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

## In the Matter of:

## CLAIMANT

## and

## WESTSIDE REGIONAL CENTER,

## Service Agency.

## DDS No. CS0022346

## OAH No. 2025080372

## DECISION

Jennifer M. Russell, Senior Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on December 8, 2025.

Sonia Tostado, Appeals and Resolution Specialist, represented the Westside Regional Center (WRC or service agency). Mother represented Claimant. Mother and Claimant are not identified by name to protect their privacy and maintain confidentiality.

Karesha Gayles, Psy.D. and Mother testified. The service agency's Exhibit 3 through Exhibit 14 and Exhibit 17 were admitted in evidence. Exhibit 1, Exhibit 15, and Exhibit 16 were marked for identification. Pursuant to a December 8, 2025 Post-Hearing Order, the record remained open for submission of an evaluative report from Claimant's treating healthcare provider regarding Claimant's presentation with 16p11.2 deletion syndrome and the service agency's response, if any. Claimant submitted a January 7, 2026 letter from a licensed clinical social worker providing therapy services to Claimant and her family, which is admitted in evidence as Exhibit A. The service agency's January 30, 2026 letter in response is admitted in evidence as Exhibit 18. The record closed and the matter was submitted for decision on February 6, 2025.

## ISSUE

Whether Claimant is eligible for services and supports under the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welf. & Inst. Code, § 4500, et seq.

## FACTUAL FINDINGS

### Jurisdictional Matters

1. By letter dated October 11, 2024, and Notice of Action dated October 16, 2024, WRC informed Mother its clinical team determined Claimant does not meet criteria for any of the five categories of developmental disability that would render Claimant eligible for services and supports under the Lanterman Act.

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2. On November 15, 2024, Mother, acting on Claimant's behalf, filed an appeal requesting a fair hearing.

3. All jurisdictional requirements are satisfied.

## Early Start Intervention Services

4. In 2021, when Claimant was an 18-month-old toddler, Mother was concerned about Claimant's development. Claimant's pediatrician referred Claimant to WRC to be assessed for early intervention services.

5. Julie Taren, MA, MSW, an Early Start Intake Coordinator at WRC, observed Claimant and interviewed Mother. Additionally, Mother completed the Ages and Stages Questionnaires (ASQ), a development and social-emotional screener for young children.

6. In a June 30, 2021 *Westside Regional Center Early Start Psychosocial Assessment* Ms. Taren reports the following concerns:

> According to the ASQ, [Claimant] is below the cutoff in communication, gross and fine motor, and problem-solving domains. [Claimant] tells her parents what she wants by saying "ah-ah-ah" and the parents states they have not seen her pointing. She sometimes goes into another room to find a familiar toy. The parents report [Claimant] has two words; in addition to "mama" and "dada." She is not imitating two-word sentences or pointing to the correct picture in a book. [Claimant] did not meet any items in the gross motor area because she is not independently walking

> and does not stand up or squat to pick up an object and stand up again. In the fine motor area, [Claimant] does not have experience with stacking small blocks. She demonstrated stacking the large Legos and turned pages of a book by herself. In the problem-solving area, [Claimant] met one item and one item sometimes. She is beginning to use a crayon, scribble back and forth, and drop several small toys in a container. When given a bottle to dump Cheerios, [Claimant] preferred shaking it up and down. [¶] . . . [¶]
>
> According to the ASQ, [Claimant] is below the cutoff in communication, gross and fine motor, and problem-solving domains. The parents' primary concerns are [Claimant is] not walking independently and [has] a vocabulary of fewer than five single words.

(Exh. 5 at pp. 5-7 [A30-A32].) Ms. Taren recommended referring Claimant "to the Interdisciplinary Team for eligibility determination and recommendations for the most appropriate services and follow-up care," a "developmental assessment," and a "speech and language evaluation." (Exh. 5 at p. 7 [A32].)

7. WRC deemed Claimant eligible for early intervention services. Juliana Plank, PT, DPT, summarizes Claimant's services and development as a 26-month, 5-day-old toddler in a February 17, 2022 *Physical Therapy Developmental Evaluation* she prepared for WRC, as follows:

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[Claimant] is a 26 month five-day old girl who was referred for an updated Physical therapy developmental evaluation to help determine continued eligibility for early intervention services. . . . She is currently receiving in person Speech Therapy once per week and In person Occupational Therapy once per week. She was receiving twice weekly Physical Therapy until December 2021 when her provider moved outside the catchment area. She is authorized for infant stimulation and is awaiting a provider match. She attends a toddler program from 9-11:30 5 days per week.

