BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the:

CLAIMANT,

vs.

South Central Los Angeles Regional Center,

Service Agency.

DDS. No. CS0028397

OAH No. 2025070551

DECISION

Chrysanthy Kyin, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on June 9, 2026, in Los Angeles, California.

Claimant was represented by his mother (Mother), who also served as his authorized representative. The names of Claimant and his family members are omitted to protect their privacy.

Tami Summerville, Fair Hearings Manager, represented South Central Los Angeles Regional Center (Service Agency).

The ALJ received testimony and documentary evidence. The record was held open until 5:00 p.m. on June 9, 2026, for Claimant to submit copies of Claimant's Position Statement, an In-Home Services Support (IHSS) Document, and a teacher's evaluation by uploading the documents to Case Center, which would have been considered proper service on Service Agency. On June 10, 2026, Claimant uploaded Claimant's Position Statement, Child and Family Team Planning Matrix, and teacher's evaluation documents, marked Exhibit C, D, and E, respectively for identification via OAH's Secure E-File system instead of Case Center. Claimant further submitted a copy of Service Agency's informal hearing denial letter dated August 5, 2025, which will be marked as Exhibit F for identification.

The record was also held open until 5:00 p.m. on June 9, 2026, for Service Agency to submit the Association of Regional Center Agencies "5th Category" Guidelines (ARCA Guidelines) by uploading the document to Case Center. Service Agency uploaded the ARCA Guidelines to Case Center on June 10, 2026. The ARCA Guidelines shall be marked Exhibit 11 for identification.

Both parties were ordered to serve and file any objections with OAH by June 12, 2026. OAH did not receive any written objections from either party by June 12, 2026.

On June 17, 2026, the ALJ issued an order to re-open the record because there was no evidence that Claimant served Service Agency with Exhibits C through F or that Service Agency had the opportunity to otherwise review these exhibits and file any objections to their admission. Therefore, the ALJ ordered Claimant to serve Service Agency Exhibits C through F via email by June 19, 2026, at 5:00 p.m., and ordered Service Agency to email Claimant and file any objection to Exhibits C through F with OAH by June 23, 2026, at 5:00 p.m.

No objections were received by Service Agency. Therefore, Claimant's Exhibits C through F were admitted. The record was re-closed and the matter was resubmitted for decision on June 23, 2026.

ISSUE

Whether Claimant is eligible for regional center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) under the categories of autism spectrum disorder (ASD) or "fifth category" disability.

EVIDENCE RELIED UPON

In reaching this decision, the ALJ relied upon Service Agency's Exhibits 1 through 11; the testimony of Laurie McKnight Brown Ph.D., Service Agency's Lead Psychologist Consultant; Claimant's Exhibits A through F; and the testimony of Mother.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant is 10 years old and lives with his adoptive Mother and three siblings. Two of Claimant's siblings are older and Mother's biological children: the third is his 11-year-old sister who is also Claimant's biological sibling.

2. Service Agency is a regional center designated by the Department of Developmental Services to provide funding for services and supports to persons with

developmental disabilities under the Lanterman Developmental Disabilities Services Act, among other entitlement programs. (Welf. & Inst. Code, § 4500 et seq.)

3. On January 13, 2026, Service Agency issued a denial letter informing Mother it found Claimant ineligible for regional center services.

4. Mother timely filed a Fair Hearing Request, disputing Service Agency's eligibility denial and this hearing ensued.

Claimant's Background

5. Claimant seeks regional center eligibility under the category of ASD or under the fifth category, a condition that is closely related to intellectual disability or requires treatment similar to that required for an individual with an intellectual disability.

6. Claimant was exposed to alcohol and marijuana while in utero and experienced early neglect. Claimant lived with eight foster families before he began living with his adoptive Mother at three years old. There is limited information regarding Claimant's biological parents. Th evidence reflects alcohol use during the pregnancy of Claimant's biological mother, although the amount consumed is unknown.

7. Claimant has been diagnosed with other specific neurodevelopmental disorder provisional, attention deficit hyperactivity disorder (ADHD), hyperactive/impulsive presentation, unspecified disruptive, impulse-control and conduct disorder, per history, unspecific anxiety disorder, per history, reactive attachment disorder, and post-traumatic stress disorder (PTSD). Claimant is currently taking medication to address his ADHD.

