

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

**In the Matter of the Fair Hearing Request of:**

**CLAIMANT**

**vs.**

**SAN GABRIEL/POMONA REGIONAL CENTER,**

**SGPRC**

**DDS Tracking No. CS0024623**

**OAH No. 2025020882**

**DECISION**

Ji-Lan Zang, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 9, 2025, in Pomona, California.

Rosa Fernandez, Appeals and Resolution Specialist, represented San Gabriel/Pomona Regional Center (SGPRC).

Claimant's mother (Mother) appeared and represented claimant, who was not present.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on April 9, 2025.

## **ISSUE**

Is claimant eligible to receive regional center services and supports from SGPRC under the Lanterman Developmental Disabilities Services Act (Lanterman Act) based on a claim of autism or a condition closely related to intellectual disability or that requires treatment similar to that required for individuals with intellectual disability (commonly known as the "Fifth Category")?

## **EVIDENCE RELIED UPON**

Documents: SGPRC's Exhibits 1-6; claimant's exhibits C1-C9.

Testimony: Mother.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. Claimant is a 9-year-old female. Mother asked SGPRC to determine whether claimant is eligible for regional center services under the Lanterman Act based on a claim of autism, or the Fifth Category.

2. By a Notice of Action and letter dated January 22, 2025, SGPRC notified claimant that she is not eligible for regional center services. SGPRC's interdisciplinary

team had determined that claimant does not meet the eligibility criteria set forth in the Lanterman Act.

3. On February 21, 2025, claimant filed a fair hearing request to appeal SGPRC's determination. This hearing ensued.

### **Claimant's Background**

4. Claimant lives at home with her parents and siblings. She attends fourth grade at her elementary school. At school, she needs frequent redirection to stay on task and complete assignments. At home, claimant needs help with showering, dressing, brushing her teeth, and choosing appropriate clothing for the weather. Mother assists claimant with hair brushing and trimming her fingernails and toenails. Claimant can identify money denominations, understand their relative value, but she struggles with coins. She requires assistance with medication and takes it under supervision. Claimant engages in tantrums, consisting of shutting down, crying, and hyperventilating. These tantrums occur a few times per month and can last up to 45 minutes. Claimant is comfortable with engaging with familiar individuals. However, when communicating with unfamiliar individuals she becomes shy, clingy, and timid, sometimes hiding or reaching for Mother.

### **SGPRC's Psychological Evaluation**

5. On October 28 and 29, 2024, at the request of SGPRC, Angelica Thomas, Psy.D., conducted a psychological evaluation of claimant to determine her eligibility for regional center services. Dr. Thomas conducted clinical observations and administered standardized tests to complete her evaluation.

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6. Regarding claimant's behavior during the assessment, Dr. Thomas wrote, in relevant part:

. . . Upon greeting, [claimant] did not respond and avoided eye contact with the examiner. [Claimant] leaned towards her mother. Her mother had to walk with her to the examination area. . . . As the session progressed [claimant] appeared more comfortable. Once she felt comfortable [claimant's] vocal tone increased and she engaged with the examiner more. [Claimant] offered spontaneous information and asked the examiner questions about their experiences. [claimant] was observed making eye contact however it was inconsistent.

[¶] . . . [¶]

[Claimant] exhibited several repetitive behaviors during the session, including tapping her hands together, tapping the table, picking at the skin on her hands, playing with her hair, and staring at her hair.

(Ex. 5, p. A18.)

7. In standardized tests, Dr. Thomas assessed claimant's cognitive abilities using the Wechsler Intelligence Scale for Children-Fifth Edition (WISC-V). This test measures a child's full-scale IQ and various other types of cognitive ability. On the WISC-V, claimant earned a full-scale IQ of 93, classifying her overall intellectual ability in the average range. Specifically, claimant's processing speed of 89 placed her in the low average range in comparison to same-age peers. Dr. Thomas noted: "Below

average scores suggest that [claimant] may have difficulty completing tasks that require quick and efficient visual processing and decision-making. This could manifest as slower performance on tasks that involve simple visual scanning, identifying patterns, or matching symbols under time pressure.” (Ex. 5, p. A21.) However, on all other subtests of the WISC-V, claimant’s scores were within the average range.

