

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

In the Matter of:

CLAIMANT

and

WESTSIDE REGIONAL CENTER,

Service Agency.

DDS No. CS0026292

OAH No. 2025050460

DECISION

Administrative Law Judge Deena R. Ghaly, Office of Administrative Hearings, State of California, heard this matter on October 14, 2025, by videoconference.

Sonia Tostado, Appeals and Resolutions Manager, represented the Westside Regional Center (WRC or Service Agency). Claimant's mother (Mother) represented Claimant. The names of Claimant and his family members are omitted to protect their privacy.

Testimony and documentary evidence were received. The record closed, and the matter was submitted for decision on the hearing day.

ISSUE

Is Claimant eligible to receive services and supports from the Service Agency under the Lanterman Developmental Disabilities Services Act (Lanterman Act) under the category of autism spectrum disorder (ASD)?

EVIDENCE RELIED UPON

Documents: Claimant's Exhibits A and B; Service Agency's Exhibits 1 through 11.

Testimony: For Claimant, Mother. For Service Agency: Dr. Thomson Kelly.

FACTUAL FINDINGS

Background

1. Claimant is a six years old. He lives at home with his parents and younger sister. Claimant had a normal babyhood and infancy. When he was two and one-half years old, his parents enrolled him in preschool but had to remove him because he was aggressive with the other children. Claimant went on to attend three other preschools and, even with the assistance of a one-to-one aid, was expelled from each one for aggressive behavior and attempted eloping. Currently, Claimant's school district, Los Angeles Unified School District (LAUSD), is paying for him to attend a therapeutic school, Cheerful Helpers, because the District's schools cannot accommodate his behavioral issues.

2. Claimant was a consumer of WRC through the Early Start program until he aged out of it at three years old. Claimant has also been enrolled in a number of

other programs and been examined by multiple medical providers. Several of these providers diagnosed Claimant with ASD and referred him to WRC for services.

WRC's Assessment and Determinations

3. To determine Claimant's eligibility to become a regional center consumer, WRC retained the practice of licensed psychologist Rebecca Dubner, Psy.D. A psychological associate, Kristen Prater, Psy.D., working under Dr. Dubner's supervision, assessed Claimant. As part of her assessment, Dr. Prater administered the following tests: (i) Wechsler Preschool and Primary Scale of Intelligence, Fourth Edition (WPPSI-IV); (ii) Vineland Adaptive Behavior Scales, Third Edition (VABS-III); (iii) Childhood Autism Rating Scale, Second Edition (CARS-2); (iv) Autism Diagnostic Interview-Revised (ADI-R); and (v) Behavior Assessment Scale for Children, Parent Rating Scale (BASC-III). In addition, she reviewed earlier assessments performed on Claimant by medical providers and his school district.

4. Based on his scores on the WPPSI-IV, Dr. Prates assessed Claimant's intelligence quotient (IQ) at the low average range, with scores for certain facets of the test, such as verbal comprehension, in the high average range and scores for tests measuring reasoning in the extremely low range.

5. In interpreting the results of the CAR-2, which is used to identity or rule out ASD, Dr. Prates found impairments associated with ASD such as deficiencies in the areas of social-emotional understanding and emotional expression; however, when taking into consideration other assessment results, particularly communication ability, she concluded that overall, Claimant's scores fell into the non-autism range.

6. The ADI-R, another test to detect ASD Dr. Prater administered, involves a clinical interview of the subject's primary caretaker. Dr. Prater interviewed Mother

regarding Claimant's social interactions, level of communication and ability to use language, and any repetitive, restrictive and stereotyped interests and behaviors.

7. Regarding social interaction, Mother reported Claimant avoids or "makes misguided attempts to engage with other children like slapping other children or breaking their toys." Otherwise, according to Mother, Claimant will hide to avoid interacting with other children. Nonetheless, Dr. Prater concluded Claimant's deficiencies in this area were not extensive enough to support an ASD diagnosis.

8. Regarding communication and language, Mother reported Claimant could nod or shake his head or point to things to communicate needs but does not engage in conversation with other children or her. Mother did not, however, state Claimant engages in stereotyped utterances, demonstrates echolalia (repeating others' words), raises inappropriate subjects, or other otherwise displays language idiosyncrasies associated with ASD. As such, Dr. Prater concluded Claimant could not be diagnosed with ASD based on communication and language deficits associated with the condition.

9. Regarding repetitive, restricted and stereotyped interests and behaviors, Dr. Prater's report states Claimant does not engage in hand flapping or similar behavior. The report, however, does not indicate the source of that information. In response to questions about these types of behaviors, Mother stated Claimant has certain sensory interests, including using masking tape in his play. Dr. Prater concluded Claimant could not be diagnosed with ASD based on repetitive, restricted and stereotyped interests and behaviors.

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10. Dr. Prater also administered the VABS-III by questioning Mother about Claimant's personal and social sufficiency. Dr. Prater determined Claimant functioned in most areas measured by the VABS-III test in the 'moderately low' range.

