

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

In the Matter of:

Claimant

and

South Central Los Angeles Regional Center,

Service Agency.

System Tracking No. CS0023002

OAH No. 2025030174

DECISION

Jennifer M. Russell, Senior Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 17, 2025. Tami Summerville, Fair Hearings Manager, and Sarah Johnson, Fair Hearings Coordinator, represented the South Los Angeles Regional Center (SCLARC or service agency). Mother represented Claimant. Mother and Claimant are not identified by name to protect their privacy and maintain confidentiality.

///

Shirley Korula, M.D., is a pediatrician and geneticist with 40 years' experience working with individuals with developmental disabilities. Laurie McKnight Brown, Ph.D., is the lead staff psychologist at SCLARC. Drs. Korula and Brown are members of SCLARC's eligibility determination team. Dr. Korula, Dr. Brown, and Mother testified. Father was briefly present at the hearing. Father did not testify. SCLARC's Exhibit 1 through Exhibit 13 and the Claimant's Exhibits M, N, O, P, Q, R, S, and T were admitted in evidence. Pursuant to Government Code 11515, official notice was taken of the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision (DSM-5-TR). The record closed at the conclusion of the hearing on April 17, 2025.

The record was subsequently reopened pursuant to an April 22, 2025 Continuance Order for Evidence Only. That order permitted SCLARC to submit analysis and comments from its eligibility determination team regarding Exhibits M, N, O, P, Q, R, and S no later than April 28, 2025. The order additionally permitted Claimant to submit a response to SCLARC's submissions no later than April 29, 2025. Neither party made submissions. The record was again closed, and the matter was resubmitted for decision on April 29, 2025.

ISSUE FOR DETERMINATION

The sole issue for determination is whether Claimant presents with significant limitations in at least three areas of life major activities, thus rendering her substantially disabled within the meaning of the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500 et seq.

///

FACTUAL FINDINGS

Procedural History

1. In 2023, SCLARC completed an intake assessment of Claimant. Based on that assessment, SCLARC does not dispute Claimant presents with Autism Spectrum Disorder (ASD), Level 1, without accompanying intellectual impairment. SCLARC maintains, however, Claimant's developmental disability is not substantially disabling.

2. By Notice of Proposed Action dated June 23, 2023, SCLARC informed Mother that Claimant is ineligible for services and supports under the Lanterman Act.

3. On November 3, 2023, Mother appealed SCLARC's ineligibility determination and requested a fair hearing. In the March 18, 2024 Decision in *In the Matter of the Fair Hearing Request of Claimant vs. South Central Los Angeles Regional Center*, OAH number 2020080828, the ALJ presiding at the fair hearing determined undisputed evidence in the record established Claimant has significant functional limitations in self-direction. The ALJ further determined Claimant has deficits in safety awareness significantly limiting her capacity for independent living. Thus, that fair hearing concluded Claimant's developmental disability is accompanied by significant limitations in two areas of major life activities—self-direction and capacity for independent living. As such, the ALJ presiding at that fair hearing concluded Claimant was ineligible for supports and services under the Lanterman Act, which requires a showing of significant limitations in at least three of six areas of major life activities.

4. Neither Mother nor SCLARC requested reconsideration of the March 18, 2024 Decision pursuant to Welfare and Institutions Code section 4713. Neither Mother

nor SCLARC petitioned for a writ of administrative mandamus pursuant to Code of Civil Procedure section 1094.5.

5. Mother subsequently submitted to SCLARC a September 9, 2024 Individualized Education Program (IEP) for its consideration. Mother maintained this IEP contains previously unavailable information showing Claimant presents with substantial limitations in other areas of major life activities, namely receptive and expressive language and learning.

6. By Notice of Proposed Action dated November 6, 2024, SCLARC informed Mother, among other things, that the September 9, 2024 IEP “shows . . . ‘[Claimant] has sufficient language skills, including social language, to access the general education curriculum.’” SCLARC additionally informed Mother, “With regard to ‘learning,’ . . . [Claimant’s] reading, writing, and math assessments show that she falls within the average range or higher. Her overall cognitive abilities are in the ‘High Average’ range with subtests ranging from average to above average. Her academic achievement was previously assessed to be in average range. No new assessment was completed for the September 2024 IEP because [Claimant] previously had trouble with motivation during the assessment. This IEP provides no new evidence or change in circumstances with regard to ‘learning.’” (Exh. 1 [at A10].) SCLARC advised Mother the September 2024 IEP does not support a determination that [Claimant] is eligible for regional center services.