8. Dr. Thomas administered the Adaptive Behavior Assessment System, Third Edition (ABAS-III), to measure claimant’s adaptive behavior and skills. Claimant obtained a general adaptive composite score of 77, which indicates that her current overall level of adaptive behavior is in the low range. Claimant’s conceptual composite score, which summarizes performance across areas in communication, functional academics, and self-direction, was 74 and fell within the low range. Claimant’s social composite score, which summarizes performance in leisure and social skill areas, was 74 and fell within the average range. Claimant’s practical composite score, which summarizes performance across areas in community use, home living, health and safety, and self-care skill areas, was 76 and fell within the low range.

9. Dr. Thomas also administered the Autism Diagnostic Interview, Restructured (ADI-R), and Autism Spectrum Rating Scales to assess for the presence of autism. On the ADI-R, claimant obtained a score of 5 on qualitative impairments in social interaction, 2 on qualitative abnormalities in communication, and 2 on qualitative repetitive behaviors and stereotyped patterns of behavior. All these scores were below the cutoff for the presence of autism spectrum disorder.

10. Dr. Thomas administered the ADOS-2 for a further assessment of autism spectrum disorder. On the ADOS-2, claimant received a combined score of 7 in social affect. In the area of repeated and repetitive behaviors, she received a score of 2. Claimant’s overall score of 9 placed her in the ADOS-2 classification of autism.

11. However, using the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), Dr. Thomas found that while claimant met some of the diagnostic criteria under Criterion B (restricted, repetitive patterns of behavior, interests, or activities), claimant did not meet the diagnostic criteria under Criterion A (persistent deficits in social communication and social interaction across multiple contexts). Dr. Thomas explained the discrepancy between her diagnosis and the results of the ADOS-2 as follows:

[Claimant] does not meet the diagnostic criteria for Autism Spectrum Disorder (ASD) on the ADI-R. She did not meet any criteria in the three core areas: social communication, restricted interests, or repetitive behaviors. Her social skills score on the ABAS-III was in the Average range, indicating typical abilities in initiating and maintaining social interactions. Although [claimant] scored in the Autism range for the ADOS, her scores are more indicative of ADHD symptoms observed during the assessment. [Claimant] is able to initiate social communication, build meaningful relationships, and shows interest in other children by approaching them and accepting invitations to play. She engages in spontaneous speech and can participate in meaningful conversations, ask questions, and contribute once she feels comfortable, as seen when she discussed her favorite avatar game. [Claimant] does not show the social

communication and interaction deficits characteristic of ASD.

(Ex. 5, p. A29.)

12. Dr. Thomas also concluded claimant does not suffer from Intellectual Developmental Disability (IDD). She wrote:

[Claimant] also does not meet criteria for Intellectual Developmental Disorder (IDD). On the WISC-V, she achieved a Full-Scale IQ (FSIQ) in the Average range, indicating typical intellectual functioning. She scored in the Average range in Social and Leisure skills, demonstrating her ability to engage in social interactions and leisure activities effectively. However, she scored in the Below Average range in Communication, Community Use, Functional Academics, Home Living, and Health and Safety. These challenges may relate more to executive functioning issues-such as inattention and impulsivity-commonly associated with Attention-Deficit/Hyperactivity Disorder (ADHD) rather than intellectual impairment.

(Ex. 5, p. A29.)

13. Dr. Thomas attributed claimant's challenges with attention, distractibility, and emotional regulations to ADHD, rather than ASD or IDD. She also believed claimant's fidgeting behaviors, such as tapping, rocking, and making finger movements, are more consistent with sensory-seeking behaviors and hyperactivity

typical of ADHD, rather than the restricted, repetitive behaviors typical of ASD. Dr. Thomas recommended further testing to rule out ADHD.

