

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

In the Matter of:

CLAIMANT

and

WESTSIDE REGIONAL CENTER,

Service Agency.

DDS No. CS0022937

OAH No. 2025010310

DECISION

Shanda W. Connolly, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter in Culver City at Westside Regional Center (WRC) on October 22, 2025.

Matthew Alivio, attorney, represented claimant, who was not present at the hearing. Sonia Tostado, Appeals Specialist, represented WRC.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on October 22, 2025.

ISSUE

Whether claimant is eligible for regional center services based on a developmental disability under the Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code section 4500 et seq. (Lanterman Act). (All further statutory references are to the Welfare and Institutions Code unless otherwise stated.)

EVIDENCE PRESENTED

The documentary evidence at hearing consisted of: WRC Exhibits 1 through 19 and Claimant Exhibits A through D. The testimonial evidence at hearing was provided by Karesha Gayles, Psy.D., a WRC psychologist, and claimant's mother (mother).

FACTUAL FINDINGS

1. Claimant, a six-year-old male, asserts he is eligible for regional center services because he has autism spectrum disorder (ASD) or a "fifth category" condition, i.e., a disabling condition closely related to intellectual disability or requiring treatment similar to that required for individuals with intellectual disability. For the sake of completeness, this decision will also address intellectual disability. The parties agree claimant does not have cerebral palsy or epilepsy.

2. On November 21, 2024, WRC issued a Notice of Proposed Action informing claimant of his ineligibility for regional center services. On December 10, 2024, mother appealed WRC's decision.

3. This hearing ensued.

Diagnostic Criteria

4. There are three conditions at issue in this case: ASD, intellectual disability, and fifth category. The ALJ takes official notice of the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition Text Revision (DSM-5) as a highly respected and generally accepted tool for diagnosing mental and developmental disorders to evaluate ASD and intellectual disability. The fifth category is not analyzed in the DSM-5; it is a creation of the Lanterman Act.

ASD

5. Under the DSM-5, an individual with ASD has persistent deficits in social communication and social interaction across multiple contexts (Criteria A), as manifested by the following, currently or by history: (1) deficits in social-emotional reciprocity, (2) deficits in nonverbal communication behaviors used for social interaction, and (3) deficits in developing, maintaining, and understanding relationships.

6. The individual also must display restricted, repetitive patterns of behavior, interests, or activities (Criteria B), as manifested by at least two of the following, currently or by history: (1) stereotyped or repetitive motor movement, use of objects or speech, (2) insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior, (3) highly restricted, fixated interests that are abnormal in intensity or focus, and/or (4) hyper- or hypo-reactivity to sensory input or unusual interest in sensory aspects of the environment. In addition, the individual's symptoms must have been present in the early developmental period and must cause the individual clinically significant impairment in social, occupational,

or other important areas of current functioning (Criteria C and D) and not better explained by Intellectual Disorder or Global Development Delay (Criteria E). (DSM-5, pp. 56-57.)

INTELLECTUAL DISABILITY AND BORDERLINE INTELLECTUAL FUNCTIONING

7. 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:

1. Deficits in intellectual functioning, 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.
2. Deficits in adaptive functioning that result in failure to meet developmental and social-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.
3. Onset of intellectual and adaptive deficits during the developmental period.

(DSM-5, p. 33.)

8. To meet the diagnostic criteria for intellectual disability, the deficits in adaptive functioning must be directly related to the individual's intellectual impairments. Onset is during the developmental period. 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, p. 39-40.)

9. The DSM-5 states 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, this involves a score of 65-75. (70 +/- 5)." (DSM-5, p. 37.) At the same time, the DSM-5 recognizes 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." (*Ibid.*)

FIFTH CATEGORY

10. What is often referred to as the fifth category is not a diagnosis recognized by the DSM-5, but instead was created pursuant to the Lanterman Act. Under the Lanterman Act, a person can be eligible for regional center services if they have disabling conditions found to be closely related to intellectual disability or

require treatment similar to that required for individuals with an intellectual disability, but the handicapping conditions should not include those solely physical in nature.