7. On a date not established by the evidence, at Mother’s request, SCLARC opened “a new submission for eligibility determination.” (Exh. 1. [at A13].) In a letter dated March 25, 2025, SCLARC informed Mother it again found Claimant ineligible for Lanterman Act supports and services.

8. Mother, acting on Claimant's behalf, again appealed SCLARC's ineligibility determination. This fair hearing ensued.

Claimant's Background

9. Claimant is a nine-year-six-month-old female. Claimant resides with both her parents and her sibling. According to the DSM-5-TR, the severity level for Claimant's ASD, Level 1, requires support in communication: "Without supports in place, deficits in social communication cause noticeable impairments. Difficulty initiating social interactions, and clear examples of atypical or unsuccessful responses to social overtures of others. May appear to have decreased interest in social interactions. For example, a person who is able to speak in full sentences and engages in communication but whose to-and-fro conversation with others fails, and whose attempts to make friends are odd and typically unsuccessful." The DSM-5-TR additionally states "Inflexibility of behavior causes significant interference with functioning in one or more contexts." (DSM-5-TR at p. 58.)

10. Claimant attends a magnet school offering specialized programs. Currently, Claimant is enrolled in a highly structured third grade general education classroom.

11. Based on Claimant's ASD diagnosis, under the terms of her most recent Individualized Education Program (IEP), dated September 9, 2024, and amended October 17, 2024, Claimant's school district provides her with behavior intervention development and intervention services for behavioral support; counseling and guidance services for social-emotional support; speech and language services for pragmatics; occupational therapy for sensory processing and fine motor/tactile skills; and recreation therapy for social functioning.

Claimant's Self-Care

12. At hearing, Mother testified Claimant "does not have an age-appropriate appearance." Claimant does not comb her hair and does not properly brush her teeth. Claimant sits in her bath water without washing herself. After toileting, Claimant does not wipe herself; she has "excessive poop in her underwear," which is "a problem at school." Claimant's failure to wash her hands after toileting has resulted in "contagious rashes." Claimant cannot independently prepare meals and snacks. Claimant restricts her diet to rice and beans and peanut butter and jelly sandwiches. Mother testified Claimant "has choked many times" and that Claimant was lucky she was present. Mother testified Claimant is obese and at risk for diabetes.

13. Mother's testimony regarding Claimant's self-care was not rebutted. However, it is not established that Claimant's self-care challenges emanate from the diagnostic features of Claimant's ASD, namely persistent impairment in reciprocal social communication and social interaction and restricted, repetitive patterns of behaviors, interests, or activities.

Claimant's Receptive and Expressive Language

14. Neither Dr. Korula nor Dr. Brown has examined or has a clinical relationship with Claimant. Drs. Korula and Brown have reviewed Claimant's records.

15. Dr. Korula testified her role was "not challenging other's diagnosis" and that she was "just highlighting trends." Dr. Korula's testimony highlighted that "everybody comments that [Claimant's] pragmatic language is really poor." The commentaries and findings of multiple professionals who assessed and evaluated Claimants, which are discussed below in connection with Claimant's learning, support this aspect of Dr. Korula's testimony.

16. Dr. Korula distinguished receptive and expressive language from pragmatic language. When she testified, Dr. Brown explained receptive language is the ability to understand the meaning of others' words and non-verbal communications. Expressive language is the ability to communicate ideas, thoughts, and feelings using words. Pragmatic language is the ability to communicate appropriately in social situations. To illustrate pragmatic language, Dr. Korula offered the hypothetical example of one of Claimant's schoolmates asking, "What do you want to eat today?" and Claimant responding, "Apples are good for you." Dr. Korula noted such a response to the hypothetical would be inappropriate because it does not answer the question directly.

17. Dr. Korula acknowledged difficulties with pragmatic language are characteristics of ASD. Dr. Korula testified Claimant "is a very bright girl" and "her social communication gets her in trouble with her peers." Dr. Korula further testified Claimant's "peers don't accept [Claimant] because she's saying the wrong things" and, in turn, Claimant "misbehaves."

18. Drs. Korula and Brown opined Claimant does not present with a substantial handicap in receptive and expressive language. Dr. Korula speculated Claimant presents with a social pragmatic communication disorder that "has not yet been addressed as a diagnosis."