## **Claimant's School Records**

14. Claimant is attending her elementary school under a Section 504 Accommodation Plan (Accommodation Plan), which ensures that students with disabilities have equal access to educational opportunities by providing them with accommodations such as modifications to learning environment, testing procedures, or work environment. Claimant submitted her Accommodation Plan dated November 2, 2024, when claimant was in the third grade. This Accommodation Plan indicates that claimant is at or above grade level in phonological awareness, phonics, high frequency words, vocabulary, and reading comprehension for literature. However, she is one grade level below in reading comprehension for informational text and math in all areas (number and operations, algebra and algebraic thinking, measurement & data, and geometry). The Accommodation Plan also notes:

[Claimant] is a kind and polite student that has many friends. She enjoys participating in class and answering questions. She is creative and artistic and enjoys sharing her work with her teacher. She also enjoys artistic activities like coloring and drawing. She is easily distracted and requires prompting and additional time to complete assignments.

(Ex. 4, p. A11.)

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## **Claimant's Visual information Processing Evaluation**

15. On October 21, 2024, claimant's teacher performed a vision therapy observation. Claimant's teacher noted that claimant "always" has difficulty seeing at any distance, loses her place when reading, need to use her finger or marker when reading, skips or re-read words or entire lines when reading, has difficulty finishing assignments in a timely manner, misaligns numbers or columns when doing math problems, has difficulty concentrating when reading or doing work, and can respond orally, but does poorly on written tasks. Claimant "frequently" takes more breaks than necessary when doing visual tasks, omits or adds small words when reading, has difficulty copying written material, has trouble remembering what she has read, and seems to be "clumsy" or often knocks things over.

16. Claimant's teacher also wrote:

[Claimant's] attention Span is 5-10 min during instruction [and] 3-5 min for independent tasks. She needs frequent opportunities to move, which is evident in leg kicking, fidgeting, and impulsivity to satisfy movement/sensory needs. [Claimant] struggles to turn in homework.

[Claimant] is seated in the front and to the left the white-board. This has been helpful, but she needs more than 3 reminders to complete tasks. [Claimant] likes to be under desks when allowed and chooses to block visual distractions.

(Ex. C-2, p. B14.)

17. On October 29 and November 7, 2024, claimant underwent a visual information processing evaluation with Francine M. Horibe, O.D. Dr. Horibe found that claimant exhibited a significant difference in powers between her two eyes, with her left eye requiring twice as much support as her right eye.

18. Dr. Horibe wrote in her evaluation report:

[Claimant's] significant difference in the powers between her two eyes has contributed not only to the slight decrease in visual sharpness of her left eye, but more importantly the reliance of her brain on her right eye, and subsequent imbalance in skills between her right and left eyes. When challenged, her brain also will "suppress" or ignore the input signal from her left eye. These factors contribute to her difficulties with focusing and eye teaming which create stress in her visual system and contribute to symptoms such as headaches associated with visual tasks, tired or watery eyes, blinking or rubbing of her eyes, and blurry or unstable vision when the work load becomes more than her eyes can tolerate. These challenges also add to her difficulty with eye tracking, causing her to skip/reread words or lines, as well as lose her place while reading. A finger can be used to help keep one's place, but this can decrease reading rate and interfere with comprehension when sentences are read word for word.

[¶] . . . . [¶]

Said another way, the muscles of her eyes do not always aim and follow where her brain intends them to aim and follow. This is complicated by the rapid fatigue of her focusing capacity, as well as the visual processing and integration problems that have been identified. The end result is a labored effort, with decreased performance. It is important to understand that this is not a learning problem, but that the vision problems compromise the effort of learning, making [claimant] work harder than necessary just to take visual information in, organize it, and act on it appropriately. [Claimant] is able to achieve, but at less than optimum levels and with greater effort. Her visual system is already taxed beyond the normal demands of her daily life, and this will become more taxed as her visual and academic demands continue to increase.

(Ex. C-4, pp. B35-36.)