11. During her assessment, Dr. Prater also interviewed one of Claimant's teachers. Based on the teacher and Mother's answers about Claimant's behavior and habits, she found Claimant exhibited signs of depression and anxiety as well as other psychological impairments to an extent to be considered clinically significant.

12. Dr. Prater concluded Claimant is not on the autism spectrum. Her primary diagnosis for him is Attention Hyperactivity Disorder-Combined Type (ADHD).

13. WRC also arranged for another psychologist, Karen Hastings, PsyD, to observe Claimant at school and prepare a report. Dr. Hastings observed Claimant at school on two different days in February 2025 for approximately one and one-half hours each time. In her report, Dr. Hastings noted that, during the period she observed him, Claimant was restless, "squirmy," and difficult to direct. She also noted he communicated well, made eye contact with whomever he was speaking to, and could engage in conversation for several minutes at a time. Dr. Hastings concluded Claimant's observed behavior was consistent with ADHD but not autism.

14. Dr. Thomson Kelly testified at the hearing. Dr. Kelly is WRC's chief psychologist and leads its eligibility team. Dr. Kelly stated the team initially concluded respondent does not have ASD. The team reconsidered its decision after it reviewed not just the opinions of Drs. Prater and Hastings but also those of Claimant's medical providers and teachers. However, the eligibility team determined Claimant's ASD was not substantially disabling. For the one area the team found Claimant to have a deficit, self-direction, the team found it was caused by his ADHD, which the team agreed was

Claimant's primary disabling condition. As such, Dr. Kelly noted, not only was Claimant not qualified to be a regional center consumer under the law but he was unlikely to benefit from the type of treatments and services available from regional centers. According to Dr. Kelly, deficiencies resulting from ADHD respond to cognitive therapies while treatments for conditions on the autism spectrum focused on behavioral training.

Claimant's Evidence

15. Mother testified at the hearing. She stated Claimant's aggression, elopement, and refusal to follow directions has meant he can no longer be safely taken on excursions with the family, that he cannot be left alone for any amount of time, and that his aggressive behavior poses a danger to his younger sibling. Claimant also resists going to school where, when he is able to attend, he can become withdrawn and anxious when he is not aggressively acting out or trying to escape. Mother also stated the family has been caught between competing explanations for Claimant's condition with nearly all Claimant's long-time providers and educators finding him to be exhibiting clear signs consistent with an autism diagnosis and recommending treatment and services consistent with that diagnosis and WRC disagreeing.

16. Mother provided evaluations about Claimant from health care providers and educators:

17. In June 2023, Therapy Place 4 Kids, an occupational, physical, and speech therapy provider, undertook an extensive two-day evaluation and concluded Claimant exhibited social, self-regulation, and fine, visual, and gross motor skill challenges. (Exh. 11.) In February 2024, another occupational therapy provider, Hiller Therapy,

undertook an evaluation and diagnosed Claimant with delayed milestones and “autistic disorder.” (Exh. 24, p. A135.)

18. In a letter dated January 29, 2025, Jaclyn Zeccola, PhD, a licensed clinical psychologist and the clinical director at Claimant’s current school, Cheerful Helpers, reported Claimant exhibits communication and social skills challenges, becomes overwhelmed in the presence of more than a few people, is unable to control or understand the consequences and effects of his aggressive behavior, and fixates on routine and rigidity in approaching tasks. Dr. Zeccola also wrote that Claimant has been seen engaging in repetitive and patterned behaviors such as lining up strips of tape, making repetitive stims such as hand flapping, spinning, throat clearing, and humming, avoiding meeting any kind of demands, and displaying emotional dysregulation. Dr. Zeccola concluded her letter with the following: “All of the above behaviors and sensitivities align with a DSM diagnosis of Autism Spectrum Disorder, Level 2, as he requires substantial support with social communication, and demonstrates patterned and restrictive repetitive behaviors.” (Exh. 13, p. A69.) In a letter dated May 23, 2025, Dr. Zeccola updated her observations based on Claimant’s ongoing attendance at Cheerful Helpers. In the May 2025 letter, Dr. Zeccola noted Claimant’s challenges largely continued and that his inability to focus due to his ASD had hindered his learning ability leaving him three years behind in literacy, including a complete inability to read, and two years behind in math concepts. (Exh. 23, p. A124.)

19. Dr. Josh Mandelberg, Claimant’s pediatrician, diagnosed him with ASD, executive functioning challenges and sensory-motor immaturity when Claimant was three and one-half years old. (Exh. 16.)

20. In addition to Claimant’s extreme difficulties at school, Mother reports Claimant’s continuing inability to follow directions, incomplete toilet training, and

aggression toward his sibling. Paola Juarez, Claimant's family's au pair of about one year between 2024 and 2025, wrote a letter in which she described her experience with Claimant:

During my time taking care of [Claimant] . . . it was my responsibility to get the kids ready for school every morning and also for bedtime a few times a week. During this time [Claimant] refused to brush his teeth or let me help him. If I tried to make him, he would often run away, get very dysregulated and it would be hard to calm him down for the next task, or he would turn violent against me or his sister hitting, kicking, pushing or throwing things.

