

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

**In the Matter of:**

**CLAIMANT**

**and**

**KERN REGIONAL CENTER, Service Agency.**

**DDS No. CS0028373**

**OAH No. 2025070529**

**DECISION**

Eric Sawyer, Administrative Law Judge (hearing officer), Office of Administrative Hearings, State of California, heard this matter by videoconference on January 14, 2026, and April 7, 2026.

Claimant was represented by his foster mother. (Titles are used instead of names to protect the confidentiality of this proceeding.)

Vanessa Webster, Fair Hearing Officer, represented Kern Regional Center (service agency).

The record closed, and the matter was submitted for decision upon the conclusion of the initial hearing date.

However, by an order dated January 23, 2026, the hearing officer advised the parties he was re-opening the record and setting the matter for a second day of hearing to fully and fairly develop the record by allowing the parties to present evidence and arguments concerning three issues specified in that order.

The record closed again, and the matter was re-submitted for decision, upon the conclusion of the second hearing on April 7, 2026.

## **ISSUE**

Is claimant eligible for services under the Lanterman Developmental Disabilities Services Act (Lanterman Act)?

## **EVIDENCE RELIED UPON**

In reaching this Decision, the hearing officer relied upon service agency exhibits 1 through 32, claimant exhibit A, as well as the testimony of Pedro Alvarez, Program Director of service agency's Intake and Assessment Unit, and claimant's foster mother.

## **SUMMARY**

Claimant appeals service agency's denial of his request to be deemed eligible for regional center services under the Lanterman Act. Service agency determined claimant does not have a qualifying developmental disability. Claimant contends he has autism. However, claimant failed to meet his burden of establishing by a preponderance of the evidence that he is eligible for services under the Lanterman Act on the basis of autism, or any other qualifying developmental disability.

Specifically, the psychological evaluation report presented by service agency concluding claimant does not have a qualifying developmental disability is more persuasive than the psychological evaluation report presented by claimant concluding that he has autism. In any event, even if claimant has autism, he failed to establish he is substantially disabled for purposes of the Lanterman Act.

Therefore, claimant's appeal is denied.

## **FACTUAL FINDINGS**

### **Parties and Jurisdiction**

1. Service agency determines eligibility and provides funding for regional center services to persons with developmental disabilities under the Lanterman Act, among other entitlement programs. (Welf. & Inst. Code, § 4500 et seq.; subsequent undesignated statutory references are to this code.)

2. Claimant is a 16-year-old male referred to service agency by multiple sources for a determination whether he is eligible for regional center services. (Exs. 22-24.)

3. Service agency records indicate claimant's biological mother first contacted service agency regarding claimant's eligibility for services in 2012. However, service agency closed its file after claimant's biological mother failed to respond to follow-up contacts. (Testimony [Test.] of Pedro Alvarez.)

4. On or about February 29, 2024, claimant was referred to service agency for an eligibility determination by his treating physician, Dr. Daniel Adams. The reason for referral was listed as suspected learning disorder and intellectual disability. (Ex. 24.)

5. On or about January 15, 2025, a referral authorization signed by claimant's biological mother was submitted to service agency. (Ex. 22.)

6. On or about March 4, 2025, another referral authorization was submitted to service agency, this time by claimant's foster mother. According to the referral note, claimant's foster mother suspected claimant had autism spectrum disorder (ASD) or intellectual disability (ID). (Ex. 23.)

7. After conducting the intake and assessment described in more detail below, service agency issued a Notice of Action (NOA) on or about June 19, 2025, in which it advised claimant's foster mother that service agency staff had concluded claimant does not have a qualifying developmental disability and therefore is not eligible for services. (Ex. 4.)

8. On July 9, 2025, claimant's foster mother submitted an Appeal Request Form to the Department of Developmental Services (DDS), requesting a hearing to appeal service agency's denial of claimant's request to be deemed eligible for services. (Exs. 31-32.)