Claimant's Background

11. Claimant lives within WRC's service catchment area with his mother, father, younger brother, and older sister.

12. Claimant is in kindergarten at Da Vinci Connect in Hawthorne, and previously attended daycare at Humble Hearts Academy in Hawthorne.

13. Claimant was first placed in foster care with his parents at around 28 months after his biological father went to prison. Claimant sustained prenatal exposure to drugs, alcohol, and environmental toxins. Claimant's biological mother lost custody of claimant when he was 20 months old. Claimant was adopted by his mother and father at age four. When claimant came to live with his adoptive parents, he was walking but not speaking. At around age three, mother reported concerns about claimant's language and social deficits and restricted and repetitive behaviors to WRC, and claimant began receiving Early Start services at WRC.

Evaluations

2022 WRC ASSESSMENT

14. On September 21, 2022, a month before claimant turned three, he was first assessed by Diedre Cook, Psy.D, a clinical psychologist at WRC, based on the request of Tanya Maya-Martinez, a WRC service coordinator. Dr. Cook reviewed records, performed a clinical interview and observation of claimant, consulted with claimant's teacher, and administered the Weschler Preschool Primary Scale Interview,

4th (WPPSI-IV), Vineland Adaptive Behavior Scales, 3d (VABS- 3), and Autism Diagnostic Interview – Revised (ADI-R).

15. Based on the WPPSI-IV, claimant obtained a Full Scale I.Q. (FSIQ) of 97, indicating average cognitive abilities. The VABS-3 showed moderate deficits in communications, daily living skills in the low range, and social interaction skills in the low range. The ADI-R, which assesses for ASD in children and adults, was consistent with the ADI-R classification of autism. Nevertheless, Dr. Cook concluded that although claimant's test scored demonstrated the "possible presence of autism," Dr. Cook's observations, the teacher's consultation, and information provided by mother suggested a "pattern of behavior inconsistent with the DSM-5 diagnostic criteria for autism." (Ex. 5, p. A29.) Dr. Cook explained that claimant did not meet any of the persistent deficits in social communication and social interaction criteria set forth in Criteria A of the DSM-5 definition for ASD and did not meet the criteria of restricted, repetitive behaviors set forth in Criteria B of the DSM-5 definition for ASD. Dr. Cook diagnosed claimant with Global Developmental Delay, suggested reassessing claimant's cognitive and adaptive functioning prior to age five, and recommended that claimant receive occupational therapy, continue speech therapy, and participate in special education services through the school district.

DEPARTMENT OF CHILDREN AND FAMILY SERVICES (DCFS) ASSESSMENTS

16. In a DCFS Medical Examination Form dated September 27, 2022, Lyn Laboriel, M.D., noted that she examined claimant and provisionally diagnosed him with Fetal Alcohol Spectrum Disorder (FASD) based on prenatal exposure to alcohol and drugs. Dr. Laboriel noted that claimant had speech delays and behavioral dysregulation but not growth impairment. In addition, Dr. Laboriel stated that claimant was doing very well in the care of his foster family and had an Individual Education

Plan (IEP) that provided speech and mental health services to assist with managing his behavioral issues.

17. According to a DCFS Medical Examination Form dated May 24, 2023, Haylee Turner, M.D., examined claimant in connection with his FASD to augment Dr. Laboriel's consultation in September 2022. Dr. Turner noted that claimant did not appear to have any growth impairment, microcephaly, or classic dysmorphic features of FAS, but he continued to exhibit developmental delays along with regulation and adaptive skills impairments.

2024 WRC ASSESSMENT

18. On October 8, 2024, and October 14, 2024, Kristen Prater, Psy.D., a psychologist at WRC, assessed claimant, who was five years old, to determine his level of functioning. Dr. Prater administered the WPPSI-IV, the VABS-3, the Childhood Autism Rating Scale, Second Edition (CARS-2), the ADI-R, and the Behavior Assessment System for Children, Second Edition (BASC-2), reviewed WRC's client records pertaining to claimant, and interviewed claimant and his mother.

