

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

In the Matter of:

CLAIMANT

and

ALTA CALIFORNIA REGIONAL CENTER,

Service Agency.

DDS No. CS00224869

OAH No. 2025030432

DECISION

Timothy J. Aspinwall, Administrative Law Judge, Office of Administrative Hearings, State of California, serving as a hearing officer, conducted a fair hearing on April 21, 2025, by videoconference from Sacramento, California.

Claimant was represented by her mother. The names of Claimant and her mother are omitted to protect their privacy and confidentiality.

The Service Agency, Alta California Regional Center (ACRC), was represented by Robin M. Black, Legal Services Manager.

Evidence was received, the record was closed, and the parties submitted the matter for decision on April 21, 2025.

ISSUE

Is Claimant eligible for services from ACRC under the Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code section 4500 et seq. (Lanterman Act) because of autism?

FACTUAL FINDINGS

Jurisdiction and Background

1. ACRC provides funding for services and supports to persons with developmental disabilities under the Lanterman Act. (All statutory references are to the Welfare and Institutions Code, unless otherwise specified.)

2. Claimant is eight years of age. She resides with her mother, father, and siblings in the family home in Folsom, California.

3. In May 2024, Claimant's mother requested that ACRC assess Claimant and determine eligibility for services under the Lanterman Act. ACRC completed an assessment, including a review of records it obtained, and two psychological evaluations, discussed below.

4. On February 19, 2025, ACRC issued a Notice of Action (NOA) denying Claimant's request for eligibility under the Lanterman Act. On March 3, 2025, Claimant's mother filed an appeal of ACRC's denial. This hearing followed.

Psychological Evaluations and Clinical Records

5. The most significant evidence on the question of whether Claimant is eligible for services from ACRC under the Lanterman Act includes two psychological evaluations and various clinical records. No testimony was offered by either party from the psychologists who performed the psychological evaluations or the clinicians who prepared the clinical records. The psychological evaluations and clinical records are summarized, in pertinent part, below.

PSYCHOLOGICAL EVALUATION BY CHASTITY EASLEY BOSLEY, PSY.D.

6. On May 1, 2024, Chastity Easley Bosley, Psy.D., Registered Psychological Associate, supervised by Joseph Armendarez, Ph.D., conducted a psychological evaluation of Claimant, and prepared a written evaluation. Tricia Mendoza Roberts, M.D., of The Permanente Medical Group referred Claimant for the psychological evaluation due to concerns regarding autism spectrum disorder (ASD).

7. Dr. Bosley's evaluation procedures included a clinical interview with Claimant and her mother; a review of available records; a patient questionnaire; Kaufman Brief Intelligence Test, Second Edition (KBIT-2); Adaptive Behavior Assessment System, Third Edition (ABAS-3); Social Communication Questionnaire; Autism Diagnostic Observation Schedule, Second Edition (ADOS-2), Module 3; and a review of the Diagnostic and Statistical Manual for Mental Disorders, Fifth Edition (DSM-5).

8. Dr. Bosley noted that Claimant was diagnosed with attention deficit and hyperactivity disorder (ADHD) in April 2024, at Kaiser Permanente. Dr. Bosley observed that Claimant is intelligent and observant. Claimant's test scores showed an average range of intelligence.

9. Claimant scored in the extremely low range in the ABAS-3 test of her adaptive functioning. The Social Communication Questionnaire completed by Claimant's parents showed clinically significant social and communications difficulties associated with autism.

10. Dr. Bosley administered the ADOS-2, Module 3. She selected Module 3 because Claimant is verbally fluent. This test involved Dr. Bosley's observation of Claimant during a semi-structured, standardized assessment of communication, social interaction, and play or imaginative use of materials. Dr. Bosley noted her observations of Claimant in the areas of language and communication, reciprocal social interaction, imagination, stereotyped behaviors and restricted interests, and other abnormal behaviors. Based on her observations, Dr. Bosley assigned a score of two regarding Claimant's social affect, and six regarding Claimant's observed restricted and repetitive behaviors, for a total score of eight. The comparison score is five for moderate symptoms of autism. Claimant's behaviors were consistent with those seen in other youth diagnosed with autism.