9. Official notice is taken that, in connection with a continuance request made after the matter was initially scheduled to be heard, claimant's foster mother executed a written waiver of the time limit prescribed by law for holding the hearing and for the hearing officer to issue a decision.

### **Claimant's Relevant Background Information**

10. Claimant has been in foster care for the last several years. (Exs. 11, 17.)

11. In 2024, claimant was placed with his current foster mother. Claimant currently lives with his foster mother and her family. (Exs. 11, 17, 18.)

12. Although claimant's biological parents' ability to exercise education and developmental disability service decisions for claimant have been limited, they have a court-ordered visitation schedule with their son. Claimant's foster mother's goal is to obtain for claimant all appropriate services he needs so he can be reunited with one or both of his biological parents. (Test. of foster mother; Exs. 11, 18.)

13. In March 2025, claimant's biological mother partially completed for service agency a Client History form. (Ex. 14.) In it she wrote:

[Claimant's] development was fine, he rode a bicycle, played with [his] sister, ran back and forth through the house. His fine motor skills, like tying shoes came before kindergarten. [He] [l]oved to brush [his] own hair. And dress himself. His reading needed a little help and me, school, and sisters helped read to him. (Ex. 14, p. A117.)

14. Claimant's biological mother also reported to service agency that claimant's development was within average ranges. For example, claimant reached physical milestones on time, was toilet trained at 12 months, and his speech and language development was typical. (Ex. 17, p. A130.)

15. Claimant began receiving special education services from his local school district in 2013, when he was four years old. An initial individualized education program (IEP) was created in 2013, and his IEP has been updated yearly since then. (Exs. 5, A.)

16. On May 11, 2022, claimant was assessed for mental health symptoms by the Henrietta Weill Memorial Child Guidance Clinic (HWMCGC). The reasons stated for claimant's initial visit were impulsiveness, poor concentration, irritability, anger

outbursts, and difficulty communicating feelings. Claimant was diagnosed with unspecified attention-deficit/hyperactivity disorder (ADHD). From August 3, 2022, to the present, claimant has received individual and family therapy at HWMCGC. Claimant's prognosis is listed as "good." (Ex. 20.) Claimant has been prescribed medications to help him manage his anxiety and impulse control. (Ex. 17, p. A130.)

## **School Records**

17. In 2009, when claimant was in the second grade, his school district administered to him the Woodcock-Johnson IV, which tests a student's range of academic achievement. The test results indicated claimant had a relative strength in math and calculations, but marked weaknesses in reading (especially oral reading) and writing. (Ex. 21.)

18. Claimant's two most recent IEPs are in the record. Claimant's eligibility category for special education services is listed in both IEPs as Other Health Impairment. The school district has not determined claimant to be eligible under the category of autism. (Exs. 5, A.)

19. Claimant's second to last IEP was issued on September 11, 2024. (Ex. 5.) That document notes claimant has average range cognitive ability; is able to communicate clearly with peers and staff; can take care of all of his personal needs at school; has made friends and seems social within his friend group; and has great conversation skills. (*Id.*, p. A21.) Claimant's father noted during the conference that claimant has made friends at school. (*Id.*, p. A35.) However, claimant's teachers noted he had emotional and anger issues causing him to leave the classroom occasionally to compose himself; puts his head down on his desk and stops working when challenged by an assignment; and has trouble regulating his anger and emotions. (*Id.*, p. A22.)

20. Claimant's most recent IEP was issued on January 13, 2026. (Ex. A.) Claimant now spends 46 percent of the school day in general education classes, with the rest in special education classes. The same observations of claimant's abilities made in the 2024 IEP are also recorded in this one, except it is noted claimant then worked in the student store. Also, the prior note of claimant having friends was replaced with the observation that he displays positive social skills and interacts with his peers without prompts. (Ex. A, p. B2.) During the conference, claimant's foster mother noted her concern that claimant's classes are too hard for him, and that he often will put his head down and not try. However, claimant's general education teacher observed claimant does well in his class, is very social, and "is a big help." (*Id.*, p. B5.)

