

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

**In the Matter of:**

**CLAIMANT**

**and**

**NORTH LOS ANGELES COUNTY REGIONAL CENTER,**

**Service Agency.**

**DDS No. CS0024696**

**OAH No. 2025030177**

**DECISION**

Glynda B. Gomez, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on April 18, 2025. The matter was submitted for decision at the conclusion of the hearing.

Claimant was represented by his foster mother, who is also his authorized representative. The names of Claimant and his family members are omitted to protect their privacy and maintain the confidentiality of this proceeding.

Paul Mejia, Fair Hearing Manager, represented North Los Angeles County Regional Center (NLACRC or service agency).

## **ISSUE**

Is Claimant eligible for NLACRC Services?

## **EVIDENCE RELIED ON**

In making this Decision, the ALJ relied on service agency's Exhibits 1 through 18, and the testimony of Sandi Fischer, Ph.D., and Claimant's foster mother.

## **FACTUAL FINDINGS**

1. Claimant is a 12-year-old boy who is in foster care. Claimant has been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD), Anxiety, and Asthma. He receives mental health services as part of the Department of Family and Social Services (DFSS) Wraparound services. Claimant has a history of trauma and neglect. He lived in several foster homes and with a relative until his current placement approximately one year ago. Claimant's biological father is not involved in Claimant's life. Claimant's biological mother is confined to a mental health facility and/or jail.

2. Claimant attends his local public school in general education classes. He was recently evaluated for special education. According to his foster mother, she was advised Claimant is eligible for special education and related services under the category of "Other Health Impairment (OHI)." Claimant's foster mother is in the process of scheduling an Individualized Education Program (IEP) meeting with the school district to design an appropriate educational program for Claimant. Presumably, evaluations were conducted by the school district. However, school-based evaluations are not in evidence.

3. Dr. Carlo DeAntonio, M.D., FAAP, reviewed Claimant's medical records on September 24, 2024. According to Dr. DeAntonio's Medical Summary, Claimant showed no evidence of "substantially handicapping cerebral palsy or epilepsy." Dr. DeAntonio recommended that Claimant seek continued primary medical care in the community and a psychological assessment to assist in the determination of eligibility for regional center services. (Ex. 7.)

4. On September 18, 2024, Beatriz Osegueda, a Social Assessment Specialist with Gittelsohn Psychology Services, performed a Telephonic Social Assessment and wrote a Social Assessment Report (SAR). According to the SAR, Claimant has some weaknesses and strengths. Specifically, Claimant is able to walk independently, jump, run, and ride a bicycle. He is on the school football team. Claimant can complete his self-care needs including dressing, bathing, feeding, toileting, and hygiene, but needs reminders and some assistance. He eats a regular diet and has a good appetite. Claimant has had some soiling issues and hides the soiled clothing in a hamper. Claimant is able to speak in sentences, uses a regular tone, and is easy to understand. Claimant has problems expressing his feelings and emotions. Claimant cries easily, gets overwhelmed, and is easily frustrated.

5. According to the SAR, Claimant's foster mother reports Claimant prefers to engage with "younger peers" and tries to bully or control them. Claimant can be manipulative, socially disruptive, has problems losing a game, displays a flat affect, and is unable to recognize social cues. When Claimant is around "older peers", he becomes the victim and may try to control them as well. He can be easily influenced by others and is a follower. Claimant has good eye contact at times or a piercing gaze needing redirection. He is not able to be properly affectionate with others. He likes to play football and video games. He is easily startled and has nightmares.

6. The SAR states that Claimant is not aggressive and does not have any self-harming tendencies according to Claimant's foster mother. She also described Claimant as disruptive, impulsive, and impatient. He paces about, engages in tantrums, has difficulty adapting to change and transitions, and abuses household pets. Claimant has eloped from school.

7. NLACRC vendor psychologist Larry E. Gaines, Ph.D., performed a psychological assessment of Claimant on December 11, 2024. To perform the assessment, Dr. Gaines reviewed all available previous testing and records including a Multidisciplinary Assessment Team report prepared by DCFS (MAT report), a Health and Education Passport dated September 4, 2024, from DSS, the SAR, and Claimant's 2023-2024 school report card.