Testimony of Dr. Laurie McKnight Brown

8. Laurie McKnight Brown, Ph.D., has served as Service Agency's lead psychologist consultant for ten years. Dr. Brown is responsible for overseeing other psychologists and serving on interdisciplinary teams, including the eligibility team that reviewed Claimant's case on June 10, 2025, and again on June 13, 2026. Dr. Brown testified regarding the basis for the team's determination. In making that determination, Dr. Brown and the eligibility team reviewed the available records for Claimant's case, which included Claimant's evidence from Kaiser Permanente (Kaiser) and Claimant's occupational therapist as well as prior assessments, educational records, and the psychosocial and psychological evaluations conducted by Service Agency in April 2025.

CLAIMANT'S EVIDENCE

October 2025 Kaiser Evaluation

9. On October 29, 2025, Tran Bao Luu-Yang, Psy.D., at Kaiser diagnosed Claimant with ASD, without accompanying intellectual impairment, without language impairment, level 1 for severity for social communication and restricted, repetitive behaviors. (Ex. A, p. B6.)

10. Dr. Luu-Yang administered the Autism Diagnostic Observation Schedule-2 (ADOS-2) and reported that Claimant scored at the autism spectrum cutoff, however, there was no accompanying score. (Ex. A, p. B4.) Mother completed the Adaptive Behavior Assessment System, Third Edition (ABAS-3), which evaluated Claimant's adaptive behavior. Claimant's ABAS-3 yielded results in the extremely low to low range for adaptive behavior skills. (Ex. A, p. B5.) Dr. Luu-Yang reported that Claimant used sentences in a largely correct fashion with no speech abnormalities characteristic of

autism. (Ex. A, p. B4.) Claimant did not exhibit unusual sensory interests or behavioral stereotypes, and he sat appropriately during the evaluation. (*Ibid.*) Dr. Luu-Yang noted Claimant's eye contact was inconsistent, and he only directed some of his facial expressions towards Dr. Luu-Yang appropriately. (*Ibid.*)

11. Dr. Brown determined that Dr. Luu-Yang's evaluation of Claimant was not comprehensive, citing the following observations: 1) the evaluation did not discuss other psychosocial factors that may be impacting Claimant such as, trauma, anxiety, and ADHD; 2) relatedly, there was no differential diagnosis made by Dr. Luu-Yang; 3) beyond Claimant's IEP, there is no indication that prior assessments and records were considered or interpreted in the assessment; 4) there was no ADOS-2 score provided in the assessment; and 5) while the evaluation indicates certain ASD criteria (Ex. A, p. B6-B7.) were met, the determination was unsupported by records and observations. According to Dr. Brown, the ADOS-2 is not used to diagnose ASD, instead, it is a tool used to assist in making a diagnosis and if there are others reasons why an ADOS-2 score could be elevated, those factors must be considered in the overall data evaluation, as many conditions involve symptoms that overlap with ASD. Dr. Brown stated these factors were not considered in Claimant's evaluation by Dr. Luu-Yang.

November 2025 Occupational Therapist Assessment

12. On November 10, 2025, Carla Sasahara, an occupational therapist from Kaiser, prepared an assessment of Claimant. Ms. Sasahara cited areas of concern and set out a rehabilitation plan of care for Claimant.

13. During her testimony at the hearing, Dr. Brown stated that the areas of concern about Claimant identified by Ms. Sasahara, such as his inability to tie his

shoelaces and to grasp a spoon, did not provide further support for an ASD or fifth category diagnosis, however, Dr. Brown did not specify the reason for her opinion.]

PRIOR ASSESSMENTS

April 2023 Academic Performance Assessment

14. In an Academic Performance Assessment dated April 12, 2023, when Claimant was seven years old, it was noted that Claimant was "focused, engaged, and on task" and did not require any redirection or prompting. It was also reported that Claimant followed all directions given by the teacher and held and used scissors in an appropriate manner. (Ex. 6, p. A45.) The assessment concluded that Claimant was performing at grade level in reading, writing, and math, however, it was reported that he could benefit from phonics interventions. (Ex. 6, p. A50.)

15. Dr. Brown stated that these findings were relevant in that it demonstrated Claimant's self-direction was appropriate for his age. Dr. Brown also testified that Claimant's academic fluency and ability to apply academic skills within the average range was considered by the eligibility team as a relevant factor that did not support a finding of cognitive impairment or a lack of substantial deficits in Claimant's ability to learn.