### **Service Agency Intake**

21. In late 2024 and early 2025, service agency staff worked with claimant's biological parents to obtain relevant school and medical records, as well as information concerning claimant's developmental history. In 2025, service agency staff worked with claimant's foster mother to the same end. (Test. of Alvarez; Exs. 3, 5, 9, 10, 13, 14, 20, 21.)

### **SOCIAL ASSESSMENT**

22. On March 31, 2025, service agency assessment coordinator Antonio Cruz conducted a social assessment of claimant. Mr. Cruz met with and interviewed claimant and his foster mother on that date. Claimant's foster mother revealed her concerns that claimant exhibited signs of ASD or intellectual delay. She noted claimant was anxious, emotional, and did not respond well to criticism. (Ex. 17.)

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23. In his Social Assessment report, Mr. Cruz noted that, during the meeting, claimant gave insightful answers to his questions, demonstrated reasonable understanding of his environment and personal experiences, made good attempts at eye contact and social cues, did not display any repetitive behaviors, and seemed self-aware of his emotional and cognitive limitations. (Ex. 17, p. A132.)

24. Based on comments from claimant and his foster mother, Mr. Cruz concluded claimant is able to manage his personal hygiene independently, with some prompts from his foster mother. He is able to feed himself, use the toilet on his own, and often volunteers to assist with help around the house. (Ex. 17, p. A130.)

### **PSYCHOLOGICAL EVALUATION**

25. Service agency referred claimant for a psychological evaluation by Michael Musacco, Ph.D., of Kern Psychological Services, Inc. (Test. of Alvarez.) Dr. Musacco is a fully licensed psychologist in the State of California. Dr. Musacco issued a report from his psychological evaluation, which is undated. (Ex. 30.)

26. Dr. Musacco spoke with claimant's foster mother by telephone on April 25, 2025, and met with claimant at his office on May 8, 2025. Claimant's foster mother told Dr. Musacco that claimant was having difficulty with his academic functioning, had social skills deficits, and a history of anger control problems. (Ex. 30.)

27. While Dr. Musacco did not have access to claimant's early developmental history information, he did have access to some of claimant's school records and information from the mental health treatment claimant receives from HWMCGC. (Ex. 30, p. A176.)

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28. Dr. Musacco administered to claimant the following three psychological tests. The results of the WASI-II indicated claimant had relative strengths in mathematics and relative weaknesses in language skills. Claimant was rated with a full scale IQ score of 90, which is in the low average range. The results of the WRAT-4 indicated claimant's reading skills were at the second grade level. The results of the Vineland-III showed claimant has low adaptive skills. (Ex. 30.)

29. Dr. Musacco diagnosed claimant with Major Depressive Disorder, Social Anxiety Disorder, Post-Traumatic Stress Disorder, and a Learning Disorder. Dr. Musacco did not diagnose claimant with ASD or ID. (Ex. 30.)

30. In his report, Dr. Musacco explained his diagnoses as follows:

I offered the diagnosis of Major Depressive Disorder to account for the client's [claimant's] history of symptoms of depression, including feelings of guilt, hopelessness, and helplessness. The client also has a history of significant difficulty with anger management and emotional self-regulation.

The diagnosis of Social Anxiety Disorder is offered as the client reported that he often experiences anxiety in social settings. He believes that people are staring at him. The client told me that his symptoms of anxiety exacerbate his symptoms of depression and vice versa.

The diagnosis of Post-Traumatic Stress Disorder is offered as the client informed me that he has experienced nightmares and flashbacks as well as emotional numbing

associated with the history of childhood trauma, which has occurred when he was in his mother's custody.

The diagnosis of a Learning Disorder is offered as the client presented with a discrepancy between his nonverbal intelligence, verbal intelligence, and academic functioning. The client's full-scale IQ score fell in the low average range, but his reading skills were measured at a second-grade equivalency. Undoubtedly, other factors have contributed to his academic difficulties. However, these substantial discrepancies warrant the diagnosis of a Learning Disability.