19. Based on the WPPSI-IV, claimant had a FSIQ of 83, in the low average range, and verbal comprehension scores in the average range. The CARS-2 revealed scores in the non-autism range. The ADI-R showed that claimant's social responses were age appropriate, he sometimes engaged in repetitive speech and echolalia, and he sometimes engaged in repetitive and restrictive behaviors. Dr. Prater found that claimant met none of the persistent social deficits in Criteria A in the DSM-5 definition for ASD, and met two of the restricted, repetitive behaviors in Criteria B in the DSM-5 definition for ASD. The BASC-3 demonstrated that claimant had "clinically significant" scores in the areas of externalizing problems, internalizing problems, and behaviors,

and had adaptive skills in the “at-risk” range. (Ex. 6, p. A39.) The VABS-3 showed scores in the moderately low range for his overall adaptive functioning, his daily living skills, socialization skills, communication skills, and motor skills.

20. Dr. Prater concluded that claimant had cognitive skills in the average range, and there was not sufficient evidence to support an ASD diagnosis. Although mother indicated behaviors suggesting Attention Deficit Hyperactive Disorder (ADHD), Dr. Prater did not observe those behaviors during the clinical interview and observation. Dr. Prater noted that claimant did not exhibit Disinhibited Social Engagement Disorder or Reactive Attachment Disorder. Dr. Prater ultimately diagnosed claimant with Other Trauma and Stressor Related Disorder, and recommended claimant to receive individual play therapy, speech therapy, and increased social opportunities outside of school.

2025 WRC OBSERVATION

21. On March 13, 2025, Dr. Gayles observed claimant in his preschool classroom at Humble Hearts Academy in Hawthorne. Dr. Gayles found that claimant’s behavior was not consistent with ASD, and that claimant exhibited appropriate eye contact and facial expressions congruent with his mood; effectively communicated his wants and needs; had difficulty with transitions resulting from poor impulse control, rather than narrow interests or fixations; and showed no aversion to textures or smells. Dr. Gayles also noted that claimant had been diagnosed with FASD, which can present with difficulty with attention, impulse control, and emotional regulation; hyperactivity and difficulty with transitions; and challenges with social awareness and play. Dr. Gayles recommended that claimant establish a predictable daily routine and implement strategies to reinforce appropriate play and self-regulation, such as speech, occupational, and physical therapy.

MARCH 2025 HELP GROUP ASSESSMENT

22. On March 3, 10, and 24, 2025, claimant was evaluated by Claudia Lechner, Ph.D., at The Help Group. Dr. Lechner administered the Autism Diagnostic Observation Schedule, Second Edition (ADOS-2); the ABAS-3; the Autism Spectrum Rating Scales (2-5), Parent Ratings Form (ASRS); the Beery Buktenica Developmental Tests of Visual-Motor Integration, Sixth Edition; California Verbal Learning Test, Children's Version (CVLT-C); the Conners 4 Early Childhood Parent Single-Rater Report; the House Tree Person; the NEPSY Second Edition (NEPSY-II); the Test of Variables of Attention (TOVA); and the Trauma Symptom Checklist for Young Children (TSCYC). Dr. Lechner also noted that Dr. Prater had tested claimant in October 2024 at WRC, and that claimant had prior diagnoses of Other Trauma and Stressor Related Disorder, FASD, provisional, and Unspecified Mood Disorder.

