

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

**In the Matter of:**

**Claimant**

**and**

**Frank D. Lanterman Regional Center**

**DDS No. CS0024574**

**OAH No. 2025020855**

**DECISION**

Thomas Lucero, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on May 14, 2025, at the Frank D. Lanterman Regional Center.

Cindy Lopez, Fair Hearings Coordinator and Appeals Manager, represented the Frank D. Lanterman Regional Center (service agency). Claimant was represented by Mother, his authorized representative.

To preserve privacy, names of family members are not used. The parties were assisted by a Spanish interpreter.

This matter is governed by the Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code sections 4500 through 4885 (Lanterman Act).

Documents and testimony were received in evidence. The record closed and the matter was submitted for decision on May 14, 2025.

## **STATEMENT OF THE CASE**

Found provisionally eligible for services, Claimant was assessed near the time last year when he turned five years old. The service agency found he had no qualifying developmental disability and accordingly proposed terminating services as of October 2024. Claimant contends he should be diagnosed with autism spectrum disorder (ASD) and is therefore eligible to continue to receive services.

## **FINDINGS OF FACT**

1. The service agency sent Claimant the Notice of Action (NOA) in this matter on February 5, 2025. Claimant's Appeal request form is not in the record. Claimant is deemed to have timely requested a fair hearing in his appeal of the NOA.

2. Claimant will turn six years old in about five months. He lives with his adoptive parents, two biological siblings, and two foster siblings. He became eligible for early intervention services in July 2021 because of global developmental delays.

### **Provisional Eligibility**

3. Caroline Garabedian explained types of eligibility. She is currently the Regional Manager of the Early Childhood Unit of the service agency, where she has

been employed for over 20 years. With experience as an Intake Manager, her current duties include managing Service Coordinators and reviewing Individual Program Plans (IPP's). IPPs are drawn up in cooperation with consumers and their families to plan the services and supports that will help reach a consumer's developmental goals. Ms. Garabedian processes documents pertaining to the purchase of services and schedules meetings as necessary. She also helps to prepare NOA's.

4. As Ms. Garabedian explained, a child under five years of age may be provisionally eligible for regional center services if the child has a disability that is not solely physical in nature and has significant functional limitations in at least two areas of major life activity, as determined by a regional center under Welfare and Institutions Code section 4512, subdivision (a)(2)(A). The service agency determined Claimant provisionally eligible in July 2021, completing a developmental evaluation and speech assessment at that time. Based on the results, the service agency determined Claimant was provisionally eligible on account of his global developmental delays.

## **Psychosocial Assessment**

5. On June 21, 2021, when Claimant was about 20 months old, Marta Schmidt-Mendez, M.A., the service agency's Consumer Assessment Coordinator, conducted a psychosocial assessment. She found Claimant had speech and language delays and she noted developmental concerns. Her report, Exhibit 7, page A37, summarized mother's concerns at that time:

[Claimant] has one word. He does not point to request things. He does not follow directions. One has to call him numerous times before he will respond to his name. . . . [H]e does not play well with traditional toys and instead likes to

explore the home environment. He will often engage in activities that are dangerous to him.

### **Dr. Navarro's Assessment in 2022**

6. Yadira Navarro, Psy.D., testified that she has been a consultant at the service agency for about 20 years. Before that, as set out in her resume, Exhibit 12, she was a Children's Social Worker II at the Department of Children and Family Services (DCFS) for several years. Dr. Navarro became familiar with regional centers before receiving her doctorate in psychology in 2012, having worked in case management and intake and assessments relating to eligibility for services.

7. On August 25, 2022, Dr. Navarro conducted the first of two Psychological Evaluations of Claimant. She observed and tested Claimant, reviewed the service agency's records, and interviewed mother. Dr. Navarro noted that when he was 20 months old, an Occupational Therapy Developmental Assessment was completed by Aurora Rowland, M.S., O.T.R./L.. Ms. Rowland reported Claimant's developmental levels based on the Developmental Assessment of Young Children, Second Edition (DAYC-2). He was delayed by a few months in several areas, such as 14 months for his Cognitive level. He was delayed by three months in his Gross Motor and Fine Motor skills. Ms. Rowland found Claimant's Social Emotional level was nine months. Of most concern was that his Expressive Language was at the two-month level.