19. Mother testified Claimant "frequently needs language to be rephrased;" "needs repetition and modified instruction to complete a task," has "trouble with multi-step directions;" and "has trouble with interpreting facial expressions and social cues." Mother further testified that Claimant "lacks clarity and structure when she is asked to recall her day" and "becomes imaginative as a form of masking." Mother additionally testified Claimant has "an odd, unusual way of speaking" and noted

Claimant's speech is "rapid, overly literal, and tangential." Mother emphasized Claimant does not "use language in a typical manner." The deficits Mother described were not reported as observed during assessment and evaluation of Claimant. For example, one evaluator reported that during the administration of a battery of assessments Claimant never asked for the repetition of instructions. (See Exh. 3 [at A78].)

20. The evidentiary record regarding Claimant's receptive and expressive language is inconclusive.

Claimant's Learning

21. Although Claimant presents with cognitive abilities assessed to be in the High Average range, her learning is significantly limited by her pragmatic language difficulties.

22. One evaluator reported the following observations in a 2024 *LA Psychological Assessment Report*.

[Claimant] demonstrates difficulties in pragmatic communication and emotional regulation. . . . She exhibited difficulties with social context appraisal (i.e. the ability to understand the intent of others and the ability to infer what others and [sic] thinking) and nonverbal clues (the ability to make meaning from nonverbal cues such as facial expression, tone of voice, inflections in prosody, gestures, and overall body language). . . . Most prominent in [Claimant's] present profile of ASD as it commonly relates to school functioning are challenges involving social

interactions and **pragmatic language/functional communication and reciprocity**. When [Claimant] is unable to regulate herself emotionally after social interactions, it has the potential to impact her ability to access educational materials in the classroom.

(Exh. 3 [at A82-A84]; bold emphasis in original.)

23. Claimant's September 2024 IEP similarly reports the following:

There are two areas that appears [sic] to be impacting [Claimant] the most at this time. The first of these relates [sic] to the impact of her social and pragmatic communication challenges and how they impact her while in unstructured time in the school setting (i.e. recess, lunch, etc.). [Claimant] has been observed engaging in behaviors that impact her ability to create and maintain friendships (which she indicates she desires) and which has [sic] historically caused her to get in trouble. . . . The second area of impact is in [Claimant's] behaviors that are viewed as defiance. She experiences difficulty regulating her emotions when she is asked to perform a nonpreferred task or a task she views as bothersome.

(Exh. P [at B299, B302].) The October 2024 amendment to the September 2024 IEP further notes Claimant's "demonstrated difficulties in navigating peer conflict" and her teachers' concerns that she "struggles with generalized perspective taking skills when working with others, such as waiting her turn or giving others an opportunity to speak,

as well as with peer conflict that occurs during unstructured time.” The October 2024 amendment concludes Claimant’s ASD “affects her ability to engage in cooperative learning lessons and social engagement activities which impacts her involvement and progress in the general education curriculum.” (Exh. 8 [at A231-A232].)

24. Claimant’s 2024/2025 Behavior Treatment Plan additionally reports Claimant “displays difficulties working in pairs/large groups” and “has also exhibited a lack of social skills which make it difficult for her to initiate or engage in . . . positive interactions with peers (i.e., appropriate play).” (Exh. Q. [at B326].)

25. Working collaboratively with peers is an instructional strategy at Claimant’s school. A preponderance of the evidence establishes Claimant’s difficulties with pragmatic language impede her ability to work with others. Consequently, Claimant’s learning is significantly limited notwithstanding her High Average overall cognition.

Claimant’s Mobility

26. Claimant is ambulatory. She requires no crutches, wheelchair, or walker for mobility. Claimant’s September 2024 IEP reports she “demonstrates neuromuscular skills to access her educational environment.” (Exh. P [at B293].) It is not established that Claimant presents with substantial limitations in mobility.

Claimant’s Self-Direction

27. At school, Claimant has demonstrated extreme difficulties sitting still, sustaining attention on a task, and completing tasks without constant redirection. Claimant experiences difficulty regulating her emotions when she is asked to perform a nonpreferred task or a task she views as bothersome. At home, Claimant is reported

to exhibit increasing difficulties regulating her emotional and behavioral responses. (Exh. P [at B297, B301].) Mother testified Claimant has “a lack of foresight and poor impulse control.” Claimant becomes “dysregulated in unstructured settings.”

28. SCLARC does not dispute Claimant presents with significant limitations in self-direction. Dr. Brown testified, “Self-direction is an area where [Claimant] has a lot of challenges with social skills and self-regulation.”

29. A preponderance of the evidence establishes Claimant presents with significant limitations in the area of self-direction.