April 2023 Psycho-Educational Assessment

16. During a psycho-educational assessment dated April 17, 2023, conducted by the local school district, Mother was interviewed and reported there that Claimant was outgoing, inquisitive, helpful, tenacious, diligent with his schoolwork and had positive peer interactions and can make and keep friends. (Ex. 4, p. A28.) The assessment noted that during his interview, rapport with Claimant was easily

established, he responded well to redirection back to tasks, and he engaged in spontaneous conversation. (Ex. 4.) It also reported that he presented with age-appropriate interpersonal communication skills, engaged in reciprocal conversation with peers, and his language skills were adequate for the educational setting. The assessment also noted that Claimant's ADHD medication has assisted in keeping him focused at school. The assessment concluded that Claimant was not experiencing clinically significant social emotional concerns. (Ex. 4.)

17. According to Dr. Brown, these findings are inconsistent with Dr. Luu-Yang's diagnosis of ASD because Dr. Luu-Yang's report also does not reflect substantial deficits self-direction, learning or language. Dr. Brown further stated that the progress achieved with Claimant's ADHD medication is relevant when evaluating whether Claimant qualifies for regional center services based on a fifth category diagnosis because, in Dr. Brown's opinion, an individual with intellectual disability would not have experienced similar improvement from ADHD medication.

JUNE 2024 INDIVIDUALIZED EDUCATION PLAN (IEP)

18. Claimant is now in the fourth grade and has an IEP with other health impairment (OHI) for ADHD, dated June 6, 2024. Claimant is in a general education setting and receives modified seating support. He receives Resource Specialist Program (RSP) for reading and writing, and behavior intervention services. According to Mother, Claimant does not receive speech or occupational therapy at school because he receives these therapies through his wraparound services. Wraparound services are personalized, coordinated supports that address an individual's social, emotional, educational, and healthcare needs to improve overall well-being and success.

19. Dr. Brown opined that Claimant's general education setting indicates that he has average cognitive ability and that he is not having any difficulties with learning. According to Dr. Brown, someone with an intellectual disability would not be expected to be in a general education setting and would not be expected to have average cognitive scores. Dr. Brown stated that these findings are inconsistent with a diagnosis of the fifth category.

MARCH 2025 PSYCHO-SOCIAL ASSESSMENT

20. Dr. Brown and the eligibility team considered the psychosocial assessment conducted by Service Agency dated March 18, 2025. In the psychosocial assessment, there are notes that Claimant exhibits sensory-seeking behaviors such as chewing on plastic and has safety awareness issues, often wandering off without regard for danger. The assessment reports that he struggles with emotional regulation, leading to outbursts and defiant behaviors, and has ongoing conflicts with siblings. During the assessment, Mother reported to the assessors that she suspected these patterns appeared to be impacted by Claimant's trauma history and current mental health diagnosis, including ADHD. (Ex. 5, p. A40.) The assessment also reports Claimant's strengths in that he has a small group of friends and engages in parallel play; he communicates complete sentences with clear language; performs well in mathematics; and can retrieve his own snacks and put away his clothing. According to the assessment, Claimant is capable in several areas of daily functioning but also requires close monitoring and support in others.

APRIL 2025 PSYCHOLOGICAL ASSESSMENT

21. In April 2025, Susan Park, Ph.D., of Aligned Psychological Services, Inc. completed a psychological assessment of Claimant Dr. Park assessed Claimant for

intellectual disability and ASD. Dr. Park's assessments involved the following procedures and tests: interview with Mother; review of records; ABAS-3; Autism Diagnostic Interview – Revised (ADI-R); Childhood Autism Rating Scale, Second Edition, High Functioning version (CARS2-HF); and Wechsler Intelligence Scale for Children (WISC-V).

22. In assessing Claimant for ASD, Dr. Park applied the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision, Washington D.C.; American Psychiatric Association; 2022 (DSM-5-TR) diagnosis of ASD, which requires qualitative impairment in social interaction and communication, as well as the presence of restricted, repetitive, and stereotyped patterns of behavior, interests, and activities.

23. Dr. Park administered the ADI-R, which tests the most atypical occurrences of specific behaviors within a specific time frame. Dr. Park concluded that Claimant exhibits strong sensory-seeking behaviors but does not display ritualistic, compulsive, or repetitive mannerisms, speech, or use of objects. (Ex. 3, p. A10.) As a part of the evaluations, Mother completed the ABAS-3, Ages 5-21, which refers to the developmentally and culturally appropriate skills necessary to cope and manage the daily demands placed on the individual by the environment. Dr. Park found that Claimant scored in the extremely low range meaning he requires a lot of support and prompts to complete age-expected tasks. (Ex. 3, p. A11.) Dr. Park administered the Childhood Autism Rating Scale (CARS2) and concluded that Claimant had minimal to no symptoms of ASD.