Results from the Developmental Assessment of Young Children-2nd Edition (DAYC-2) indicate [Claimant] scores "Poor" for Adaptive Development with a 13-month age equivalency. She is not yet drinking from an open cup, she is a picky eater, and she is not cooperative with dressing or diaper changes. She scores "Poor" for Expressive language with a 14-month age equivalency. She verbalizes 9 words consistently and signs for "more." She does not verbalize to express her wants and needs and she does not combine two words together. [Claimant] scores Below Average for Cognitive development (18-months), Receptive language (20-months), Fine Motor (15-months) and Gross Motor(17-months). She brings toys to share with her caregivers, but does not participate in pretend play, does not combine objects in play or sequence her play. She was able to tower four blocks. She matched a circle with its shape with heavy

> cuing from Mom. She follows one part directives and two part related directives some of the time. She enjoys coloring and uses a palmer supinate grasp to scribble with her right hand while stabilizing the paper with her left hand. She requires cuing to point with an isolated index finger and prefers to gesture with her whole hand. Brianna presents with mild hypotonia throughout her body. She is not yet jumping in any manner, possibly due to decreased planta flexion strength, as she is not able to take steps on tip toes yet. She creeps up stairs when she does not have adult support to manage the stairs instancing.

(Exh. 6 at pp. 6-7 [A39-A40].) Ms. Plank opined, "At this time, [Claimant] would benefit from reinitiating Physical Therapy, continuing with Occupational Therapy and Speech Therapy and initiating Infant Stimulation when providers can be matched with [Claimant's] schedule." (Exh. 6 at p. 7 [A40].)

8. A February 28, 2022 Speech and Language Progress Report, admitted in evidence as Exhibit 12, establishes Claimant began receiving speech and language therapy in July 2021 to address her expressive language delays. The reporting speech-language pathologist notes Claimant's progression since the initiation of therapy as follows:

> [Claimant] has made measurable progress with her expressive language skills as she is imitating and spontaneously using words and phrases to label items and people in her environment. She will follow one-step directions with moderate verbal and gestural cues. Since

> initiating therapy, her expressive language has grown from gesturing, pointing, and approximately four words to currently spontaneously/imitating over 50 words and phrases . . . . While she is making measurable progress, [Mother] has reported that [Claimant] continues to say "uh" and gesture when she is making requests, however [Mother] "feels like [Claimant] can do it." [Mother] reported concerns regarding some errors or missing sounds such as "d" in her sound inventory. . . . .
>
> [Claimant] presents with several phonological processes (i.e. pattern of sound errors used to simplify speech) at this time that may reduce her overall clarity of speech. She presents with appropriate facial symmetry and occlusion is within normal range. [Claimant] has been observed to use a "softer" voice when expressing her wants and needs. [Claimant] will attend to tasks, especially when preferred. She requires minimal verbal and gestural requests to come back to the activity.

(Exh. 12 at p. 2 [A85].)

## Provisional Eligibility for Lanterman Act Services and Supports

9. When Claimant was a three-year, one-month-old child, Carol Kelly, Ed.D., conducted a psychological evaluation of Claimant to determine Claimant's eligibility for Lanterman Act services and supports. Dr. Kelly administered the following assessments to Claimant: the Wechsler Preschool and Primary Skills of Intelligence-

Fourth Edition (WPPSI-IV), the Childhood Autism Rating Scale-Second Edition (CARS-2) and the Vineland Adaptive Behavior Scales-Third Edition (VABS-3). In a February 2, 2023 *Psychological Evaluation* Dr. Kelly prepared the following summary of her findings:

> [Claimant's] cognitive skills were measured using the WPPSI-IV. [Claimant's] composite score on tests measuring Verbal Comprehension fell within the low average range. Her score on tests measuring Visual Spatial skills was in the average range. Her Full-Scale Composite [FSIQ] score fell within the low average range. [Claimant's] mother was interviewed using the VABS-3. [Claimant's] communication, daily living, socialization and motor skills fell within the borderline range.
>
> This examiner administered the CARS-2 and on this instrument, [Claimant] was not found to meet the criteria for a diagnosis of an autism spectrum disorder. Mother expressed concern that [Claimant's] behavior has changed in the past six months. [Mother] said [Claimant] has started stuttering and "cries when anyone looks at her." [Claimant] loves her preschool program but cries in the morning when mother is getting her ready to go. [Mother] said, "[Claimant] cries for anything and all transitions are hard." [Mother] said getting [Claimant] dressed is a struggle as is leaving the house to go to her program. [Claimant] is said to be "clingy" with mother and is having some separation issues when

> taken to her program. [Mother] said if a stranger says "hello" to [Claimant] she cries. It is suspected by this examiner that [Claimant's] behavioral changes may be related to the birth of her baby sister and the changes that have occurred in the home as a result of the new addition to the family.
>
> [Claimant] was receiving speech and occupational therapy while in Early Start program at WRC. She was also referred for physical therapy. It was difficult for this examiner to assess her speech during the test session because she was not very verbal. Although she is reported to have a vocabulary of 50 words, the words she used during the session were minimal and not clear. At this juncture a rule out diagnosis of Language Disorder will be tendered with the suggestion that she have a speech assessment conducted through the local school district. Also, mother has expressed concern that [Claimant's] motor skills are not well developed, and an occupational therapy assessment should be conducted to determine if she needs to continue receiving therapy.

(Exh. 7 at p. 5 [A46].) Dr. Kelly rendered a diagnosis of Rule Out Language Disorder.

10. In February 2023, WRC deemed four-year-old Claimant provisionally eligible for Lanterman services and supports without a formal developmental disability diagnosis.

## WRC's Eligibility Review

### MELISSA BAILEY, PSY.D.

11. In July and September 2024, when Claimant was a four-year, six-month-old child, Melissa Bailey, Psy. D. revaluated Claimant. Dr. Bailey's revaluation included administration of the following assessments to Claimant: the VABS-3, the Kaufman Brief Intelligence Test-Second Edition Revised (K-BIT2), the Autism Diagnostic Observation Schedule-Second Edition (ADOS-2), the Autism Spectrum Ratings Scales, and the Conner's Early Childhood Report. In the Psychological Evaluation she prepared, Dr. Bailey reports her summary and conclusions as follows:

> [Claimant] was born following [an] uncomplicated full-term pregnancy. According to [M]other, she was delayed on all milestones. She has obesity and seizures. . . . .She has no other major illnesses, injuries, or surgeries. No problems with vision or hearing were noted.
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> There is no family history of any type of developmental delays or mental health concerns. Mother states that [Claimant] has a difficult time with children her own age. She does better with older children. She has temper tantrums. She tends to be obsessed with food. She has some difficulty with transition. She will stare off and clap her hands. She has issues with sand and slime. She is not in any type of therapy; however, when she was younger, she received infant stimulation and occupational, physical and speech therapy. She has separation anxiety. She has been

known to have temper tantrums and throw herself on the floor. The family denies any type of traumatic events. There is no evidence of any type of abuse. [Claimant] attends preschool from 9 to 3. They are considering homeschooling. The rest of the day [Claimant] is with her mother. The examiner was able to review a previous assessment by Dr. Carol Kelly, which indicated that [Claimant] had a diagnosis of rule out language disorder. Dr. Kelly indicated that on the CARS-2, [Claimant] was not found to meet the diagnosis of autism spectrum disorder.

The [WRC] requested a psychological evaluation for the purpose of diagnostic clarification and ongoing eligibility. The examiner administered the [K-BIT2]. Overall, when she was 3 years of age, her scores are solidly in the low average range. She did have more difficulty when there was not a visual stimulus involved. She also appeared to be somewhat distractible. These scores are most likely an under representation of her true abilities.

Adaptively, according to the [VABS-3], according to [Claimant's] mother, overall [Claimant] is functioning in the delayed range. [Claimant] shows a relative strength related to daily living skills and motor skills. Her socialization and communication skills are both in the delayed range of functioning. The examiner also sent [Claimant's] mother several inventories, including the autism spectrum rating

scales. However, it does appear that both on the autism spectrum rating scales and the Connor's Early Childhood Intervention Scores that mother may have over reported. There were several scores which were in the heightened area, which indicate that there may have been over-reporting. On the Early Childhood Intervention, it does not appear that [Claimant] has significant issues related to defiant behavior and inattention. She also has some poor social functioning.