Claimant’s Capacity for Independent Living

30. Mother testified Claimant “does not do age-appropriate chores without an adult actively doing it with her.” Claimant cannot independently prepare snacks or meals. As discussed above in connection with her self-care, Claimant has choked many times while eating; Mother reported Claimant was lucky Mother was present when those choking incidents occurred. Claimant “has no understanding of how money works. She gives away money to friends.” According to Mother’s testimony, Claimant is “a safety risk in the kitchen.” Additionally, Claimant “cannot be left in her bedroom or outside alone.”

31. Claimant cannot be left unsupervised at school. Claimant’s history includes a reported “adverse childhood experience at school,” which is recorded in the 2024 *LA Psychological Assessment Report* as follows:

[A] couple of boys asked [Claimant] to lift up her skirt and she did not feel comfortable seeking out a teacher who had previously dismissed her. [Mother] further described that

the teacher put her out with the two boys who were “harassing” her and during this time one of the boys touched her vagina over her underwear.

(Exh. 3 [at A69].)

32. A preponderance of the evidence establishes Claimant presents with significant limitations in the area of capacity for Independent living.

Claimant’s Economic Self-Sufficiency

33. Given Claimant’s developmental age, any assertion regarding her economic self-sufficiency would be speculative.

LEGAL CONCLUSIONS

1. The Lanterman Act defines “developmental disability” to mean the following:

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

(Welf. & Inst. Code, §4512, subd. (a)(1).)

2. California Code of Regulations, title 17 (CCR), section 54000 further defines "developmental disability" as follows:

(a) "Developmental Disability" means a disability that is attributable to [intellectual disability], cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to [intellectual disability] or to require treatment similar to that required for individuals with [intellectual disability].

(b) The Developmental Disability shall:

(1) Originate before age eighteen;

(2) Be likely to continue indefinitely;

(3) Constitute a substantial disability for the individual . . .;

(c) Developmental Disability shall not include handicapping conditions that 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 mental retardation, educational or psychosocial 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 mental retardation.

3. Establishing the existence of a developmental disability within the meaning of the Lanterman Act and promulgated regulations requires Claimant additionally to establish by a preponderance of evidence the developmental disability is a "substantial disability," defined in Welfare and Institutions Code section 4512, subdivision (1), to mean "the existence of significant limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person: (1) Self-care. [¶] (2) Receptive and expressive language. [¶] (3) Learning. [¶] (4) Mobility. [¶] (5) Self-direction. [¶] (6) Capacity for independent living. [¶] (7) Economic self-sufficiency." (See also CCR, § 54001, subd. (a); CCR, § 54002 defines "cognitive" as "the ability of an individual to solve problems with insight to adapt to new situations, to think abstractly, and to profit from experience.")

4. As Claimant is seeking to establish eligibility for Lanterman Act supports and services, she has the burden of proving by a preponderance of the evidence she has met the Lanterman Act's eligibility criteria. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits]; *Greator v. Board of Admin.* (1979) 91 Cal.App.3d 54, 57 [retirement benefits]; Evid. Code, § 500.)

5. "'Preponderance of the evidence means evidence that has more convincing force than that opposed to it.' (Citations.) . . . [T]he sole focus of the legal definition of 'preponderance' in the phrase 'preponderance of the evidence' is the *quality* of the evidence. The *quantity* of the evidence presented by each side is irrelevant." (*Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314, 324-325, original italics.) In meeting the burden of proof by a preponderance of the evidence, Claimant "must produce substantial evidence, contradicted or un-contradicted, which supports the finding." (*In re Shelley J.* (1998) 68 Cal.App.4th 322, 339.) Claimant has met her burden.

6. It is undisputed Claimant presents with ASD, which is nomenclature denoting "autism," within the meaning of the Lanterman Act. The severity level of Claimant's autism is Level 1. Claimant presents with significant communication deficits and inflexible behaviors, which in turn are substantially disabling across multiple settings in three areas of Claimant's major life activities—learning, self-direction, and capacity for independent living. (Factual Findings 21-25; 27-29; and 30-32).

7. Based on the totality of the evidentiary record, cause exists to grant Claimant's appeal. Claimant has met her burden establishing by a preponderance of the evidence she has a developmental disability, autism, Level 1, that is substantially disabling, thereby rendering her eligible for Lanterman Act services and supports under section 4512, subdivision (a)(1), of the Welfare and Institutions Code.

ORDER

1. Claimant's appeal is granted.
2. South Central Los Angeles Regional Center shall deem Claimant eligible for Lanterman Act services and supports in accordance with Welfare and Institutions Code section 4512, subdivision (a)(1).

DATE:

JENNIFER M. RUSSELL
Senior 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 decision.