24. Dr. Park concluded that, based on Mother's interview, observation and interaction with Claimant as well as test data, Claimant did not meet the criteria for ASD because he does not have evidence or history displaying significant differences in

the areas of social communication or restricted and repetitive behaviors associated with the condition. (Ex. 3, p. A13.)

25. In assessing Claimant for intellectual disability, Dr. Park applied the DSM-5-TR criteria, which require deficits in intellectual functions with concurrent deficits in adaptive functioning in one or more activities of daily life across multiple environments.

26. Dr. Park administered the WISC-V to determine Claimant's overall cognitive functioning. Claimant's full scale intelligence quotient (FSIQ) was in the low average range at 83. His verbal comprehension index (VCI) capturing his verbal reasoning skills was 100, scoring in the average range. (Ex. 3, p. A9.)

27. Dr. Park noted that "concerns exist regarding Claimant's prenatal exposure to substances and alcohol, which may result in persistent neurodevelopmental differences affecting cognitive functioning, learning, memory, attention, executive function, emotional regulation, and language." (Ex. 3, p. A13.) Dr. Park further reported that although the extent of Claimant's biological Mother's alcohol consumption during pregnancy is unknown, there was some evidence that Claimant was exposed to unspecified controlled substances in utero. Therefore, Dr. Park provisionally diagnosed Claimant with other specified neurodevelopmental differences due to prenatal substance exposure. (Ex. 3, p. A13.) Dr. Park recommended Claimant to consider obtaining a Fetal Alcohol Spectrum Disorder (FASD) evaluation. (Ex. 3, p. A14.) Dr. Park concluded that Claimant's overall cognitive skills were well within the average range and attributed Claimant's challenges are likely related to psychological needs or other specific neurodevelopmental disorders, such as FASD. (Ex. 3, p. A13.)

28. Dr. Brown agreed with Dr. Park's findings that Claimant's cognitive ability is in the average range, reiterating during her testimony that such cognitive ability disqualifies Claimant from eligibility under the fifth category. Dr. Brown noted that an individual who requires treatment similar to that of an individual with an intellectual disability would never have cognitive ability in the average age. Further, Dr. Brown specified that a condition that requires treatment similar to an individual with an intellectual disability would require treatments for learning to be simplified and implementation of remedial instruction, requiring breaking down each step and repeating the steps in order to build a basic foundational skill. There was no evidence presented that Claimant required treatment of this nature. Dr. Brown also noted that Service Agency does not conduct FASD evaluations because it is not a qualifying diagnosis under the Lanterman Act.

ARCA FIFTH CATEGORY GUIDELINES

29. The ARCA Guidelines state that the fifth category "is defined as having two separate prongs: (1) a disabling condition found to be closely related to intellectual disability, **or** (2) to require treatment similar to that required for individuals with intellectual disability." (*Id.*, at p. A99, emphasis in original.) The California Code of Regulations, Title 17, (Reg. or Regulations) section 5400, further clarifies that the developmental disability shall not include handicapping conditions that are: 1) solely psychiatric disorders; 2) solely learning disabilities; or 3) solely physical in nature. (Ex. 11, p. A99.)

30. Dr. Brown testified that Claimant does not meet the first prong of the ARCA Guidelines for the fifth category. She explained that a condition closely related to intellectual disability requires the person to have cognitive abilities that are not in the average range. Here, Claimant has a nonverbal IQ in the low average range. The

ARCA Guidelines state: "The closer an individual's cognitive scores are to the average range, the less similar that individual will be to a person with intellectual disability." (Ex. 11, p. A100.) The ARCA Guidelines further state: "As an individual's IQ scores rise above the subaverage range, it becomes increasingly essential for the eligibility team to demonstrate that the individual's substantial adaptive deficits appear to be clearly related to *cognitive* limitations – and not solely to factors such as psychiatric disorders, learning disabilities, or conditions solely physical in nature." (*Ibid.*, emphasis in original.)