23. According to the CVLT-C, claimant's overall verbal recognition memory skills were adequate. The NEPSY-II, which measures executive functioning, language, memory, and perception in children by their ability to respond to oral instructions, showed claimant's performance in the below average range. The Beery Buktenica Developmental Tests of Visual-Motor Integration, in which examinees copy shapes, revealed scores in the high average and above average range. The TOVA, which measures attention, demonstrated that claimant had superior scores that subsequently dropped to average as the testing progressed, and had impulsivity scores in the low average range. The NEPSY-II, which assessed claimant's verbal inhibition, showed average and low average scores, indicating claimant had "adequate potential for controlling verbal impulsivity." (Ex. 9, p. A565.) According to the Conners Early Childhood Assessment, a parent and teacher questionnaire, mother reported very elevated scores in the areas of inattention, temper, aggression, social functioning,

atypical behaviors, mood and affect, and emotional lability. The TSCYC, which measures caregiver perspectives on acute and chronic symptoms of stress in children, indicated a wide variety of elevated symptoms reported by mother, such as anxiety, depression, anger, aggression, and dissociation.

24. According to the ADOS-2, an activity-based test to evaluate communication and social skills for assessing ASD, claimant's total score of 6 was less than the autism cutoff score, "indicating a classification of non-spectrum" and a "level of autism spectrum-related symptoms in the low range." (Ex. 9, p. A60.) According to the ASRS, another questionnaire provided to mother, mother reported scores in the very elevated range, with a total score in the 99th percentile. The ABAS-3 form provided to mother demonstrated scores in the below average range for overall adaptive functioning.

25. Dr. Lechner diagnosed claimant with Other Specified Neurodevelopmental Disorder, and suggested diagnoses of Attention-Deficit/Hyperactivity Disorder, Combined Presentation, Moderate, and ASD should be ruled out.

OCTOBER 2025 HELP GROUP ASSESSMENT

26. In an October 20, 2025 Evaluation, Alyson Marx, Psy.D, a Help Group psychologist, performed further tests to clarify the prior assessment performed by Dr. Lechner. Dr. Marx reviewed prior evaluations from Dr. Lechner and WRC and performed a clinical interview of claimant and mother. Mother completed several questionnaires that screen for ASD (the Social Communication Questionnaire (SCQ) and the Social Responsiveness Scale, 2d Edition (SRS-2)), and claimant was administered the NEPSY-II to assess his social reasoning.

27. The NEPSY-II revealed scores in the average range. According to the SRS-2, claimant exhibited moderate limitations overall; moderate limitations in social communication, social motivation, and restricted and repetitive behaviors; and severe limitations in social awareness and social cognition. According to the SCQ, Dr. Marx found that claimant's scores suggested a likelihood of ASD. In addition, Dr. Marx reviewed Dr. Prater's assessment and, based on Dr. Marx's observations and mother's history, disagreed with Dr. Prater's conclusion that claimant does not make inappropriate statements.

28. Based on her evaluation, Dr. Marx diagnosed claimant with Other Specified Neurodevelopmental Disorder, ADHD, Combine Presentation, and ASD, Level 2. Dr. Marx recommended claimant seek therapeutic interventions and school support to target his symptoms of ADHD and ASD and continue to monitor his ADHD symptoms to identify the most appropriate interventions.

School Records

29. According to claimant's IEP dated September 21, 2023 from Landale Elementary School District, prepared when claimant was three years and 11 months old, claimant had been referred for Special Education services on July 26, 2022 and was eligible for Special Education under the classification of "Speech or Language Impairment due to his articulation skills which impact his ability to be understood by others and participate in appropriate preschool activities." (Ex. 10, p. A71.)

30. Claimant provided several reports reflecting his behavioral challenges in a classroom setting. An accident report dated November 1, 2022 from Humble Hearts Academy noted that claimant bit another classmate on the chest while on the playground, and the other child was sent home after the bite was cleaned with soap

and water. Another accident report from Humble Hearts Academy dated April 10, 2023 noted that claimant hit another classmate in the face, and stated that the school would need to send him home if the behavior continued. An accident report dated May 9, 2023 from Humble Hearts Academy noted that claimant picked up and dropped one of his friends. An undated Teacher Questionnaire completed by Araceli Gonzalez at Humble Hearts Academy noted that claimant frequently pushed, touched, and spanked his peers, which was contrary to the school's policy of providing a safe environment for its students. A January 6, 2025 Incident Report noted claimant pushed another classmate during circle time, and a September 6, 2025 Incident Report noted that claimant hit another child while in line and laughed while the other child cried.