Based on the examiner's review of all current information and the [ADOS-2], it is the examiner's opinion that [Claimant] does not meet criteria for autism spectrum disorder at this time. During the evaluation, she showed a wide range of affects. She did not engage in any stereotypical or repetitive behavior. Occasionally, she did answer information randomly, but she offered information as well. She talked to her sister. She brought things to her mother. She also engaged in joint attention. Instead, it is the examiner's opinion that most likely [Claimant] does have a language disorder, which is evidenced by her difficulty with receptive language, particularly when there is not a visual stimulus involved. Furthermore, she was quite hyperactive during the evaluation. As a result, her cognitive scores are probably an underestimation of her true abilities.

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(Exh. 8 at p. 8-9 [A55-A56].) Dr. Bailey opined Claimant meets the diagnostic criteria for Attention Deficit Hyperactivity Disorder, combined presentation and Language Disorder.

### KRISTEN M. PRATER, PSY.D.

12. In March 2025, when Claimant was a five-year, three-month-old child, Kirsten M Prater, Psy.D., a psychological associate working under the supervision of Rebecca R. Dubner, Psy.D., a licensed psychologist, evaluated Claimant to determine whether Claimant presented with autism spectrum disorder or intellectual disability. Dr. Prater administered the following assessments to Claimant: the Wechsler Preschool and Primary Scales for Intelligence-Fifth Edition (WPPSI-V), the VABS-3, the Childhood Autism Rating Scale, Second Edition, Standard Version (CARS-2-ST) and the Autism Diagnostic Interview, Revised (ADI-R). In the Psychological Assessment Dr. Prater prepared, she provides the following summary of her findings:

> [Claimant's] intellectual abilities were evaluated with the WPPSI-IV. She required high levels of praise and prompting to perform for this assessment. Her performance indicated that her skills are in the **Average** range in Verbal Comprehension. Her Visual-Spatial skills were assessed in the **Borderline** range. Her Fluid Reasoning skills were evaluated in the **Low Average** range. Her working memory and processing speed skills were assessed with only one subtest each, yet her scores reflected **average** and **low average** skills, respectively. Her FSIQ also fell within the **Low Average** range. These scores should be shared with her educational team to ensure they are supporting her

cognitive growth. Considering her behaviors within the interview process and scores on cognitive testing, [Claimant's] visual-spatial skills are an area of deficit. It is important to address these spatial relationship difficulties early, as this skill will be particularly beneficial in her academic career in mathematics, reading, and navigating her environments.

The current assessment results indicate that [Claimant's] adaptive functioning falls within the **Moderately Low** range average based on the results of the [VABS-3]. [Claimant's ] scores in the Socialization and Daily Living Domains fell in the **Moderately Low** range, and her score for the Communication domain fell within the **Low** range. Considering her cognitive abilities, [Claimant's] adaptive skills may be impacted by her behavior and/or environmental expectations.

Based on the present evaluation, including her scores on the CARS [*sic*] and ADI-R, [Claimant] did not present with deficits in communication or socialization. She did not present with repetitive behaviors. Neither the CARS-2 [*sic*] nor the ADI-R indicated clinically non-significant scores for diagnostic criteria of Autism Spectrum Disorder . . . . Based on observation of [Claimant], interviews with her mother, and data from standardized testing, [Claimant] **does not meet** the diagnostic criteria for Autism Spectrum Disorder.

> [Claimant] was referred for a psychological assessment to assess for Autism Spectrum Disorder and intellectual functioning. At this time, [Claimant] does not meet the diagnostic criteria for a developmental disability. [Claimant's] cognitive scores indicate potential deficits in visual processing, which may be addressed with vision therapy and/or occupational therapy. [Claimant's] communication appears to be within age-appropriate limits. She appears to be meeting her self-care needs and did not display substantial deficits in self-direction. She was able to share her play skills and has clearly developed relationships with her peers. [Claimant's] mother describes her as clumsy, which may be alleviated with occupational therapy.