31. Dr. Brown testified that Claimant does not meet the second prong of the ARCA Guidelines for the fifth category, i.e., that it requires treatment similar to that required for persons with intellectual disability. The ARCA Guidelines state: "Individuals with intellectual disability typically require simplification of instructions, content presented at a remedial level, and actions broken down into small, discrete units taught through repetition." (Ex. 11, p. A102.) The ARCA Guidelines reference examples of treatments commonly needed by individuals with intellectual disability, which were drawn from the *Samantha C. v. State Department of Developmental Services* (*Samantha C.*) (2010) 185 Cal.App. 4th 1462. (Ex. 11, p. A101.) The relevant examples include specialized social or recreational services; specialized rehabilitative training; specialized skill development teaching methods, behavioral training, and reading and writing support services. (Ex. 11, p. A101.) Dr. Brown explained that if a person does not have deficits in their cognitive ability, they are not likely to require treatment similar to that required for persons with intellectual disability. Here, Claimant's cognitive functioning was in the low average range and the interdisciplinary team found that Claimant did not require treatment similar to that required for a person with intellectual disability.

MOTHER'S TESTIMONY

32. Mother's testified at the hearing. Her testimony was supplemented by her written position statement. (Ex. C.)

33. During her testimony, Mother stated she has observed Claimant engaging in restricted and repetitive behaviors like repetitive chair rocking; mouthing of non-food objects, licking of public surfaces, and sensory-related behaviors.

34. In the area of self-care, Mother stated that Claimant requires hands-on assistance and frequent prompting for basic daily living skills that are below age expectations. In the area of safety and independent living, Mother described that Claimant demonstrates limited safety awareness and requires constant supervision to maintain safety. She referenced Kaiser's occupational therapy assessment (Ex. B.), which identifies safety concerns, however, they appear to be reported by Mother (Ex. B, p.B12.) In the area of self-direction, Mother explained that Claimant exhibits significant difficulty with self-regulation and requires continuous external structure and redirection. Mother noted that these concerns are reported to persist despite medication management and structured educational supports. In the area of social functioning, Mother stated Claimant is socially motivated but demonstrates deficits and reciprocal social interaction. She notes ongoing peer conflict required behavioral supports including seating modifications and structured interventions with greater difficulty observed in less structured environments such as recess and lunch time.

35. With respect to Claimant's eligibility under the fifth category, Mother asserts Claimant qualifies for regional center services because he receives long-term, habilitative, Applied Behavior Analysis Therapy (ABA)-based treatments of the same kind provided to individuals with intellectual disabilities. Mother stated he also

receives mental health therapy once a week and is monitored by a psychiatrist every is weeks. There was no evidence presented regarding the nature of the services or how they are implemented, consistent with the ARCA Guidelines.

36. Mother argues that Claimant's ability to perform grade level mathematics within a structured classroom setting does not outweigh his significant deficits in daily living skills. Mother cited *Samantha C.,* which she argued requires substantial cross-domain adaptive impairment, not merely diagnostic classification, average IQ, or performance in structured environment. She contends that while Claimant's IQ is average, his adaptive impairments are more evident outside structured academic environments and he receives treatments similar to a person with an intellectual disability. Mother contends that, under the reasoning of *Samantha C.*, Claimant is eligible for services under the fifth category.

CLAIMANT'S OTHER EVIDENCE: AUGUST 2025 TEACHER EVALUATION

37. Mother presented a teacher's evaluation completed by Claimant's third grade teacher, dated August 23, 2025. The evaluation reports that Claimant is a curious person who asks clarifying questions and notes that once he grasps a structured routine, he can be an independent worker and get along with his peers. The evaluation noted no issues with comprehension, math, reading, or writing. (Ex. E.)

38. Mother also presented Child and Family Team Planning Matrix (CFTM) dated July 23, 2024, and completed by the Los Angeles County Department of Mental Health, which reports that Claimant receives ABA, Cognitive Behavioral Therapy, and behavioral therapies targeting self-regulation, communication, and self-care. (Ex. D.)

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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. (Welf. & Inst. Code, §§ 4710-4714.) (Further statutory citations are to the Welfare and Institutions Code unless otherwise indicated.) Claimant, through Mother, requested a hearing 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 and Standard of Proof

2. An applicant seeking to establish eligibility for government benefits or services bears the burden of proof. (See, e.g., *Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [addressing disability benefits].)

3. Regarding eligibility for regional center services, "the Lanterman Act and implementing regulations clearly defer to the expertise of the DDS [Department of Developmental Services] and RC [regional center] professionals and their determination as to whether an individual is developmentally disabled." (*Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, 1129.) In *Mason*, the court focused on whether the applicant's expert witnesses' opinions on eligibility "sufficiently refute[d]" those expressed by the regional center's experts that the applicant was not eligible. (*Id.* at pp. 1136-1137.)