(Ex. 30, pp. A176-177.)

31. In a letter he wrote to service agency after his psychological evaluation of claimant, Dr. Musacco described his impressions as follows. Claimant's foster mother noted that claimant interacted well with others, and he enjoyed building things. Claimant presented with intact communication skills. Dr. Musacco did not observe repetitive motor mannerisms, highly focused interests, or deficits in verbal or nonverbal communication. The records Dr. Musacco reviewed referenced concerns for ADHD, a Specific Learning Disability, and Emotional Disturbance, but they did not indicate a concern for ASD. Given the absence of symptoms suggestive of ASD, Dr. Musacco decided to not administer any tests designed to detect symptoms of ASD, such as the ADOS-2. (Ex. 15.)

### **SERVICE AGENCY DETERMINATION**

32. On June 19, 2025, service agency's Eligibility Team met to consider claimant's case. (Ex. 6.)

33. As described in more detail below, claimant's foster mother supplied a psychological evaluation from another psychologist diagnosing claimant with ASD. On October 2, 2025, service agency's Eligibility Team considered that report and reconsidered claimant's case. (Ex. 7.)

34. On both occasions, service agency's Eligibility Team concluded that claimant does not have ID, ASD, or any other developmental disability qualifying him for regional center services under the Lanterman Act. Service agency further concluded claimant does not have a significant limitation in three or more areas of major life activity. (Test. of Alvarez; Exs. 6, 7.)

## **Claimant's Evidence**

### **TESTIMONY OF CLAIMANT'S FOSTER MOTHER**

35. Claimant struggles with academic work at school. The school district is still assessing claimant for purposes of placing him in a different setting, such as a special day class. Claimant may not graduate but instead receive a certificate of completion. (Test. of foster mother.)

36. Claimant's reading is not at grade level. He can only understand small words. (Test. of foster mother.)

37. Claimant does not know how to socialize or make friends. He does not do well with younger children or big crowds. He does not like meeting new people. (Test. of foster mother.)

38. Claimant has a hard time expressing his feelings. He gets upset quickly. He does not like change. (Test. of foster mother.)

39. Claimant would like to get a job, but he needs to be shown step-by-step how to do tasks. (Test. of foster mother.)

40. Due to the diagnosis of ASD discussed in more detail below, claimant recently has been approved for applied behavior analysis (ABA), which is expected to begin soon. (Test. of foster mother.)

### **PSYCHOLOGICAL EVALUATION**

41. Claimant was referred to Prism Healthcare by Kern County Department of Human Services for a psychological evaluation to determine whether he has ID or another developmental disability. Claimant was evaluated by Karina Salas, Ph.D., a registered psychological associate working under the supervision of licensed clinical psychologist Lusine Gabrielyan, Psy.D. Dr. Salas issued a report from her psychological evaluation, which is dated August 27, 2025. (Ex. 29.)

42. On July 22, 2025, Dr. Salas interviewed both claimant and his foster mother. Claimant's foster mother expressed concern about claimant's comprehension of his school work, distractibility, hyperactivity, fidgeting, poor frustration tolerance, and emotion dysregulation. (Ex. 29, p. A165.)

43. Dr. Salas did not receive information concerning claimant's developmental milestones, and was not given any records or testing for her review. (Ex. 29, pp. A165-166.)

44. Claimant's foster mother reported to Dr. Salas that claimant is able to sustain a conversation with preferred topics, and demonstrates interest in peers but has difficulty making friends because he is bullied. Claimant's foster mother also

reported claimant's teachers have expressed concern over his anger and emotional outbursts at school, and his difficulty understanding schoolwork. (Ex. 29, p. A166.)

45. Claimant's foster mother reported to Dr. Salas that claimant engaged in stereotypical behaviors, such as rocking, pacing around while on his toes, and stereotypical utterances. She reported claimant is fixated on playing with his Legos and having his room organized in a certain way. She also reports claimant is sensitive to loud sounds and wearing certain clothing textures. (Ex. 29, p. A166.)