Treatment Records

31. In an undated letter to WRC, Lisa Miao, Developmental Paraprofessional, noted that claimant had been receiving floor time therapy to progress his behavioral goals, and requested that his access to the services be extended.

32. Since October 2022, mother and claimant had received outpatient mental health treatment at Violence Intervention Program to help claimant regulate his emotions. Mother had participated in group training educating caregivers on how prenatal alcohol exposure has impacted their children's developmental and behavioral functioning and helping to develop strategies to work with their children's issues. A February 11, 2025 letter to mother from Alexander Tamayo, AMFT, and Rafael Gomez, LMFT, who worked with mother and claimant at Violence Intervention Program, noted that claimant and mother continued to have difficulty co-regulating claimant's behaviors and claimant continued to demonstrate defiant and physically aggressive behaviors.

Testimony

DR. GAYLES

33. Dr. Gayles testified that she reviewed the entirety of records in this case, including Dr. Marx's October 2025 assessment, and found that claimant did not have a qualifying diagnosis of ASD, intellectual disability, or fifth category disability. Dr. Gayles confirmed that no other testing or records was necessary in order to diagnose claimant. In addition, Dr. Gayles confirmed that WRC's eligibility team had considered Dr. Marx's assessment but the assessment did not change its conclusion that claimant was ineligible to receive regional center services.

34. Dr. Gayles explained that claimant has no deficits in adaptive functioning, and his cognitive deficits result from mental health disorders, rather than deficits in intellectual functioning.

35. Dr. Gayles agreed with the conclusion of Dr. Prater that claimant did not meet the definition of ASD in the DSM-5. Although claimant met two categories of restrictive and repetitive behaviors as defined in Criteria B of the DSM-5's definition of ASD, he did not meet any of the Criteria A of persistent deficits in social communication and social interaction. Dr. Gayles attributed claimant's social challenges that she observed in March 2025 to be consistent with ADHD.

36. Dr. Gayles disagreed with Dr. Marx's diagnosis of ASD because it was based solely on questionnaires and was not supported by standardized testing. According to Dr. Gayles, questionnaires are a less reliable measure.

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MOTHER

37. Mother testified that claimant attends kindergarten on Mondays and Tuesday at Da Vinci Connect and is homeschooled on Wednesday through Friday. Da Vinci Connect provides project-based learning and social-emotional support.

38. Mother explained that claimant's inappropriate social behaviors are escalating, in that he is fighting with friends, stealing toys, playing too closely to others, and failing to respect social boundaries at school. Claimant can be destructive when he plays. Claimant repeats curse words and becomes fixated on things for weeks or months at a time, such as snakes, venom, or Halloween characters. Claimant needs assistance with self-care, such as brushing his teeth and dressing. In addition, claimant exhibits sensory issues, such as sensitivity to loud noises or vibration. Claimant usually eats the same food and has preferences based on food textures. Claimant has extreme fears and anxiety, and has nightmares and panic attacks.

39. Mother explained that claimant has a poor short-term memory and has difficulty completing his schoolwork. Claimant is awaiting a new IEP at his school.

40. Claimant is continuing to receive floor time therapy, although the vendor is in the process of being replaced.

41. Mother would like for claimant to receive regional center services to help with his socialization and self-direction.

LEGAL CONCLUSIONS

1. Jurisdiction exists to conduct a fair hearing in the above-captioned matter, pursuant to section 4710 et seq., based on Factual Findings 1 through 3.

2. Because claimant is the party asserting a claim, he bears the burden of proving, by a preponderance of the evidence, that he is eligible for government benefits or services. (See Evid. Code, §§ 115 and 500.) Claimant has not met his burden of proving he is eligible for regional center services in this case.