8. Dr. Navarro notes that Claimant was assessed again at 27 months, as reported in an Occupational Therapy Progress Report. Claimant had begun receiving occupational therapy services in September 2021 and his developmental levels were reported based again on the DAYC-2. He continued to have delays similar to those previously reported.

9. Dr. Navarro was only partially successful in administering the Wechsler Preschool and Primary Scale of Intelligence, Fourth Edition (WPPSI-IV), the Vineland Adaptive Behavior Scales, Third Edition (Vineland-3), the Autism Diagnostic Observation Schedule, Second Edition, Module 1 (ADOS-2), and the Childhood Autism Rating Scale, Second Edition (CARS-2). Claimant was distracted and did not complete all portions of the WPPSI-IV regarding his cognitive ability. He completed only the visual spatial subtests. His visual spatial skills were in the average range.

10. Dr. Navarro reported, Exhibit 8, page A45:

The results of the current assessment indicate that [Claimant] has significant deficits in his adaptive functioning skills. On the Vineland-3, his overall adaptive functioning (ABC=68) fell within the Low range. His Communication (SS=64) and Socialization (SS=68) skills fell within the Low range and his Daily Living Skills (SS=72) and Motor Skills (SS=84) fell within the Moderately Low range.

The results of the assessment indicate that [Claimant] does not meet diagnostic criteria for Autism Spectrum Disorder (ASD) according to the DSM-5 criteria.

11. The ASD criteria Dr. Navarro refers to are set out in the DSM-5, the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition. In Exhibit 8, page A45, she quotes the criteria that the DSM-5 describes generally as, "Persistent deficits in social communication and social interaction across multiple contexts . . . ." She found that Claimant used nonverbal gestures, such as pointing in his social

interactions, but he exhibited adequate eye contact and directed facial expressions to others.

12. Dr. Navarro noted that Claimant had limited opportunities for social interaction, especially during the COVID-19 pandemic. She found he sought attention and interaction with family members and engaged in physical and interactive play. But he also had difficulty with sharing and turn taking and he was at times aggressive. Dr. Navarro acknowledged that mother described some ASD-related behaviors but they were not seen during the session. Dr. Navarro also expressed some caution regarding a definitive diagnostic impression of Claimant, writing, Exhibit 8, page A42:

Young children's intellectual abilities may change substantially over the course of early childhood. Additionally, a child's scores on the WPPSI-IV can be influenced by motivation, attention, interests, and opportunities for learning. All scores may be slightly higher or lower if [Claimant] were tested again on a different day. It is therefore important to view these test scores as a snapshot of [Claimant's] current level of intellectual development.

13. Dr. Navarro recommended a structured educational program, ongoing speech therapy, and social opportunities with same-aged peers. Her diagnostic impression was 315.39 (F80.9) Language Disorder.

### **Dr. Navarro's Assessment in late 2024**

14. To advise the service agency on ongoing eligibility, Dr. Navarro assessed Claimant on November 21 and December 5, 2024. Her resulting Psychological

Evaluation report of January 30, 2025, similar in significant respects to her earlier evaluation, sets out in Exhibit 9, page A52, her assessment procedures:

Review of FDLRC client records

Interview with adoptive parents . . . .

Interview with teacher, Teresa Aguilar (via phone on 1-22-25)

Behavioral Observations

Wechsler Preschool and Primary Scale of Intelligence,  
Fourth Edition (WPPSI-IV)

Vineland Adaptive Behavior Scales, Third Edition, Spanish  
(Vineland-3)

Autism Diagnostic Observation Schedule, Second Edition,  
Module 2 (ADOS-2)

Childhood Autism Rating Scales, Second Edition (CARS-2)

Social Responsiveness Scale, School Age, Second Edition,  
School Age, Spanish (SRS-2; with parent and teacher)

15. Dr. Navarro noted that Claimant said his first words at 31 months and he has a limited vocabulary. Regarding his language ability, she wrote, Exhibit 9, page A52, "He uses phrases and complete sentences in English and Spanish . . . asks and responds to questions, volunteers information, and relates experiences but he does not have verbal back and forth exchanges." His parents advised Dr. Navarro that

Claimant does not show much interest in peers and does not initiate interaction with them. He occasionally responds to social approaches. When he engages in physical play with peers and siblings, it is for a short time. He is generally affectionate with his family, however.