46. Dr. Salas notes in her psychological evaluation report claimant was extremely difficult to engage with, had poor eye contact, a flat affect, very limited use of gestures, and spoke in an odd tone. Dr. Salas's impression is that claimant experiences significant challenges with poor frustration tolerance, aggression toward others, and communication problems which negatively impact his ability to socialize, complete daily tasks, or follow directions at school or home. (Ex. 29, p. A167.)

47. Dr. Salas administered to claimant the following three tests designed to identify and quantify symptoms consistent with ASD. Claimant's raw score of 37 from the CARS 2-ST suggested to Dr. Salas that claimant has a severe level of symptoms related to ASD. Claimant's score of 21 from the ADOS-2 also indicates a severe level of symptoms related to ASD. In fact, in two of the three qualitative impairment categories, Dr. Salas scored claimant as being significantly impaired in all of the criteria. Claimant scored at or above the cut-offs for all three domains of the ADI-R, which Dr. Salas concluded shows a severe level of symptoms related to ASD. (Ex. 29, pp. A169-170.)

48. Based on the above, Dr. Salas concluded claimant met the diagnostic criteria for ASD set forth in the Diagnostic and Statistical Manual of Mental Disorders,

Fifth Edition Text Revision (DSM-5 TR), and she diagnosed claimant with ASD, without accompanying language impairment or intellectual impairment. In evaluating the various criteria for ASD under the DSM-5 TR, Dr. Salas concluded claimant met all five criteria (A-E), and every sub-part of criteria A (A1-A3) and B (B1-B4). (Ex. 29, p. A171.)

49. Dr. Salas did not diagnose claimant with ID, and she did not suggest a diagnosis or rule-out for any mental health disorder. She did recommend claimant receive ABA, continue with his psychotherapy and update his psychiatric medications, and get an updated speech pathology evaluation to address his speech challenges. (Ex. 29, p. A172.)

### **Weighing Expert Opinion Evidence**

50. The two psychologists who evaluated claimant are qualified and offered valid opinions, through their reports. On balance, however, the expert opinion of Dr. Musacco that claimant does not have ASD is more persuasive than Dr. Salas's expert opinion that claimant does have ASD, for the reasons explained below.

51. Dr. Musacco is more qualified and has more experience. Dr. Musacco is a fully licensed psychologist who works independently. On the other hand, Dr. Salas is not fully licensed in this state, but rather is a registered psychological associate, who will be qualified for full licensure only after working a specified number of hours under the supervision of a fully licensed psychologist.

52. In coming to her conclusions, Dr. Salas relied on a number of her own observations during her interview of claimant (e.g., lack of eye contact, flat affect, odd voice tone) that are either not documented in any of the other records presented in this case, or are inconsistent with the observations of others, such as claimant's teachers. Moreover, Dr. Salas relied on reports from claimant's foster mother of activity

or behaviors (e.g., rocking, pacing on toes, stereotypical utterances, fixation with Legos) that are not documented anywhere else in the record, including when service agency interviewed claimant's foster mother during its Social Assessment.

53. Dr. Musacco's report provides observations of claimant's performance during his evaluation that are consistent with the observations of claimant by others in other settings, such as at home and school.

54. Dr. Salas rated claimant's performance in all three autism tests as demonstrating severe symptoms, and found almost every criteria was met by claimant. This extreme rating undercuts the veracity of her opinion because the record does not corroborate extreme or severe behaviors or actions by claimant.

55. Finally, while acknowledging claimant is currently receiving mental health treatment, Dr. Salas makes no attempt to account for the impact of the mental health problems on claimant's observed behaviors or actions, and Dr. Salas makes no explanation for why the mental health problems are not causing the behaviors she is associating with ASD.