(Exh. 9 at pp. 9-10 [A71-A72]; original emphasis.) Dr. Prater's diagnosis is reported as "No Diagnosis."

### KARESHA GAYLES, PSY.D.

13. Karesha Gayles, Psy.D., is a WRC staff psychologist and member of its multidisciplinary staffing team. At hearing, Dr. Gayles explained the composition and function of the WRC multidisciplinary staffing team and its processes for determining eligibility for Lanterman Act services and supports. Dr. Gayles testified, in this matter, the multidisciplinary staffing team consisted of herself as an Autism Specialist; Tom Kelly, Ph.D., in his capacity as Manager/Staff Psychologist; Ari Zeldin, M.D., in his capacity as Physician; and Mayra Mendez, Ph.D., LMFT, in her capacity as Psychology Consultant. The multidisciplinary staffing team reviewed and considered the reports of Dr. Carol Kelly, Dr. Melissa Bailey, and Dr. Kristen Prater and determined Claimant has

"no eligible Regional Center condition," as documented in the Westside Regional Center Diagnostic/Eligibility Sheet admitted in evidence as Exhibit 10.

## Claimant's Evidence in Support of Eligibility for Lanterman Act Services and Supports

14. Mother maintains Claimant exhibits "significant delays." She testified Claimant "saw many doctors who was *[sic*] never able to say why she was delayed." Mother further testified Claimant is diagnosed with a "genetic mutation" that "shows up in different ways at every age." Mother asserted, "It's like an intellectual disability. [Claimant] needs extra support in everything that she does."

15. In support of her advocacy on behalf of Claimant, Mother proffered a Genetic Test Report, admitted in evidence as Exhibit 13, which reports a sample of Claimant's buccal mucosa tested positive for Distal 16p11.2 microdeletion syndrome.

16. A chapter from *GeneReviews*, published by the U.S. National Library of Medicine, admitted in evidence as Exhibit 14, provides the following information on the clinical features associated with Distal 16p11.2 microdeletion syndrome. Some of the clinical features are consistent with the behaviors observed by the professionals assessing Claimant's eligibility for Lanterman Act services and supports.

a. Developmental Delay: Most if not all individuals experience some degree of developmental delay, although the severity varies. Developmental coordination (motor) disorder is one of the most common, followed by phonologic processing disorder, language disorders, and autism spectrum disorder. Individuals perform worse on functional motor tasks, have lower endurance, and generally walk and run slower than siblings without the deletion.

Delays in Claimant's motor development are a persistent concern. Ms. Plank, the physical therapist, reports as a 26 month, five-day-old toddler, Claimant presented to her with mild hypotonia or muscle weakness. (Exh. 6. at p. 7 [A40].) As a three-year, one-month old, Dr . Kelly scored Claimant as falling within the Borderline range on the Motor Skills Domain of the VABS-3. (Exh. 7 at p.4 [A45].) When Claimant was a four-year, six-month-old child, Dr. Baily reported Claimant is able to walk up and downstairs alternating her feet, pedal a tricycle, and hop on one foot. (Exh. 8 at p. 5 [A52].) When Claimant was a five-year, three-month-old, Dr. Prater reported Claimant confidently performed basic activities like jumping or walking while recognizing room for ongoing development, including refining Claimant's ability to run smoothly, ride a bicycle, and catch small balls. Dr. Prater reported Claimant exhibited fine motor proficiency picking up objects and executing movement with her hands, although Claimant occasionally struggled with precision tasks like drawing shapes or coloring within the lines. (Exh. 9 at p. 9 [A71].)

b. Cognitive Impact: Most affected individuals do not have intellectual disability but may have below average cognition and learning disabilities in both verbal and nonverbal domains.

Dr. Kelly, Dr. Bailey, and Dr. Prater unanimously characterize Claimant's overall intellectual functioning as Low Average but do not conclude Claimant meet criteria for intellectual disability.

c. Psychiatric Disease and Behavioral Issues: Individuals are at increased risk for psychiatric diagnoses. Attention-Deficit Hyperactivity Disorder is common in approximately 35 percent of individuals with the deletion.