[¶] . . . [¶]

Other challenges include [Claimant's] toileting. Despite nightly attempts to limit his water intake before bed (these demands were often met with dysregulation (violence and hyperactivity) or ignoring me he wet the bed every night. There were also instances where he would urinate on the floor in the house when dysregulated. Lastly, he frequently went to the bathroom outside in public places without communication or a request to find a toilet.

Feeding [Claimant] was a notable struggle because he refused to eat at times. . . I noted his tolerable foods also became more restrictive throughout the year too.

(Exh. 17, p. A107.)

21. Mother stated she has always listened carefully to all the experts who have evaluated or worked with Claimant, including Dr. Kelly. She exposed Claimant to many cognitive-based therapies and learning techniques as suggested by Dr. Kelly and others, including occupational and speech therapy, but to no avail. Privately, the family contracted with an Applied Behavior Analysis (ABA) therapy provider, Jacqueline Hernandez. According to Mother, the ABA treatments have been more effective than anything else tried so far. In an undated letter from Ms. Hernandez, she stated Claimant has responded positively to the ABA sessions. (Exh. B, p.B18.)

LEGAL CONCLUSIONS

General Provisions

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.) 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.

2. Generally, when an applicant seeks to establish eligibility for government benefits or services, the burden of proof is on the applicant to prove eligibility by a preponderance of the evidence. (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 on 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.)

Regional Center Eligibility

3. To be eligible for regional center services, a claimant must have a qualifying developmental disability. Welfare and Institutions Code section 4512, subdivision (a), 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 (Regulation), section 54000, subdivision (c) provides that a developmental disability shall not include disabling conditions that are solely psychiatric, learning, or physical disabilities.

5. To demonstrate a qualifying developmental disability within the meaning of Welfare and Institutions Code section 4512, claimants must show that they have a “substantial disability.” Under Welfare and Institutions Code section 4512, subdivision (a)(1), a substantial disability means functional limitations in three or more of the

following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency.

6. Regulation section 54001 further defines "substantial disability." It provides in part that a substantial disability means: "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."

Analysis

7. Here, while WRC's eligibility team ultimately concluded Claimant is properly diagnosed with the qualifying condition of ASD as well as ADHD, it determined Claimant exhibited only one area of substantial disability, a deficiency in self-direction, and that deficiency had its origin in Claimant's ADHD condition, not ASD. Although as expressed by Dr. Kelly, the eligibility team appeared to have carefully and thoughtfully considered Claimant's condition, its conclusions are less persuasive than Claimant's position, as advocated by Mother, namely that Claimant has multiple substantial disabilities and they emanate from his ASD diagnosis.

8. Evidence presented on behalf of Claimant established he has consistently had extreme problems at school not only because his behavior prevents him from learning or making friends but, as noted by Dr. Zoccola, he is prone to rigidity in moving from task to task and engages in stimming activity hindering his ability to participate fully in school activities and learn. Dr. Zoccola concluded Claimant is between two and three years behind in literacy and math, a significant delay and she, as one of the team of educators working day-to-day with Claimant and herself a

licensed psychologist, attributes Claimant's circumstances to ASD. Other caretakers and providers point out Claimant's inability to take care of himself or even allow others to help. For instance, Ms. Juarez's letter corroborates Mother's testimony that Claimant is not yet fully toilet-trained and provides additional detail about Claimant's toileting dysfunctions, including urinating in open spaces in public demonstrates how far away he is from engaging or cooperating in the basic practices of self-care reasonably expected of a child Claimant's age.

9. Thus, in addition to the substantial disability acknowledged by the eligibility team, self-direction deficiencies, a preponderance of the evidence establishes at least two others, learning and self-care.

10. A preponderance of the evidence likewise established Claimant's disabilities are primarily the result of ASD, not ADHD. Dr. Zoccola credibly opined Claimant's deficiencies stem from his ASD condition. In addition, Claimant has responded well to ABA therapy while multiple other, more cognitive-based therapies such as occupational therapy and school aides have not significantly improved his condition.

11. Considering the totality of the evidence, from at least two and one-half years old, Claimant has not been able to effectively communicate and aside from the occasional playmate, has been unable to establish friendships with his peers, is consistently violent and unable to correct his behavior, engages in repetitive behavior, and is rigid and inflexible when moving from one task to another. Moreover, Claimant's condition has prevented him from productively participating in school and therefore learning, from caring for himself consistent with his age, including being unable to toilet himself alone and from having even the limited independent living children his age might enjoy because his behavior mean it is not possible for him to

ever be left without supervision. These attributes are not only consistent with an ASD diagnosis but are clearly substantially disabling.

12. Because Claimant has a qualifying diagnosis of ASD and is substantially disabled by ASD in at least three areas of major life activity, he is eligible for regional center services under the Lanterman Act.

ORDER

Claimant's appeal of Westside Regional Center's determination that he is not eligible for regional center services is granted. Westside Regional Center will accept claimant as a consumer and begin providing him services forthwith.

DATE:

DEENA R. GHALY

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.