### **Impairments in Claimant's Major Areas of Life Activity**

56. As discussed in the Legal Conclusions below, eligibility for services under the Lanterman Act also requires the eligible condition to cause a substantial disability. In making that determination, each of the seven areas of major life activity listed below must be analyzed for the presence of a significant functional limitation.

57. Section 4512, subdivision (a)(2)(A), provides that the "areas of major life activity" should be applied "as appropriate to the age of the person."

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## **RECEPTIVE AND EXPRESSIVE LANGUAGE**

58. While claimant has language delays related to reading and writing, he is able to fully converse with others, as noted by Mr. Cruz and Dr. Musacco during their assessments. In his IEPs, claimant's teachers note claimant is able to clearly communicate with teachers and peers. In fact, Dr. Salas's diagnosis of claimant's ASD includes that it is without accompanying language impairment.

59. Based on the above, claimant failed to establish by a preponderance of the evidence that he has a significant functional limitation in receptive and expressive language.

## **LEARNING**

60. At hearing, service agency conceded claimant has a significant functional limitation in learning. This is demonstrated by the school records in evidence, which indicate claimant is several grade levels behind his age in reading and writing, and that he is receiving special education services.

## **SELF-CARE**

61. Claimant's IEPs indicate he is able to take care of his personal needs at school. Mr. Cruz concluded from his social assessment that claimant is able to handle his personal hygiene, grooming, and feeding, either independently or with some prompts. There is no other information in the record indicating claimant is unable to care for himself appropriate to his age.

62. Based on the above, claimant failed to establish by a preponderance of the evidence that he has a significant functional limitation in self-care.

## **MOBILITY**

63. No evidence indicates claimant has any functional limitation in mobility.

## **SELF-DIRECTION**

64. Other than Mr. Cruz's notation in his Social Assessment that claimant demonstrates delays in self-direction, especially during moments of feeling anxious or overwhelmed, there is no other information in the record concerning this major life activity. Moreover, Mr. Cruz's notation appears to link this delay with mental health issues as opposed to developmental delays.

65. Based on the above, claimant failed to establish by a preponderance of the evidence that he has a significant functional limitation in self-direction.

## **CAPACITY FOR INDEPENDENT LIVING**

66. Claimant's degree of independent living skills should be viewed in comparison to those of other teenagers.

67. While claimant is not at an age to live independently, he is at an age where an average functioning teenager of equivalent age would be allowed to go to school or into the community unescorted, left home alone for brief periods of time, or to care for younger children unsupervised (either siblings or as a babysitter). In this case, the only indication of a limitation in this area is that claimant is not allowed to be with young children unsupervised. This restriction is related to an incident that happened several years ago while claimant was in foster care. It is not clear from the record what prompted that incident.

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68. Based on the above, claimant failed to establish by a preponderance of the evidence that he has a significant functional limitation in his capacity for independent living.

### **ECONOMIC SELF-SUFFICIENCY**

69. Claimant's degree of economic self-sufficiency also must be viewed in comparison to those of other teenagers.

70. A typical teenager would be expected to be interested in part-time work to earn money for hobbies or interests, or otherwise perform chores or tasks around the home for an allowance.

71. Claimant's foster mother testified claimant needs step-by-step direction for even simple tasks. On the other hand, claimant's foster mother also reported claimant is interested in working, and his latest IEP noted he worked at his school's student store. Other records indicate claimant is able to make change, do chores around the house, and that he volunteers to help at home or school when needed.

72. Based on the above, claimant failed to establish that he has a significant functional limitation in this major life activity.

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## 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 contrary service agency decision. (§§ 4710-4714.) Claimant's foster mother requested a hearing to contest service agency's denial of claimant's eligibility for services under the Lanterman Act and therefore jurisdiction for this appeal was established. (Factual Findings 1-9.)