19. Dr. Horibe recommended the following: (1) spectacles lenses to balance the powers between claimant's two eyes; (2) an individualized program of optometric vision therapy; and (3) tools to help claimant build visual skills including limiting screen time to 20 to 30 minutes at a time, minimizing chalkboard-to-desk copying, and encouraging claimant to use a bookmark rather than her fingers to keep her place when reading.

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## **Mother's Testimony**

20. At the hearing, Mother testified that claimant has ADHD. Claimant has food aversions and is currently underweight by 20 pounds. Mother believes claimant needs food therapy.

21. Mother also testified about the various challenges claimant faces at home, including sensory seeking, lacking in self-care skills, suffering tantrums lasting up to 45 minutes, and having difficulty sleeping. Mother reported that at school, claimant struggles with penmanship, needs one-on-one assistance to stay on task, and sometimes prefers to stay underneath her desk rather than in her seat. Claimant is behind her grade academically, and Mother currently pays for a private tutor to help claimant with her schoolwork. Claimant also lacks self-advocacy skills. Mother related that claimant was hugged by a boy, but she was not able to assert herself and express her discomfort. Mother stated that claimant is not "a typical average child who needs a little more support."

22. Moreover, Mother discussed the evaluations presented at the hearing. She emphasized the portions of Dr. Thomas' evaluation relating to claimant's scores on the ABAS-III, specifically that claimant's scores on two subtests (ability to function in the community and ability to protect physical well-being) in the practical domain were in the extremely low range. However, Mother also noted she was not able to communicate with Dr. Thomas, and she wished for a more comprehensive psychological assessment. Additionally, Mother discussed Dr. Horibe's visual information processing evaluation, stating claimant suffers from a vision problem that compromises her ability to learn and thus requires vision therapy. Furthermore, Mother presented a prescription from claimant's pediatrician for Adaptive Behavioral Analysis (ABA).

23. On cross-examination, Mother conceded that claimant interacts with her peers, has a best friend, and engages in imaginary play. However, Mother recounted that claimant's development simply does not match her age. Mother stated she knows "something is wrong [with claimant], but [she] couldn't pinpoint it." Mother believes claimant is "on the cusp" of autism. She contends claimant qualifies for regional center services based on the Fifth Category because claimant needs food therapy and ABA, which are services for those with autism.

## **LEGAL CONCLUSIONS**

### **Burden and Standard of Proof**

1. Because claimant is the party asserting a claim, she bears the burden of proving, by a preponderance of the evidence, that she is eligible for government benefits or services. (See Evid. Code, §§ 115, 500.) She has not met this burden.

2. Claimant did not establish that she suffers from a developmental disability entitling her to receive regional center services, as set forth in Factual Findings 1 through 23 and Legal Conclusions 1 through 12.

### **Applicable Law**

3. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 et seq.) Eligibility for regional center services is limited to those persons meeting the criteria for one of the five categories of developmental disabilities set forth in Welfare and Institutions Code section 4512, subdivision (a), as follows:

"Developmental disability" means a disability that 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 intellectual disability ["Fifth Category"], but shall not include other handicapping conditions that are solely physical in nature.

4. The conditions qualifying an individual for regional center services must also cause a substantial disability. (Welf. & Inst. Code, § 4512, subd. (a); Cal. Code Regs., tit. 17, § 54000, subd. (b)(3).) A "substantial disability" is defined by California Code of Regulations, title 17, section 54001, subdivision (a), as:

(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.

5. In this case, the parties do not dispute that claimant does not suffer from cerebral palsy, epilepsy, or intellectual disability. Thus, the sole question is whether claimant qualifies for regional center services based on autism, or a disabling condition that is closely related to intellectual disability or requires treatment similar to that required for individuals with intellectual disability.