Legal Conclusions pertaining to Eligibility Generally

3. The Lanterman Act, at section 4512, subdivision (a)(1), defines developmental disabilities as follows:

“Developmental disability” is 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. . . . [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.

4. California Code of Regulations, title 17 (CCR), section 54000, subdivision (c), specifies those conditions that are not considered developmental disabilities. The excluded conditions 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. Such psychiatric disorders include psycho-social

deprivation and/or psychosis, severe neurosis or personality disorders even where social and intellectual functioning have become seriously impaired as an integral manifestation of the 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 [intellectual disability], educational or psycho-social deprivation, psychiatric disorder, or sensory loss.

(3) Solely physical in nature. These conditions include congenital anomalies or conditions acquired through disease, accident, or faulty development which are not associated with a neurological impairment that results in a need for treatment similar to that required for [intellectual disability].

5. To prove the existence of a developmental disability within the meaning of section 4512, a claimant must show that he has a "substantial disability." CCR section 54001 defines "substantial disability" to mean:

(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.

6. The fifth category is not defined by statute or by regulation. In *Mason v. Office of Administrative Hearings* (2001) 89 Cal. App.4th 1119, 1129, the California Court of Appeal provided general guidance: "The fifth category condition must be very similar to [intellectual disability], with many of the same, or close to the same, factors required in classifying a person as [intellectually disabled]. Furthermore, the various additional factors required in designating an individual developmentally disabled and substantially handicapped must apply as well." It is therefore important to consider factors required for a diagnosis of intellectual disability when assessing fifth category eligibility.

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Legal Conclusions Specific to this Case

7. Claimant is not eligible to receive regional center services on the grounds of cerebral palsy or epilepsy. (Factual Finding 1.)

ASD

8. Claimant did not show by a preponderance of the evidence he is eligible for regional center services based on ASD.

9. None of the WRC psychologists diagnosed claimant with ASD, as claimant did not meet the DSM-5 criteria for the condition. (Factual Findings 15, 19, 20, 35.) Both Dr. Cook and Dr. Prater found that claimant did not meet the Criteria A of persistent deficits in social communication and interaction, which is required for a diagnosis of ASD under the DSM-5. (Factual Findings 15, 19.)

10. According to claimant's September 21, 2023 IEP, he was found eligible for special education based on speech and language impairments, not ASD.

11. Claimant's evidence from The Help Group was insufficient to show claimant is eligible for regional center services based on ASD. Dr. Marx's findings of ASD were less persuasive than those by Dr. Cook, Dr. Prater, and Dr. Gayles because Dr. Marx relied upon parent questionnaires and not concurrent standardized testing in reaching her conclusion. As Dr. Gayles explained, parent questionnaires are not as reliable as standardized testing in diagnosing ASD. Moreover, when Dr. Lechner evaluated claimant in March 2025, she administered standardized testing (the ADOS-II), in addition to reviewing parent questionnaires, and found claimant's scores were not consistent with a classification of ASD. (Factual Finding 24.) Although Dr. Lechner

indicated ASD should be ruled out, she was unable to conclude that claimant had ASD. (Factual Finding 25.)

12. Dr. Gayles further explained that claimant's social limitations resulted from ADHD, not ASD. (Factual Finding 36.) Under CCR, section 54000, subdivision (c)(1), a mental health disorder is not considered a developmental disability.

INTELLECTUAL DISABILITY AND FIFTH CATEGORY

13. Claimant did not show by a preponderance of the evidence he is eligible for regional center services based on intellectual disability or fifth category disability. None of the psychologists diagnosed claimant with intellectual disability, and claimant did not meet the DSM-5 criteria for the condition. (Factual Findings 15, 20, 25, 28, 33.) Claimant's lowest FSIQ was 83, in the average range, which is higher than the typical IQ of 70 or below for intellectual disability, and his cognitive skills were average. (Factual Findings 19.)