### Governing Law

2. One is eligible for services under the Lanterman Act if it is established he is suffering from a substantial disability attributable to intellectual disability, cerebral palsy, epilepsy, autism, or what is referred to as the fifth category. (§ 4512, subd. (a).) The fifth category condition is specifically defined as "disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability." (§ 4512, subd. (a).) A qualifying condition must originate before one's 18th birthday and continue indefinitely. (§ 4512.)

3. A qualifying condition also must cause a substantial disability. (§ 4512, subd. (a).) A "substantial disability" is defined by California Code of Regulations, title 17, section (regulation) 54001, subdivision (a)(2), as:

(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.

4. Pursuant to regulation 54000, subdivision (c), a developmental disability shall not include handicapping conditions that are solely "psychiatric disorders" (subd. (c)(1)), "learning disorders" (subd. (c)(2)), or "physical in nature" (subd. (c)(3)).

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

5. Generally, when an applicant seeks to establish eligibility for government benefits or services, the burden of proof is on him. (See, e.g., *Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits].) The same burden exists in cases determining eligibility for services under the Lanterman Act. (*Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, 1136-1137.)

6. In this case, claimant bears the burden of establishing he is eligible for regional center services because he has a qualifying condition that is substantially disabling.

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7. The standard of proof in this case is the preponderance of the evidence because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) Preponderance of the evidence means evidence that has more convincing force than that opposed to it. (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 324-325.)

## **Claimant Does Not Have a Qualifying Developmental Disability**

### **INTELLECTUAL DISABILITY**

8. One of the reasons claimant was referred to service agency was concern that he has ID. However, all of the known cognitive functioning tests indicate claimant's cognitive ability is in the low average range. Neither Dr. Musacco nor Dr. Salas diagnosed claimant with ID. Therefore, it cannot be concluded claimant has ID. (Factual Findings 17, 29, 49.)

### **AUTISM**

9. The Lanterman Act and its implementing regulations contain no specific definition of the neurodevelopmental condition of "autism." However, the DSM-5 TR provides ASD as the single diagnostic category for the various disorders previously considered when deciding whether one had autism, i.e., Pervasive Developmental Disorder Not Otherwise Specified, Asperger's Disorder, and Autistic Disorder. Therefore, a person diagnosed with ASD should be considered someone with the qualifying condition of "autism" pursuant to the Lanterman Act.

10. In this case, claimant failed to meet his burden of establishing by a preponderance of the evidence that he has the qualifying condition of ASD, or for purposes of the Lanterman Act, autism. Whether someone has ASD is an issue that

only can be established by persuasive expert diagnosis. Here, service agency has concluded claimant is not eligible, based in part on the expert opinion of Dr. Musacco. (Factual Findings 21-34.) In turn, Dr. Musacco's expert opinion that claimant does not have ASD is more persuasive than Dr. Salas's expert opinion that he does have ASD. (Factual Findings 50-55.)

11. In addition, there are many facts present in this case that are inconsistent with a diagnosis of ASD for claimant. For example, claimant's chronology of developmental milestones was unremarkable. The record does not suggest claimant's biological family has a history of autism. Claimant's IEPs do not indicate behaviors consistent with ASD, and the school has determined to not make him eligible for special education services under the category of "autism." Finally, when assessing claimant, neither Mr. Cruz nor Dr. Musacco noticed any behavior consistent with ASD. (Factual Findings 10-34.)

### **Claimant is Not Substantially Disabled**

12. Even if claimant has ASD, he failed to establish that he has a significant functional limitation in three or more major life activities. In this case, claimant only established a significant functional limitation in one major life activity, i.e., learning. (Factual Findings 56-72.)

### **Claimant is Not Eligible for Services**

13. Since claimant failed to establish he has the qualifying developmental disability of autism, and that currently he is substantially disabled, it was not established by a preponderance of the evidence that he is eligible for regional center services under the Lanterman Act. (Factual Findings 1-72; Legal Conclusions 1-12.)

## **ORDER**

Claimant's appeal is denied.

Claimant is not eligible for services under the Lanterman Developmental Disabilities Services Act.

DATE:

ERIC SAWYER

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.