16. Parents reported to Dr. Navarro Claimant lines up his toys and becomes upset if they are moved. They reported no other repetitive behaviors. Claimant is sensitive to loud sounds. He dislikes being washed and has tantrums that may last 5 to 10 minutes when forced to do something he does not like. Dr. Navarro noted, as mother did during the hearing, that Claimant has poor awareness of danger. He is impulsive and fearless.

17. As before, Dr. Navarro documented several deficits in Claimant's functioning in different areas, with some uncertainty owing to testing conditions. Dr. Navarro summarized, Exhibit 9, page A61:

The WPPSI-IV was attempted to assess [Claimant's] cognitive ability across three areas of cognitive functioning. However, he was uncooperative at times and only participated in the subtests he was interested in. Therefore, an FSIQ [Full Scale Intelligence Quotient] could not be determined. Based on the PSI [Psychological Screening Inventory], his processing speed skills (VSI [Visual Spatial Index]=97) were in the average range. Additionally, he showed average ability on a visual spatial subtest (OA=11) and on a fluid reasoning subtest (MR=10) and extremely low ability on a verbal comprehension subtest (SI=4). The results of the current assessment also indicate that



[Claimant] has significant deficits in his adaptive functioning skills. On the Vineland-3, his overall adaptive functioning . . . fell within the Low range, His Communication . . . , Daily Living Skills . . . , and Socialization . . . skills fell within the Low range and his Motor Skills . . . fell within the Moderately Low range. The results of the assessment indicate that [Claimant] does not meet diagnostic criteria for Autism Spectrum Disorder (ASD) according to the DSM-5 criteria . . . .

18. As she did in her 2022 evaluation, Dr. Navarro noted that the results of her testing should be considered a sort of snapshot of Claimant's condition, subject to significant change depending on such things as Claimant's level of cooperation and interest on the day of testing.

### **Eligibility under the Lanterman Act**

19. Deciding eligibility under the Lanterman Act, like deciding provisional eligibility, is based on the review of records followed by a multi-disciplinary meeting. Psychology is a prominent discipline pertinent to the eligibility decision. The records examined often include psychological or psychiatric assessments, but also medical evaluations and school records when available.

20. A member of the service agency's Eligibility Team, Claudia Lara, Claimant's Service Coordinator (SC), completed the Statement of Eligibility form dated February 5, 2025, regarding Claimant. Preceded by a code used in the International Classification of Diseases (ICD), the statement refers, Exhibit 1, page A1, to "F80.9 Language Disorder" and states: "The above named person [Claimant] is not eligible for

Regional Center services – Does not present with a Developmental Disability.” In addition to SC Lara, the other members who signed the form were: (i) Michelle Johnson, M.S., Intake Manager, (ii) Wendy Leskiw, M.D., Medical Consultant, and (iii) Manadana Moradi, Psy.D., Psychologist.

21. Ms. Garabedian explained that, to be eligible, a consumer must have a substantial developmental disability in one of five categories. So states Welfare and Institutions Code section 4512, subdivision (a)(1):

“Developmental disability” means 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 . . . [and] shall include [1] intellectual disability, [2] cerebral palsy, [3] epilepsy, and [4] autism . . . [as well as] disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability . . . .

22. The statutory language just quoted is elucidated in title 17 of the California Code of Regulations. Each Regulation cited here is a section of title 17. Ms. Garabedian explained criteria for eligibility found in Regulation 540001, that the service agency must find, taking account of a child’s age, significant functional limitations in at least three areas of major life activity:

(A) Receptive and expressive language;

(B) Learning;

- (C) Self-care;
- (D) Mobility;
- (E) Self-direction;
- (F) Capacity for independent living;
- (G) Economic self-sufficiency.

Some of these criteria are of limited relevance to a child such as Claimant, who, at five years old, is not expected to meet a criterion such as economic self-sufficiency.

