools**

10. Claimant attends a charter school. The full name of Claimant's school is not used to protect Claimant's privacy.

11. On November 4, 8, and 10, 2022, Claimant's school assessed Claimant's eligibility for special education services. The assessment was performed by Lillian Sestiaga (Sestiaga), School Psychologist, and is entitled "Initial Psycho-Educational Evaluation" (Exhibit 6). Sestiaga stated that Claimant "appeared social and transitioned well between activities during the testing observation." (Exhibit 6, page A47.) Sestiaga

concluded Claimant's condition did not support a diagnosis of ASD, as defined by federal and state special education regulations. However, Sestiaga also concluded Claimant has a Specific Learning Disability and meets the criteria for Special Education services.

## **Interdisciplinary Team Conference**

12. On November 20, 2024, RC's interdisciplinary team met to determine Claimant's eligibility for services and supports. After considering all the available information provided by Claimant's mothers, and the three medical assessments of Claimant discussed in Factual Findings 4 to 11, the team concluded Claimant was not eligible to receive services from RC.

## **Testimony of Claimant's Mothers**

13. C.B. and T.R., Claimant's mothers, both testified at hearing. Their testimony established the following facts. Claimant's sister is a consumer of RC by way of her diagnosis of ASD. Claimant has tantrums and is unable to explain why she is having a tantrum. Claimant often masturbates to soothe herself when she is feeling anxious. Claimant exhibits some behaviors which are normally associated with an ASD diagnosis, such as stemming and being rigidly organized. When writing, Claimant misspells many words, which T.R. believes may be due to undiagnosed dyslexia. Claimant generally behaves appropriately while attending school; however, when she arrives home, she "unloads" all her school-day's frustrations with an outburst in behavior.

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## **Other Findings**

14. Claimant did not establish RC's decision finding her not eligible for Lanterman Act services and supports is incorrect. While Claimant was diagnosed by Hsieh (a psychologist at Kaiser Permanente) as having a qualifying diagnosis of ASD, both Sestiaga (from Claimant's school) and Okoro (RC's consulting psychologist) opined that Claimant does not have a diagnosis of ASD. None of the three medical professionals diagnosed Claimant as having an Intellectual Disability diagnosis.

15. Claimant's Mothers presented as credible and zealous advocates for Claimant. Mothers are understandably concerned about obtaining any assistance to which Claimant is entitled.

## **LEGAL CONCLUSIONS**

1. The Lanterman Act (Welf. & Inst. Code, § 4500 et seq.) provides a framework for the provision of services and supports to individuals with developmental disabilities.

2. Individuals who disagree with regional center determinations, such as in this case, may appeal the determination through a fair hearing process. (Welf. & Inst. Code, §§ 4700-4716, and Cal. Code Regs., tit. 17, §§ 50900-50964).

3. Because Claimant seeks to establish her eligibility for services, she bears the burden to demonstrate her eligibility, and that the RC's decision to deny eligibility is incorrect. (See Evid. Code §§ 115.)

4. Welfare and Institutions Code (Code) section 4512, subdivision (a), defines a developmental disability as ". . . a disability which originates before an

individual attains age 18; continues or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual." The sole qualifying disabilities are: "intellectual disability, cerebral palsy, epilepsy, and autism. . . [and] 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." (*Id.*) A person must establish they have a qualifying disability to potentially be eligible to receive RC services. Once a qualifying disability is established, the person then must establish that they are "substantially disabled" in at least three of the major life categories, which is more fully discussed in Legal Conclusion 8.

5. In determining eligibility, "the Lanterman Act and implementing regulations clearly defer to the expertise of the DDS (California Department of Developmental Services) and regional center professionals' determination as to whether an individual is developmentally disabled." (*Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, 1127.)

6. RC's interdisciplinary team assessed Claimant for eligibility. The team reviewed three medical reports and all information submitted by Claimant. Under the *Mason* case, deference to the RC's expertise is required. Additionally, two medical professionals (Okoro and Sestiaga) concluded that Claimant does not meet the criteria for a diagnosis of ASD or ID. This evidence is more convincing than the medical opinion of Hsieh, who diagnosed Claimant as having ASD. Hsieh's diagnosis was given less weight because it was not supported by reliable and accurate ADOS-2 testing, as set forth in Factual Findings 4-7.

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7. Claimant did not establish she has a diagnosis of ASD or ID. Claimant did not establish that RC's assessment and decision regarding Claimant's ineligibility was erroneous.

8. Since Claimant does not have a potentially qualifying disability, a detailed discussion of whether Claimant suffers substantial disability in three or more major life activities is unnecessary. Nevertheless, a brief discussion of the law in this area is provided for completeness. Pursuant to Code section 4512, subdivision (l), the term "substantial disability" means significant functional limitations in three or more of the following areas of major life activity: Self-care, Receptive and Expressive language, Learning, Mobility, Self-direction, Capacity for independent living, and Economic self-sufficiency. The regional center determines whether a significant functional limitation exists for each category, as appropriate to the age of the person. Since Claimant did not establish she meets the initial criteria of having an eligible qualifying disability, Claimant was also unable to establish she is substantially disabled in three of the major life activities, as set forth in Legal Conclusions 6-7.

9. For the reasoning set forth in Legal Conclusions 1-8, RC's determination must be upheld and affirmed. However, if additional relevant information becomes available, or if Claimant's situation changes, Claimant may request that RC re-evaluate Claimant for eligibility at that time.

## **ORDER**

1. Claimant's appeal of Regional Center's denial of eligibility is denied.
2. The Regional Center's denial of Claimant's eligibility is affirmed.



3. Claimant is not currently eligible for Regional Center services and supports, pursuant to the Lanterman Developmental Disabilities Services Act.

DATE:

CHRIS RUIZ

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.