11. Based on her evaluation and observations as a whole, Dr. Bosley diagnosed Claimant with ASD, 299.00 (F84.0), under the DSM-5 criteria. Both Dr. Bosley and her supervisor, Dr. Armendarez, signed the written psychological evaluation.

PSYCHOLOGICAL EVALUATION BY CHRISTY L. SHAW, PSY.D.

12. On December 12, 2024, Christy L. Shaw, Psy.D., conducted a psychological evaluation of Claimant, and prepared a written evaluation. Dr. Shaw is licensed to practice psychology in the state of California. ACRC referred Claimant to Dr. Shaw to determine whether Claimant meets the DSM-5 TR criteria for ASD.

13. Dr. Shaw's evaluation procedures included administration of the ABAS-3; the ADOS-2, Module 2; behavioral observations of Claimant; clinical interview with Claimant's parent(s); Developmental Profile-Fourth Edition; the Weschler Intelligence Scale for Children-Fifth Edition (WISC-V); a review of records provided by ACRC, including the written psychological evaluation prepared by Dr. Bosley, and other records including medical records from Kaiser Permanente.

14. Dr. Shaw noted that Claimant was diagnosed with ADHD in April 2024, at Kaiser Permanente. She also noted that Claimant has a family history of ASD, ADHD, and developmental delays. Claimant has participated in applied behavioral analysis and family therapy.

15. Dr. Shaw's observations included that Claimant is an engaging and friendly eight-year-old. Dr. Shaw did not observe Claimant to demonstrate restricted interests or repetitive behaviors. Dr. Shaw observed Claimant to display joint attention and social reciprocity.

16. Dr. Shaw assessed Claimant's intellectual functioning by administering the WISC-V. The test results showed that Claimant is in the average range of intelligence.

17. Dr. Shaw administered the ABAS-3 to assess Claimant's adaptive skills. Claimant scored in the extremely low range. Dr. Shaw also administered the Developmental Profile-Fourth Edition. This is a comprehensive assessment that measures development in areas including adaptive behavior, social and emotional, cognitive, and communication. Claimant's scores indicate that her development is delayed in all these areas.

18. Dr. Shaw utilized the ADOS-2, Module 2, to specifically assess Claimant for autism. Due to Claimant's use of phrasing/expressive language, Dr. Shaw used Module 2 to provide an opportunity to observe her responses for the presence of autism. Dr. Shaw noted her observations of Claimant in the areas of communication, reciprocal social interaction, restricted and repetitive behavior, and other behaviors. Dr. Shaw did not observe Claimant make restrictive or repetitive statements or engage in any restrictive or repetitive behaviors. Based on Dr. Shaw's observations, she assigned scores of one each in the areas of social affect and restrictive/repetitive behavior, for a total of two. A score of two is not consistent with an ADOS-2 classification of autism.

19. Based on Dr. Shaw's observations of Claimant during the evaluation and claimant's history, Dr. Shaw's opinion is that Claimant does not meet the criteria for ASD.

SELECTED CLINICAL RECORDS

20. On April 20, 2024, psychologist R.A. Calabrese, Ph.D., of the Permanente Medical Group, Child and Family Psychiatry in Roseville, California, signed a letter addressed to Claimant's parents. The letter states that Claimant was evaluated at the Kaiser's Child Mental Health and Wellness Department, and was diagnosed with ADHD, Combined Presentation. The letter states, in part: "These symptoms appear to cause significant impairment in her school and social functioning. . . ."

21. On May 24, 2024, a clinician at Kaiser Permanente, Pediatric Developmental Disability Department in Oakland, California, entered an ancillary order adding the diagnosis of ASD, F84.0.

22. On April 2, 2025, Tricia Mendoza Roberts, M.D., wrote a clinical progress note. Under the heading Assessment & Plan, the note states, in part: "ASD diagnosis

recognized by Kaiser, allowing access to behavioral therapy. Reevaluation risks losing autism services.” Under the heading History of Present Illness, the note states, in part, the following:

The patient, an eight-year-old girl diagnosed with Autism Spectrum Disorder (ASD), Attention Deficit Hyperactivity Disorder (ADHD) combined type, and anxiety, is reported by her mother to be experiencing escalating symptoms. The mother describes the child’s severe anxiety, impulsivity, and aggression as increasingly challenging. The child’s anxiety is so severe that it is causing frequent stomach aches and appears to be driving her impulsive behaviors. The child’s aggression manifests as self-harm, including biting and scratching herself, and harming others.