23. After the service agency sent Claimant the February 5, 2025 Statement of Eligibility, it received and evaluated some new information, specifically an August 2024 Individualized Education Plan, Exhibit 5. The IEP describes Claimant's need for language and speech therapy but determines that the supports, services, accommodations, or modifications in the IEP were available to Claimant in a general education classroom or setting. Ms. Garabedian testified that the IEP provided insufficient information to support a reversal of the service agency's decision against eligibility.

### **Informal Meeting on Eligibility**

24. On February 28, 2025, the parties participated in an informal meeting. Such a meeting with an administrator from the service agency is an option on the form the consumer submits in requesting a fair hearing and may be followed by another option, mediation. In this case the administrator at the meeting was Allan Baca, who identifies himself in a March 5, 2025 letter he wrote mother as the Executive Director's

Designee. He informally upheld the service agency's decision against eligibility. He wrote, Exhibit 4, page A15, regarding the meeting:

[W]e discussed your concerns about [Claimant's] behaviors and why you believe he has a developmental disability. Specifically, you believe [Claimant] is showing signs of autism because he has a difficult time when it is time to eat and he is having tantrums. You also explained that [Claimant's] sibling has autism and [Claimant] is starting to exhibit the same behaviors. However, you did not have any documentation or assessments showing that [Claimant] has been diagnosed with autism.

In the end, Mr. Baca's informal decision was based on the fact that Claimant had no documentation or other proof to show he is afflicted with one or more of the five categories of disability enumerated in the Lanterman Act. Ms. Garabedian agreed with Mr. Baca's letter.

### **Mother's Testimony**

25. Mother stated that her only goal at present is to have her son reassessed by the service agency, as she is convinced that more testing will reveal that he has ASD and that it disables him in many ways. She believes she will have more documentation in this regard, but at the time of the hearing a psychologist who has Claimant in his care was on vacation or otherwise unavailable and had not provided her a report.

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## LEGAL CONCLUSIONS

### Burden and Standard of Proof

1. The party who seeks government benefits or services, Claimant in this case, bears the burden of proof. Thus the party that sought disability benefits was held to bear the burden of proof in *Lindsay v. San Diego Retirement Board* (1964) 231 Cal.App.2d 156, 161. The standard of proof Claimant must meet is proof by a preponderance of the evidence under Evidence Code section 115.

### ANALYSIS

2. Claimant did not meet his burden of proof in showing that he has one at least of the five categories of disabilities enumerated in Welfare and Institutions Code section 4512, subdivision (a)(1), quoted above. Mother claims that because Claimant has shown some of the behaviors of a sibling who has ASD, Claimant too must have ASD. The claim is not supported by other credible evidence and is not enough for a finding that Claimant has ASD, even if he has some symptoms of ASD similar to his sibling's. A person who is infected with the COVID-19 virus is said to be ill with COVID. ASD is not so simple. There is no one characteristic, like an infection with a virus, that compels the conclusion that a person has the disorder. The disorder presents on a spectrum, such that multiple symptoms must be observed and together they must disable the person in substantial ways, such as being severely limited in developing, maintaining, and understanding relationships.

3. This means also that, whether or not mother is correct in her claim that Claimant has ASD, her evidence must still be found insufficient for eligibility. Claimant has been carefully and thoroughly observed and tested twice by a qualified

psychologist, Dr. Navarro, and by others. Observation and testing has not shown that Claimant has significant functional limitations in at least three areas of major life activity, as Regulation 540001 requires for eligibility.

4. To some extent, testing and observation may be considered a snapshot, as Dr. Navarro wrote in her 2022 report, of Claimant's condition at a given time, rather than a complete determination of his cognitive and other functioning. Also, considering Claimant's age and the difficulty of testing him, he may yet be found to have developed such deficits as will ultimately make him eligible for services. But that evidence does not currently exist. There was, moreover, no evidence to show that Claimant might have a qualifying disability other than ASD. At this time Claimant cannot be said to have a disability such as the Lanterman Act describes. Claimant is not at present eligible for services.

## **ORDER**

Claimant's appeal of the service agency's decision to deny eligibility for services is denied.

DATE:

THOMAS LUCERO  
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.