14. In addition, none of the WRC examining psychologists found claimant eligible for regional center services based on fifth category disability. (Factual Findings 15, 20, 33.) Claimant's FSIQ of 83 and average cognitive skills also do not support a finding of fifth category disability. Dr. Gayles further explained that claimant's deficits result from mental health disorders, rather than intellectual disability or fifth category disability. (Factual Finding 34.)

15. As set forth in Factual Findings 1 through 41 and Legal Conclusions 1 through 14, claimant did not establish that he has a developmental disability that makes him eligible for services under the Lanterman Act.

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ORDER

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

DATE:

Shanda W. Connolly
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.

**BEFORE THE
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STATE OF CALIFORNIA**

In the Matter of:

CLAIMANT,

and

WESTSIDE REGIONAL CENTER,

Service Agency.

DDS No. CS0022937

OAH No. 2025010310

ORDER DENYING CLAIMANT'S APPLICATION FOR RECONSIDERATION

On November 4, 2025, an Administrative Law Judge (ALJ) from the Office of Administrative Hearings (OAH) serving as a hearing officer issued a final decision in this matter sustaining Service Agency's determination that Claimant was not eligible for regional center services and denying Claimant's appeal of that determination (Decision). On November 18, 2025, Claimant's authorized representative applied to OAH for reconsideration of the Decision. The application was timely submitted. Service Agency did not file a response. The undersigned hearing officer did not hear the matter or write the decision for which reconsideration is requested.

A party may apply for reconsideration to correct a mistake of fact or law or a clerical error in the decision, or to address the decision of the original hearing officer not to recuse themselves following a request pursuant to Welfare and Institutions Code section 4712, subdivision (g). (Welf. & Inst. Code, § 4713, subd. (b).)

The wording of Welfare and Institutions Code section 4713, subdivision (b), as well as the expedited deadline for deciding an application set by section 4713, subdivision (d), make clear that the mistake of fact or law in question must be apparent from the decision (for example, an obvious mathematical error in calculating hours of service, an order that fails to accurately encompass the facts or legal conclusions, citation to the wrong statute, or reliance on a law that is no longer in effect). There is nothing in section 4713 suggesting that an application for reconsideration contemplates the hearing officer reviewing the entire record, including the admitted exhibits and the recorded hearing, to determine if the hearing officer made errors in evidentiary rulings or made mistakes of fact or law. That process is undertaken in an appeal of the decision to the Superior Court, not in an application for reconsideration pursuant to section 4713.

Claimant's Basis for Reconsideration

Claimant seeks reconsideration of the following claimed mistakes of fact or law:

(1) On page 14 of the Decision, Claimant contends the Decision is mistaken because (a) the Decision did not acknowledge Claimant has a diagnosis of Autism Spectrum Disorder (ASD) and a fifth category condition qualifying him for regional center services under the Lanterman Developmental Disabilities Services Act

(Lanterman Act)¹; (b) the Decision did not acknowledge Claimant has adaptive functioning and cognitive deficits; (c) Karesha Gayles, Ph.D., a psychologist who works for Service Agency, failed to address that Claimant was previously tested during which the testing psychologist found Claimant's trajectory to be "ASD-bound"; (d) the Decision did not take into consideration the professional opinion of Dr. Alyson Marx, who evaluated Claimant, and the Decision only considered testing by Service Agency employees.

(2) On page 19 of the Decision, Claimant contends the Decision did not take the diagnoses of Dr. Marx and Dr. Claudia Lechner into account, and the Decision was based solely on the assessment of Service Agency's employees.

(3) On page 20 of the Decision, Claimant contends that the Decision incorrectly based its finding that Claimant did not have a fifth category condition on Claimant's IQ scores. According to Claimant, Claimant has a fifth category condition because he "requires treatment similar to that provided to individuals with intellectual disability, including speech, occupational, and behavioral therapy to achieve basic social and self-direction skills." Additionally, Claimant asserts the Decision does not address Claimant's prenatal alcohol exposure and does not consider Dr. Marx's diagnosis Neurodevelopmental Disorder Associated with Prenatal Alcohol Exposure (ND-PAE).