8. Dr. Gaines conducted a clinical interview of Claimant, and administered various tests. Dr. Gaines calculated Claimant's Full Scale Intelligence Quotient (FSIQ) using the Wechsler Intelligence Scale for Children-V (WISC-V). He determined Claimant's adaptive skills level by having Claimant's foster mother complete the Vineland Adaptive Behavior Scale Third-Edition (VABS-3). Dr. Gaines used the Autism Diagnostic Interview-Revised (ADI-R) and Autistic Diagnostic Observation Scale-2 Module 3 (ADOS), and a clinical interview to ascertain whether Claimant meets the criteria for a diagnosis of Autism.

9. During the clinical interview, Dr. Gaines observed Claimant make eye contact and a greeting. Claimant shared information about his school and friendships with Dr. Gaines, but did not provide details. Dr. Gaines noted Claimant did not display behavior problems that affected his testing. However, Dr. Gaines observed Claimant give up easily on the testing measures.

10. Claimant performed in the low average range of cognitive ability achieving an FSIQ of 77. Claimant's adaptive skills composite score was 64 within the mildly deficient range. The combination of adaptive skills and cognitive ability demonstrated by Claimant's scores shows that he does not have Intellectual Disability as defined by the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (Text Revision) (DSM-5-TR). Similarly, his scores on both the ADI-R and ADOS fell below the cut-off for Autism.

11. Dr. Gaines provisionally diagnosed Claimant with ADHD Combined-Type. Dr. Gaines recommended that Claimant seek educational support, mental health therapy, and an evaluation for behavioral and emotional issues.

12. NLACRC's interdisciplinary eligibility committee comprised of Dr. Antonio, Director of Clinical Services, Margaret Swaine, M.D., Manager of Medical Services, and Sandi Fischer, Ph.D., Manager of Psychological and Intake Services, determined Claimant was not eligible for NLACRC's service because he did not have an eligible developmental disability based on Dr. Gaines's assessment and report.

## **LEGAL CONCLUSIONS**

### **Jurisdiction**

1. An administrative hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Act to appeal a service agency decision. (Welf. & Inst. Code, §§ 4700-4716.) Claimant's foster mother requested a hearing on Claimant's behalf to contest Service Agency's proposed denial of Claimant's eligibility for services under the Lanterman Act, and therefore jurisdiction for this appeal was established.

## **Burden of Proof**

2. Generally, when an applicant seeks to establish eligibility for government benefits or services, the burden of proof is on him to prove by a preponderance of the evidence he meets the criteria for eligibility. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161; Evid. Code, §§ 115, 500.) "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 Co.* (1990) 226 Cal.App.3d 314, 324-325.)

## **Eligibility for Regional Center Services**

3. In order to be eligible for regional center services, a claimant must have a qualifying developmental disability. Welfare and Institutions Code section 4512, subdivision (a)(1), defines "developmental disability" as:

[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. . . . [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, section 54000, subdivision (c), provides that a developmental disability does 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 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 mental retardation.

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5. To prove the existence of a qualifying developmental disability within the meaning of Welfare and Institutions Code section 4512, a claimant must show that he has a "substantial disability." Pursuant to Welfare and Institutions Code section 4512, subdivision (1):

"Substantial disability" means the existence of significant functional 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:

- (A) Self-care.
- (B) Receptive and expressive language.
- (C) Learning.
- (D) Mobility.
- (E) Self-direction.
- (F) Capacity for independent living.
- (G) Economic self-sufficiency.

6. California Code of Regulations, title 17, section 54001 further refines the definition of "substantial disability." It states, in pertinent part:

- (a) "Substantial disability" means:
  - (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.

7. California Code of Regulations, title 17, section 54001, subdivision (b), provides, in pertinent part, that the "assessment of substantial disability shall be made by a group of Regional Center professionals of differing disciplines," and the "group shall include as a minimum a program coordinator, a physician, and a psychologist."

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## **Autism**

8. To be eligible for regional center services under the category of autism, Claimant must be diagnosed with Autism Spectrum Disorder under the DSM-5-TR. Under the DSM-5-TR, 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.

9. 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, 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-TR, p. 57.)

10. Claimant's performance on the ADOS and ADI-R were substantially below the cut-off for an Autism Spectrum Disorder diagnosis. Although Claimant did demonstrate some traits consistent with Autism, they were not pervasive and did not meet the testing cut-offs; thus, Claimant did not meet the criteria for an Autism Spectrum Disorder diagnosis. Dr. Gaines ruled out Autism Spectrum Disorder and

diagnosed Claimant with ADHD. The diagnosis was not refuted by any evidence at hearing, and there was no evidence that Claimant has ever been diagnosed with Autism.