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Dr. Bailey noted Claimant "was quite hyperactive during . . . evaluation." (Exh. 8 at p. 9 [A56].) Dr. Bailey opined Claimant meets the diagnostic criteria for Attention Deficit Hyperactivity Disorder, combined presentation.

d. Motor Speech Disorders: Approximately 80 percent of children with the deletion present with a motor speech disorder such as childhood apraxia of speech, a neurological disorder affecting the brain's ability to plan and sequence muscle movement for speech, and dysarthria, weakness, paralysis, or incoordination of the muscles resulting in slurred, slow, weak, or breathy speech.

The evidentiary record does not disclose whether Claimant presents with a motor speech disorder.

e. Language Disorder: More than 80 percent of individuals demonstrate both receptive and expressive deficits. Pragmatic language impairment is also common, even among individuals without an autism spectrum diagnosis.

Claimant has an early history of speech and language therapy to address delays in her expressive language. (Exh. 12.) In subsequent assessments, Dr. Kelly determined Claimant's score on the Communication Domain of the VABS-3 fell within the Borderline range and Dr. Kelly gave Claimant a diagnosis of rule out Language Disorder. (Exh. 7.) Dr. Bailey reported that, according to Mother, Claimant does not always respond to questions that begin with where or when; does not always follow an action with two steps; does not always use nouns; does not use pronouns to refer to others; and does not always recognize alphabet letters. Dr. Bailey determined Claimant's receptive, expressive, and written communication functioning is within the delayed range. (Exh. 8.) Dr. Bailey opined, "[M]ost likely [Claimant] does have a language disorder, which is evidenced by her difficulty with receptive language,

particularly when there is not a visual stimulus involved." (Exh. 8 at p. 9 [A56].) Dr. Parter reported Claimant does not engage in stereotyped utterances or delayed echolalia and concluded Claimant's communication quality does not meet the diagnostic criteria for Autism Spectrum Disorder. (Exh. 9.)

f. Obesity: Obesity generally emerges in childhood and the prevalence of being overweight and obesity is higher than in the general population.

Dr. Bailey reported Claimant tends to over eat and has obesity. (Exh. 8 at p. 2 [A49].)

g. Autistic features: Although not all individuals with Distal 16p11.2 microdeletion syndrome meet diagnostic criteria for Autism Spectrum Disorder, almost all have some behavioral traits shared with Autism Spectrum Disorder, including insistence on sameness, reduced scope of interest, repetitive behaviors, and problems with social communication.

Dr. Kelly reported, "This examiner administered the CARS-2 and on this instrument, [Claimant] was not found to meet the criteria for a diagnosis of an autism spectrum disorder." (Exh. 7 at p. 5 [A46].) Dr. Bailey reported, "Based on the examiner's review of all current information and the Autism Diagnostic Observation Schedule, it is the examiner's opinion that [Claimant] does not meet the criterial for autism spectrum disorder at this time" (Exh. 8 at. p. 8 [A55].) Dr. Prater reported selecting the CARS-2-ST "because of [Claimant's] current age and skill set and concluded based this measurement and observation, Claimant "**did not** present with behaviors typical of children with Autism Spectrum Disorder." (Exh. 9 at p. 5 [A67]; original emphasis.)

h. Seizures: Twenty-five percent of individuals experience benign familial infantile seizures and infantile convulsions.

Dr. Prater reported Mother is vigilant of Claimant's health because Claimant's physician informed her seizures are associated with Claimant's genetic condition. (Exh. 9 at p. 2 [A64].) The evidentiary record does not reflect whether Claimant has actually experienced any seizures.

17. Mother additionally submitted a January 7, 2026 letter authored by a licensed clinical social worker providing Claimant and her family with therapy services, including behavioral counseling services. The letter states, among other things, the following:

> Services are focused on supporting the family functioning, caregiver guidance, and the development of strategies to address behavioral, emotional regulation, and adaptive skill needs within the home environment. Interventions include parent support, skill-building, and family-based therapeutic approaches aimed at promoting stability, consistency, and effective coping strategies.

(Exh. A)

18. In January 2026, the WRC multidisciplinary staffing team reconvened, considered Claimant's diagnosis for Distal 16p11.2 microdeletion syndrome along with the licensed clinical social worker's January 7, 2026 letter, and "determined that the decision that Claimant is ineligible for Regional Center remains unchanged." (Exh. 18.)