The child’s sleep is disturbed by frequent sleepwalking episodes of issues with bowel and bladder control. The mother reports that the child often has accidents during the day and at night, which she believes may be triggered by anxiety or distraction. The child’s sleep disturbances and incontinence are causing significant distress for the family.

Socially, the child is struggling to make and maintain friendships. She either isolates herself or becomes overly attached to a single friend, to the point of smothering. She struggles with sharing friends and interprets any interaction her friend has with others as a personal rejection. This

black-and-white thinking often leads to emotional
meltdowns that carry over into the home environment.

Testimony of Catarina Juan Fishman, Psy.D.

23. Dr. Fishman has been employed as a staff psychologist at ACRC since 2022. Dr. Fishman has been licensed as a psychologist in California since 2020. She has experience performing assessments for developmental disabilities and interpreting psychological evaluations. Dr. Fishman's responsibilities at ACRC include, among other things, reviewing psychological evaluations performed by other psychologists. Dr. Fishman reviews approximately 50-60 psychological evaluations per month.

24. Dr. Fishman reviewed the clinical records presented in evidence by ACRC and the psychological evaluations prepared by Dr. Shaw and Dr. Bosley. Dr. Fishman does not agree with Dr. Bosley's evaluation and diagnosis of autism. One of her primary concerns is that Dr. Bosley's evaluation does not include a clear differential diagnosis to distinguish between ADHD and ASD symptoms. In contrast, Dr. Shaw's evaluation includes a differential diagnosis in which Dr. Shaw noted her observations that Claimant showed strengths not typically seen in children with ASD. For example, Dr. Shaw observed that Claimant "was able to adequately initiate and respond to social interactions Responses to attempts for joint attention and directing of facial expressions were observed." Based on her review of the evidence, Dr. Fishman found Dr. Shaw's psychological evaluation to be more convincing.

Testimony of Claimant's Parents

25. Claimant's parents each provided a clear and convincing account of their own observations regarding Claimant's behaviors and emotions.

TESTIMONY OF CLAIMANT'S FATHER

26. Claimant's father has observed that Claimant does not show any "emotional feeling" about anyone else. She has "no understanding" of the impact of what she says. Her mood can "switch" from calmness to hitting and kicking her sisters. She "does not display any empathy when people get hurt." When she is with other people "empathy goes away." Claimant does not handle transitions well. For example, she becomes "upset and angry" when it is time to change her clothes after coming home from school. She becomes "very anxious and scared" around crowds. Loud noises scare her. Around her peers, she will focus on one friend, then do "strange things" such as "tapping on the friend continuously." Claimant is "a very smart girl" but will "shut down" if something becomes difficult.

TESTIMONY OF CLAIMANT'S MOTHER

27. Claimant's mother observed that Claimant requires assistance in self-care. For example, she "needs assistance and reminders to get dressed each day" and "washing her hands after using the toilet." Claimant also has "troubles with expressive and receptive language." Claimant's "condition is getting progressively worse." She has "no safety awareness" and will often elope. Claimant is "not able to identify things that are hot and dangerous."

Analysis

28. The evidence is in conflict regarding the specific question of whether Claimant has autism. Dr. Bosley diagnosed Claimant with ASD based, in part, on her observation that Claimant displayed behaviors consistent with autism. For example, Dr. Bosley observed Claimant to have restrictive and repetitive behaviors. On the other hand, Dr. Shaw did not see Claimant display such behaviors. Rather, she observed

Claimant to display joint attention and social reciprocity, which are not consistent with autism. Neither of the evaluating psychologists testified. This makes it more difficult to assess their testing methodologies and observations of Claimant as noted in their respective written evaluations.