## **Intellectual Disability**

11. The Lanterman Act and its implementing regulations contain no definition of the qualifying developmental disability of "intellectual disability." Consequently, when determining eligibility for service and supports on the basis of intellectual disability, the DSM-5-TR definition of Intellectual Developmental Disorder (also known as intellectual disability) is utilized.

12. The DSM-5-TR describes Intellectual Development Disorder as follows:

[A] disorder with onset during the developmental period that includes both intellectual and adaptive functioning deficits in conceptual, social and practical domains. The following three criteria must be met:

A. Deficits in intellectual functions, 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.

B. Deficits in adaptive functioning that result in failure to meet developmental and socio-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.

C. Onset of intellectual and adaptive deficits during the developmental period.

(DSM-5-TR, p. 37.)

13. The DSM-5-TR notes the need for assessment of both cognitive capacity and adaptive functioning to determine intellectual disability. Additionally, the severity of intellectual disability is determined by adaptive functioning rather than IQ score. (*Id.* at 38.)

14. As measured on the WISC-5 and the VABS-3 administered by Dr. Gaines, Claimant's cognitive skills are in the low average range, and he has mild adaptive functioning deficits. Claimant's performance on these measures demonstrates a level of functioning higher than could be achieved by a person with intellectual disability. Furthermore, there was no evidence that Claimant was ever diagnosed with intellectual disability. Dr. Gaines ruled out intellectual disability.

## **Fifth Category**

15. Pursuant to Welfare and Institutions Code section 4512, subdivision (a)(1), the "fifth category" of Lanterman Act eligibility includes individuals with "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 does "not include other handicapping conditions that are solely physical in nature."

16. The fifth category is not defined in the DSM-5-TR. In *Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, 1129, the California Court of Appeal held the fifth category was not unconstitutionally vague and set down a general standard: "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."

17. Individuals may qualify for regional center services under the fifth category on either of two independent bases: (1) a condition closely related to intellectual disability or (2) a condition requiring treatment similar to that required for an intellectually disabled individual. (*Samantha C. v. State Department of Developmental Services* (2010) 185 Cal.App.4th 1462.)

18. Determining whether a claimant's condition "requires treatment similar to that required" for people with intellectual disability is not a simple exercise of enumerating the services provided and finding that a claimant would benefit from them. 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, or supervision). The criterion therefore is not whether someone would benefit from the provision of services, but whether that person's condition requires treatment similar to that required for people with intellectual disability, which has a narrower meaning under the Lanterman Act than services. (*Ronald F. v. Dept. of Developmental Services* (2017) 8 Cal.App.5th 94, 98.)

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19. Claimant has not received a diagnosis of intellectual disability, and the evidence of his cognitive functioning and adaptive skills received at the hearing rules out the presence of intellectual disability or a fifth category condition, i.e., a condition closely related to intellectual disability, or one requiring treatment similar to that required by individuals with intellectual disability. Instead, Dr. Gaines diagnosed Claimant with ADHD and recommended a mental health evaluation.

### **Cerebral Palsy/Epilepsy**

20. There was no evidence that Claimant has either Cerebral Palsy or Epilepsy.

### **Disposition**

21. In sum, Claimant does not have a qualifying developmental disability. There was no evidence that Claimant has cerebral palsy or epilepsy. Although Claimant demonstrates elevated levels of some behaviors and traits typical of Autism Spectrum Disorder, as measured by the ADI-R and ADOS and a clinical interview, his testing results overall fell substantially outside of the range for diagnosis of Autism Spectrum Disorder, and Claimant has never been diagnosed with Autism. Similarly, Claimant has not received a diagnosis of intellectual disability, and the evidence of cognitive functioning and adaptive skills received at the hearing does not show Intellectual Disability, a condition closely related to intellectual Disability, or one requiring treatment similar to that required by individuals with Intellectual Disability.

22. Claimant does not have a developmental disability, as defined by the Lanterman Act, and is therefore not eligible for regional center services at this time.

## **ORDER**

Claimant's appeal is denied.

DATE:

GLYNDA B. GOMEZ

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.