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# LEGAL CONCLUSIONS

## Standard and Burden of Proof

1. As Claimant is seeking to establish eligibility for Lanterman Act services and supports, she has the burden of proving by a preponderance of the evidence that she has met the criteria for eligibility. (*Lindsay v. San Diego Retirement Bd*. (1964) 231 Cal.App.2d 156, 161 [disability benefits]; *Greatorex v. Board of Admin*. (1979) 91 Cal.App.3d 54, 57 [retirement benefits]; Evid. Code, § 500.)

2. "'Preponderance of the evidence means evidence that has more convincing force than that opposed to it.' (Citations.) . . . [T]he sole focus of the legal definition of 'preponderance' in the phrase 'preponderance of the evidence' is the *quality* of the evidence. The *quantity* of the evidence presented by each side is irrelevant." (*Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314, 324-325, original italics.) In meeting the burden of proof by a preponderance of the evidence, Claimant "must produce substantial evidence, contradicted or un-contradicted, which supports the finding." (*In re Shelley J*. (1998) 68 Cal.App.4th 322, 339.)

## Applicable Law

3. The Lanterman Act defines "developmental disability" to mean the following:

> [A] disability that originates before an individual attains age 18 years, 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 intellectual disability, but shall not include other handicapping conditions that are solely physical in nature.

(Welf. & Inst. Code, §4512, subd. (a).)

4. California Code of Regulations, title 17 (CCR), section 54000 further defines "developmental disability" as follows:

> (a) "Developmental Disability" means a disability that is attributable to intellectual disability, cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with intellectual disability.
>
> (b) The Developmental Disability shall:
>
> (1) Originate before age eighteen;
>
> (2) Be likely to continue indefinitely;
>
> (3) Constitute a substantial disability for the individual . . . ;
>
> (c) Developmental Disability shall not include handicapping conditions that are:
>
> (1) Solely psychiatric disorders where there is impaired intellectual or social functioning which originated

as a result of the psychiatric disorder or treatment given for such a disorder. Such psychiatric disorders include psycho-social deprivation and/or psychosis, severe neurosis or personality disorders even where social and intellectual functioning have become seriously impaired as an integral manifestation of the disorder.

(2) Solely learning disabilities. A learning disability is a condition which manifests as a significant discrepancy between estimated cognitive potential and actual level of educational performance and which is not a result of generalized mental retardation, educational or psycho-social deprivation, psychiatric disorder, or sensory loss.

(3) Solely physical in nature. These conditions include congenital anomalies or conditions acquired through disease, accident, or faulty development which are not associated with a neurological impairment that results in need for treatment similar to that required for intellectual disability.

5. Establishing the existence of a developmental disability within the meaning of section 4512, subdivision (a), requires Claimant additionally to establish by a preponderance of evidence the developmental disability is a "substantial disability," defined in section 4512, subdivision (*l*), to mean "the existence of significant limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person: (1) Self-care. [¶] (2) Receptive and expressive language. [¶] (3) Learning. [¶] (4) Mobility. [¶] (5) Self-

direction. [¶] (6) Capacity for independent living. [¶] (7) Economic self-sufficiency." (See also CCR, § 54001, subd. (a).) CCR section 54002 defines "cognitive" as "the ability of an individual to solve problems with insight to adapt to new situations, to think abstractly, and to profit from experience."

## Discussion

6. Intellectual Disability is characterized by significant limitations in intellectual functioning and adaptive behaviors that are both present before the age of 18. Dr. Kelly, Dr. Bailey, and Dr. Prater administered to Claimant psychometrically sound and generally accepted tests of cognitive or intellectual functioning. They unanimously reported Claimant's overall intellectual functioning scores are within the Low Average range. Any score purporting to represent Claimant's intellectual capacity must be considered in conjunction with Claimant's adaptive functioning in real life situations requiring age-appropriate reasoning, judgment, understanding, problem-solving and other cognitive skills. Dr. Kelly, Dr. Bailey, and Dr. Prater characterized the range of Claimant's adaptive functioning as "borderline," "delayed," and "moderately low," respectively. Notably, however, these characterizations were qualified. Dr. Kelly suspected that, at the time of her evaluation of Claimant's adaptive functioning, Claimant's behaviors concerning Mother were influenced by the birth of Claimant's baby sister and concomitant changed household dynamics. Dr. Bailey attributed her reported delays in Claimant's adaptive functioning to possible "over-reporting" by Mother and inattention and defiant behaviors by Claimant. Dr. Prater identified environmental expectations as a factor affecting the moderately low range within which she assessed Claimant's adaptive functioning. Regardless, Claimant's intellectual capacity or functioning is not comparable or similar to that of individuals with intellectual disability. Individuals with intellectual disability are characterized by