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

In the Matter of:

CLAIMANT

and

SOUTH CENTRAL LOS ANGELS REGIONAL CENTER,

Service Agency

DDS No. CS0023002

OAH No. 2025030174

RULING ON REQUEST FOR RECONSIDERATION

On May 9, 2025, the Office of Administrative Hearings received the Service Agency's Request for Reconsideration of the Decision of the administrative law judge who heard this matter (the hearing judge), dated May 2, 2025, in the above-captioned case. The Request for Reconsideration was made pursuant to Welfare and Institutions Code section 4713.

On May 12, 2025, Claimant filed her Response in Opposition to Request for Reconsideration with the Office of Administrative Hearings.

The undersigned administrative law judge, who was not involved in the hearing, having read and considered the May 2, 2025 Decision, the Request for Reconsideration, and the Opposition to the Request for Reconsideration, hereby issues the following Ruling:

1. The Service Agency's request for reconsideration is based on the following argument:

Upon review of the hearing decision, the determination [of eligibility] was made that the claimant was found eligible based on a learning disability. However, two highly qualified clinicians provided testimony affirming that the claimant attends a gifted magnet school, where admission is contingent upon rigorous testing. The [s]chool also requires that individuals are no less tha[n] 2 grade[s] ahead in their studies. Furthermore, school records indicate there were no needs for academic support in reading, writing or math and claimant does not exhibit the learning deficits outlined in Welfare and Institutions Code (WIC) Section 4512. . . .

Request for Reconsideration, p. 2.

2. The above argument is not entirely accurate. Claimant was not found eligible for regional center supports and services based on a learning disability. She was found eligible based on a finding of Autism Spectrum Disorder (Welf. & Inst. Code §4512, subd. (a)(1)) from which she is substantially disabled in at least three areas of major life activity as set forth in California Code of Regulations, title 17, section 54001, subdivision (a).

3. Welfare and Institutions Code section 4713, subdivision (d), permits reconsideration when a factual or legal mistake has been committed. The Service Agency did not establish that the hearing judge committed any such mistakes. She based her Decision on an analysis of the evidence, and she came to a decision with which the Service Agency disagrees. If the hearing judge rejected certain evidence that came before her, or if she chose to give greater weight to certain evidence over other evidence, those decisions did not constitute either a factual or a legal mistake. In *Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 890, the Court held that a trier of fact may reject the testimony of a witness, including an expert witness even if it is uncontradicted. Claimant bore the burden of proof in this action. The standard of proof applicable in this case was a preponderance of the evidence. A preponderance of the evidence requires the trier of fact to determine that the existence of a fact is more probable than its nonexistence. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.) Based on a thorough review of the evidence, the hearing judge found that Claimant sustained her burden.

4. The Service Agency alleges that five areas of the Decision contain factual or legal mistakes. Those allegations are addressed below:

a. The Service Agency claims that paragraph 3 on page 3 refers to deficits in self-direction and safety awareness, but both are self-direction. There is no error there. The hearing judge was referring to an earlier Decision written by another administrative law judge.

b. The Service Agency claims that, at page 4, paragraph 6, the hearing judge stated that Claimant fell into "the average range or higher." However, that finding refers to a Notice of Proposed Action dated November 6, 2024, in which

the Service Agency informed Claimant's mother of the results of certain assessments. The Service Agency did not establish any legal or factual mistakes in that paragraph.

c. Page 6, paragraph 12 refers to Claimant's inability to complete certain self-care tasks. That finding was based on the testimony of Claimant's mother at the fair hearing. The Service Agency did not establish any factual or legal mistakes in either the testimony or in the hearing judge's factual findings in that paragraph.

d. The Service Agency claims that page 6, paragraph 12 also refers to Claimant consuming a limited diet but being obese and open to eating many things. That claim is inaccurate. Based on the testimony of Claimant's mother, the factual finding was: "Claimant restricts her diet to rice and beans and peanut butter and jelly sandwiches." No factual or legal errors in that regard were established.

e. Lastly, the Service Agency claims that Paragraph 12 indicates that Claimant cannot complete self-care, while Paragraph 13 indicates she is able to complete self-care. The Service Agency is correct about Paragraph 12, but not about Paragraph 13. Paragraph 13 does not contain a finding that Claimant is able to complete self-care. It contains a finding that "it is not established that Claimant's self-care challenges emanate from the diagnostic features of Claimant's ASD . . ."

5. No other factual or legal mistakes were established.

///

///

///

///

ORDER

The Service Agency's request for reconsideration is denied.

DATE:

H. STUART WAXMAN

Administrative Law Judge

Office of Administrative Hearings