29. Dr. Fishman testified regarding her concerns about Dr. Bosley's written evaluation, including the absence of a clear differential diagnosis to distinguish between ASD and ADHD. Dr. Fishman's concerns have been noted and considered, but do not cause Dr. Shaw's evaluation to have relatively more convincing force than Dr. Bosley's evaluation. Based on the evidence, neither psychological evaluation appears more or less reasonable than the other.

30. The clinical records have also been carefully considered. It is significant that Kaiser recognizes Claimant's ASD diagnosis. However, no evidence was presented that Kaiser conducted a psychological evaluation of its own. Rather, Kaiser referred Claimant to Dr. Bosley for the psychological evaluation. Under these circumstances, Kaiser's acceptance of Dr. Bosley's evaluation does not cause her evaluation to have relatively more convincing force than Dr. Shaw's evaluation.

31. Importantly, careful consideration has been given to the observations and concerns expressed by Claimant's parents in their testimony and as reflected in Dr. Tricia Mendoza Roberts's extensive clinical note, quoted above. Claimant's parents were clear and credible in their descriptions of their daughter's emotions and behaviors. Their deep concern for their daughter's well-being is abundantly clear. They want what is best for her. They believe their daughter has autism, and that she is for that reason eligible for ACRC services and supports. However, it is necessary to consult the psychological evaluations in assessing whether Claimant has autism.

32. On the question of whether Claimant is eligible for ACRC services and supports because of autism, it is essential to note that for purposes of this Decision, Claimant bears the burden of proof by a preponderance of the evidence. As a practical matter, that means Claimant's appeal must be denied if there is not a preponderance of evidence in support of a finding that Claimant has autism. In this matter, the evidence considered as a whole, and particularly the psychological evaluations, is inconclusive on the question of whether Claimant has autism.

33. For all the foregoing reasons, and based on the evidence presented, a finding cannot be made at this time that Claimant has autism. Therefore, Claimant's appeal must be denied. However, Claimant is not precluded from presenting additional information to ACRC for consideration, or from applying for ACRC services in the future.

LEGAL CONCLUSIONS

The Burden and Standard of Proof

1. In an administrative hearing, the burden of proof is on the party seeking government benefits or services. (See, e.g., *Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) In this case, Claimant bears the burden of proving, by a preponderance of the evidence, that Claimant is eligible for services from ACRC under the Lanterman Act because of autism. (Evid. Code, § 115.)

Applicable Law

CARE FOR THE DEVELOPMENTALLY DISABLED

2. Under the Lanterman Act, the State of California accepts responsibility for persons with developmental disabilities and pays for the majority of the “treatment and habilitation services and supports” to enable such persons to live “in the least restrictive environment.” (Welf. & Inst. Code, § 4502, subd. (b)(1).) The State Department of Developmental Services is charged with implementing the Lanterman Act and is authorized to contract with regional centers to provide the developmentally disabled access to the services and supports needed. (Welf. & Inst. Code, § 4620, subd. (a); *Williams v. State of Cal.* (9th Cir. 2014) 764 F.3d 1002, 1004.)

ELIGIBILITY FOR REGIONAL CENTER SERVICES

3. Eligibility for regional center services and supports is dependent on the person having a “developmental disability” that: (1) originated before she reached 18 years of age; (2) is likely to continue indefinitely; and (3) constitutes a substantial disability. (Welf. & Inst. Code, § 4512, subd. (a)(1).) Under the Lanterman Act, “developmental disability” includes intellectual disability, cerebral palsy, epilepsy, autism, and disabling conditions found to be closely related to or require treatment similar to that required for individuals with an intellectual disability. (*Ibid.*)

Disposition

4. Based on the Factual Findings and Legal Conclusions as a whole, Claimant did not meet her burden of establishing by a preponderance of evidence that she has autism or any other developmental disability that would qualify her to receive services from ACRC under the Lanterman Act. For these reasons, Claimant’s appeal

must be denied. However, nothing in this Decision should be taken to discourage or prevent Claimant from presenting additional information to ACRC in favor of eligibility or appealing any future denial for ACRC services.

ORDER

Claimant's appeal is DENIED.

DATE: May 1, 2025

TIMOTHY J. ASPINWALL

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 under Welfare and Institutions Code section 4713, subdivision (b), 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.