significant limitations in cognitive functions and deficits in adaptive functioning. The evidence of Claimant's intellectual or cognitive functioning is not indicative of an individual with intellectual disability. A preponderance of the evidence does not establish Claimant is eligible for Lanterman Act services and supports under a qualifying diagnosis of intellectual disability.

7. Cerebral palsy is a non-progressive, life-long disorder caused by abnormal brain development or damage before, during, or shortly following birth that impacts movement, muscle tone, and posture. Although Claimant's delayed motor skills or difficulties with motor coordination have been concern, neither Mother nor the healthcare professionals assessing Claimant maintain Claimant presents with cerebral palsy. A preponderance of the evidence does not establish Claimant is eligible for Lanterman Act services and supports under a qualifying diagnosis of cerebral palsy.

8. The defining characteristic of epilepsy is recurrent seizures. The evidentiary record does not reflect whether Claimant experienced any seizures. A preponderance of the evidence does not establish Claimant is eligible for Lanterman Act services and supports under a qualifying diagnosis of epilepsy.

9. The essential diagnostic features of autism are deficits in social communication and interaction and restricted repetitive patterns of behavior, interests and activities. These deficits must be present from early childhood and limit or impair everyday functioning. Dr. Kelly administered the CARS-2 to Claimant and determined Claimant does not meet criteria for Autism Spectrum Disorder. Dr. Bailey administered the ADOS-2 to Claimant and determined Claimant does not meet criteria for Autism Spectrum Disorder. Dr. Prater administered the CARS-2-ST and the ADI-R to Claimant and determined Claimant does not meet criteria for Autism Spectrum Disorder. Nothing in the evidentiary record refutes the determinations of Dr. Kelly, Dr. Bailey, or

Dr. Prater. A preponderance of the evidence does not establish Claimant is eligible for Lanterman Act services and supports under a qualifying diagnosis of autism.

10. Claimant has not proven by a preponderance of evidence she presents with a condition related to intellectual disability. Claimant presents with 16p11.2 deletion syndrome, a genetic condition associated with developmental delays, language impairments, and motor delays. None of the clinical assessments of Claimant by Dr. Kelly, Dr. Bailey, and Dr. Prater indicates intellectual disability accompanies Claimant's genetic condition. Having the deletion alone does not render Claimant eligible for Lanterman services and supports.

11. Claimant has not proven by a preponderance of the evidence she presents with a condition requiring treatment similar to that required by an individual with intellectual disability. "Treatment" is about instruction. For an individual with intellectual disability, treatment entails breaking down skills into small steps and systematically and repeatedly practicing those steps with the individual. (See *Max C. v. Westside Regional Center* (Oct. 12, 2018, B283062 [nonpub. opn.].) Treatment is distinct from "service," which is something intended to aid or help. (*Ibid.*) In this case, Claimant has a history of services, including the speech and language therapy to address Claimant's expressive and receptive language delays, the physical therapy to address delays in Claimant's gross motor skills, and the occupational therapy to build Claimant's fine motor skills and daily living skills. A preponderance of the evidence does not supports a finding Claimant presents with a condition closely related to intellectual disability or requires treatment similar to that required by a person with intellectual disability.

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12. As Claimant does not present with a developmental disability, it is not necessary to determine whether Claimant is substantially disabled, as defined in the Lanterman Act.

13. By reason of Legal Conclusions 1 through 12, cause exists to deny Claimant's appeal. Claimant has not met her burden of establishing by a preponderance of the evidence her eligibility for Lanterman Act services and supports under section 4512, subdivision (a), of the Welfare and Institutions Code

## ORDER

1. Claimant's appeal is denied.

2. Westside Regional Center's determination that Claimant is ineligible for Lanterman Act services and supports is affirmed.

DATE:

JENNIFER M. RUSSELL
Senior 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 decision.