¹ Under the Lanterman Act, a fifth category condition is a disabling condition found to be closely related to intellectual disability or require treatment similar to that required for individuals with an intellectual disability, but the handicapping condition should not include those solely physical in nature. (Welf. & Inst. Code, § 4512, subd. (a)(1).)

Analysis

Claimant requests reconsideration to correct several factual findings for alleged mistakes of fact and several legal conclusions for alleged mistakes of law. The issue at the fair hearing was whether Claimant is eligible for regional center services. Claimant has the burden to prove he has a developmental disability and meets the criteria to be eligible for regional center services.

In the Decision, the hearing officer determined Claimant did not qualify for regional center services. The hearing officer considered the exhibits offered by Service Agency and by Claimant as well as testimony by Dr. Gayles and Claimant's mother.

On page 14 of the Decision, the hearing officer summarizes the testimony of Dr. Gayles, who assessed Claimant and is a psychologist for Service Agency. Claimant did not identify any mistakes of fact in the hearing officer's summary. Instead, Claimant's objections are to conclusions reached by Dr. Gayles based on her knowledge of Claimant's assessments and her own observations.

On page 19 of the Decision, the hearing officer explains the basis for her conclusion that Claimant is not eligible for regional center services based on ASD. Specifically, the hearing officer cites the findings of Diedre Cook, Psy.D., in 2022, Kristin Prater, Psy.D., in 2024, and Dr. Gayles in 2025, as well as the findings of Claimant's school district and Dr. Lechner to support her conclusion. The hearing officer also explains why she found Dr. Marx's conclusions unpersuasive. Thus, contrary to Claimant's claims, the hearing officer took into account the findings of Dr. Marx and Dr. Lechner in reaching her conclusion. Claimant's objections are based on her disagreement with the hearing officer's analysis of the findings of Dr. Marx and Dr. Lechner and do not identify any mistakes of fact or law.

On page 20 of the Decision, the hearing officer explains the basis for her conclusion that Claimant is not eligible for regional services based on a fifth category condition. She concludes that Claimant's full-scale intelligence quotient (FSIQ) of 83, which was his lowest score, does not support a finding of fifth category condition. As stated in the Decision, a fifth category condition is not defined by statute or regulation. However, the Court of Appeal provided general guidance in *Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119,1129 (*Mason*), stating as follows:

The fifth category condition must be very similar to [intellectual disability], with many of the same, or close to the same, factors required in classifying a person as [intellectually disabled]. Furthermore, the various additional factors required in designating an individual developmentally disabled and substantially handicapped must apply as well.

Claimant did not cite any mistakes of law in the hearing officer's analysis of whether Claimant has a fifth category condition. The hearing officer's determination that Claimant is ineligible for regional services based on a fifth category condition is consistent with *Mason*. Claimant's FSIQ score is considered low average and thus does not share the same factors used to classify someone as intellectually disabled. The hearing officer also found Dr. Gayles's testimony that Claimant's adaptive deficits result from mental health disorders rather than intellectual disability persuasive. That Claimant may benefit from the same services provided to an individual with intellectual disability is not decisive; Claimant must demonstrate he requires similar treatment as an intellectually disabled individual to be eligible for regional center services. Further,

the hearing officer acknowledged Claimant was diagnosed with an alcohol-related condition elsewhere in the Decision. The hearing officer's omission of that diagnosis in her analysis of whether Claimant has a fifth category condition does not constitute a mistake of law. The Lanterman Act does not recognize the existence of an alcohol-related condition by itself to be a disability eligible for regional center services. (Welf. & Inst. Code, § 4512, subd. (a)(1).)

Based on the foregoing, there are no mistakes of fact or law that require a correction. The application for reconsideration therefore must be denied.

ORDER

Claimant's application for reconsideration is denied.

DATE:

CINDY F. FORMAN
Administrative Law Judge
Office of Administrative Hearings