### **Claimant is Not Eligible Based on a Claim of Autism**

6. To be eligible for regional center services under the category of autism, claimant must be diagnosed with autism spectrum disorder under the DSM-5. Under the DSM-5, section 299.00, to diagnose autism spectrum disorder, it must be determined that an individual has persistent deficits in social communication and social interaction (Criterion A) across multiple contexts, 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. The individual must also have restricted, repetitive patterns of behavior, interests, or activities (Criterion 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, symptoms must be present in the early developmental

period and must cause clinically significant impairment in social, occupational, or other important areas of current functioning (Criteria C and D). (DSM-5, p. 50-51.)

7. In this case, little evidence was presented that claimant suffers deficits in social communication. Dr. Thomas noted in her psychological evaluation that claimant's social affect normalized once she became more comfortable. Claimant's teacher, in the Accommodation Plan, described claimant as a kind student with many friends. Claimant's mother also testified that claimant interacts with her peers and has a best friend. Although claimant's score on the ADOS-2 indicated autism, Dr. Thomas explained that claimant's scores in social interaction, verbal communication, and stereotype/repetitive behavior on the ADI-R did not meet any of the cutoff scores for autism. Dr. Thomas further opined that claimant's scores on the ADOS-2 are more indicative of ADHD than autism because claimant can initiate social communication, build meaningful relationships, engage in spontaneous speech and meaningful conversations, and show interest in other children. Dr. Thomas declined to diagnose claimant with autism for failure to meet Criterion A set forth under the DSM-5. This opinion is unrefuted, consistent with the evidence in this case, and therefore accorded significant weight.

### **Claimant is Not Eligible under the Fifth Category**

8. Addressing eligibility under the Fifth Category, the Appellate Court in *Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, 1129, stated in part:

The fifth category condition must be very similar to mental retardation [now, intellectual disability], with many of the same, or close to the same, factors required in classifying a



person as mentally retarded. Furthermore, the various additional factors required in designating an individual developmentally disabled and substantially handicapped must apply as well.

9. Thus, to be “closely related” to intellectual disability, there must be a manifestation of cognitive and/or adaptive deficits that 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 (e.g., reliance on IQ scores). 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 her performance renders her like a person with intellectual disability.

10. The evidence in this case supports the conclusion that claimant does not function like a person with intellectual disability. On the WISC-V, claimant obtained average score across all subtests except for processing speed. However, claimant’s low average score in process speed, suggesting she may have difficulty completing tasks that require visual processing, is better explained by claimant’s visual information processing problems described by Dr. Horibe in her evaluation, than by cognitive problems. On the ABAS-III, claimant scored in the below average range in communication, community use, functional academics, home living, and health and safety. However, Dr. Thomas attributed these deficits to executive functioning issues associated with ADHD rather than intellectual disability. In the school setting, although claimant has qualified for the Accommodation Plan, eligibility for these services is more inclusive than eligibility for regional center services. Mother believes that

claimant is on the “cusp” of autism, but there is little evidence that claimant has the cognitive and adaptive functioning similar to a person with intellectual disability.

11. Mother also testified claimant would benefit from food therapy, ABA, and vision therapy. However, the criterion is not whether someone would benefit from the provision of *services*, but whether that person’s condition requires *treatment*, which has a narrower meaning under the Lanterman Act than *services*. (*Ronald F. v. State Dept. of Developmental Services* (2017) 8 Cal.App.5th 94, 98.) Many people, including those who do not suffer from intellectual disability, or any developmental disability, could benefit from the types of services offered by regional centers (e.g., counseling, vocational training, living skills training, speech therapy, or occupational therapy). In this case, little evidence was presented that the services claimant is seeking, such as food therapy, ABA, and vision therapy, are treatments similar to that required for an individual with intellectual disability.

12. Under these circumstances, claimant does not have a developmental disability, as defined by the Lanterman Act, under the claim of autism or the Fifth Category. Thus, she is not eligible for regional center services at this time.

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## **ORDER**

Claimant's appeal from the San Gabriel/Pomona Regional Center's denial of eligibility for services is DENIED. Claimant is not eligible to receive regional center services under the Lanterman Act at this time.

DATE:

JI-LAN ZANG

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.