4. In this case, Claimant bears the burden of establishing he is eligible for services because he has the qualifying condition of ASD or the fifth category and that

this condition is substantially disabling. In that regard, Claimant's evidence regarding eligibility must be more persuasive than the service agency's evidence in opposition.

5. 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.)

General Provisions

6. An individual is eligible for services under the Lanterman Act if it is established he is suffering from a substantial disability attributable to one of the qualifying conditions of intellectual disability, cerebral palsy, epilepsy, autism, or what is referred to as the fifth category. (§ 4512, subd. (a).) A qualifying condition must originate before one's 18th and continue indefinitely. (§ 4512.)

7. The fifth category condition is 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).)

8. A qualifying condition also must cause a substantial disability. (§ 4512, subd. (a).) A "substantial disability" is defined by Regulations, section 54001, subdivision (a), as:

> (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.

9. 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)).

Claimant Does Not Have the Qualifying Condition of ASD

10. In this case, Claimant did not establish that he has the qualifying condition of ASD, in that under the tenets of *Mason*, Claimant did not sufficiently refute Service Agency's conclusion that Claimant does not have ASD, as defined by Welfare and Institutions Code section 4512.

11. According to *Mason*, Service Agency's decisions regarding eligibility for services are generally entitled to deference. Whether someone has ASD is an issue that only can be established by persuasive expert diagnosis. In this case, Service Agency has concluded that Claimant is not eligible based, in part, on the expert opinion of Dr. Park. Having considered the evaluations conducted by Dr. Luu-Yang and Dr. Park, in combination with Dr. Brown's testimony regarding both assessments, greater weight is afforded to Dr. Park's evaluation. Dr. Park's psychological evaluation is more persuasive in that her findings are based on a more comprehensive review of the available records and data, her findings were supported by observations and existing records, and Dr. Park's opinion that Claimant does not have ASD is more consistent with the totality of the available evidence. Although Claimant experiences substantial deficits in the area of self-direction, the evidence did not establish the deficits resulted from a qualifying diagnosis of ASD.

12. Under these circumstances, Claimant did not sufficiently refute Service Agency's conclusion that Claimant does not have ASD. Thus, Claimant did not meet his burden of proving by a preponderance of the evidence that he has the qualifying condition of ASD and that he is eligible for regional center services under the Lanterman Act.

Claimant Does Not Have the Qualifying Condition of the Fifth Category

13. Claimant did not establish by a preponderance of the evidence that he has a developmental disability as defined under Welfare and Institutions Code section 4512. Claimant does not have a disabling condition closely related to intellectual disability. Dr. Luu-Yang's diagnosis for Claimant is ASD without accompanying intellectual impairment. Claimant's cognitive functioning is in the average to low-

average range, and his educational records indicate that he is performing at grade level across multiple subjects and demonstrates strong mathematical proficiency. Claimant is in a general education school setting and requires modified seating support only, which is indicative of both his cognitive functioning and reflective of no current need for school services that are typically associated with intellectual disability. Additionally, Claimant's improvement on ADHD medication runs counter to the assertion that his presentation is consistent with a condition similar to intellectual disability.

14. Claimant receives other various treatments, however, there was no evidence presented that the nature in which these services are provided require simplification of instructions, content presented at a remedial level or actions broken down into small units through repetition, as required by the ARCA Guidelines. Further, while Claimant experiences adaptive skills deficits specifically, in the area of self-direction, these challenges coupled with his no less than average intellectual functioning are more plausibly explained by other neurodevelopmental factors associated with FASD, rather than a qualifying developmental disability under the Lanterman Act. While adaptive deficits are noted, the record does not establish that these deficits are related to a disabling condition closely related to intellectual disability nor does the record establish that Claimant requires treatment similar to that required by persons with an intellectual disability, consistent with *Samantha C.* Thus, the reasoning in *Samantha C.*, as cited by Mother, is not controlling in this case and without sufficiently showing that a qualifying condition exists, the issue of substantial disability is never reached.

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15. Under these circumstances, Claimant has not established by a preponderance of the evidence that Claimant is eligible for regional center services under the Lanterman Act.

ORDER

Claimant's appeal is denied. Claimant is not eligible for services under the Lanterman Act.

DATE:

CHRYSANTHY KYIN
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. Each party is bound by this decision. Either party may request a reconsideration pursuant to subdivision (b) of Welfare and Institutions Code section 4713 within 15 days of receiving the decision, or appeal the decision to a court of competent jurisdiction within 180 days of receiving the final decision.