

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

In the Matter of:

CLAIMANT

and

SOUTH CENTRAL LOS ANGELES REGIONAL CENTER,

Service Agency.

DDS No. CS0033160

OAH No. 2026010236

DECISION

Administrative Law Judge (Hearing Officer) Chantal M. Sampogna, Office of Administrative Hearings, State of California, heard this matter by videoconference on February 20, 2026.

Mother, Claimant's authorized representative, appeared on behalf of Claimant, who was not present. (Titles are used to protect the privacy of Claimant and her family.)

Tami Summerville, Appeals Manager for South Central Los Angeles Regional Center (Service Agency), appeared on behalf of Service Agency.

Testimony and documents were received in evidence. The record closed and the matter was submitted for decision on February 20, 2026.

ISSUES

1. Whether Claimant's Autism Spectrum Disorder (ASD) constitutes a substantial disability as defined by the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.). (Statutory references are to the Welfare and Institutions Code unless otherwise designated.)

2. Whether Claimant is eligible for regional center services under the Lanterman Act.

EVIDENCE RELIED UPON

Documents: Service Agency's Exhibits 1 through 5; Claimant's Exhibit A.

Testimony: Laurie McKnight Brown, Ph.D.; Mother.

SUMMARY

Mother referred Claimant, her 10-year-old daughter, to Service Agency to be assessed for eligibility under the Lanterman Act. Mother has concerns about Claimant's persistent emotional dysregulation and inflexible behaviors, avoidance of public spaces, and her challenges with communication and forming relationships with others. Service Agency conducted a psychological evaluation of Claimant and reviewed

Claimant's recent school progress report. Service Agency concluded Claimant has ASD but found she is only substantially disabled in the major life activity of self-direction.

Service Agency denied Claimant's request for eligibility because the Lanterman Act requires an individual to be substantially disabled in at least three major life activities. However, Service Agency's assessment of how Claimant's ASD impacts her major life activities was not consistent with the results of the psychological evaluation or the applicable guidelines. Contrary to Service Agency's assessment, Claimant's ASD constitutes a substantial disability in four areas of major life activities: self-direction, receptive and expressive language, learning, and capacity for independent living. Accordingly, Claimant is eligible for services under the Lanterman Act. Claimant's appeal is granted.

FACTUAL FINDINGS

Jurisdiction

1. Claimant is 10 years old and resides with Mother, her father, her three sisters, 19-, 16-, and 11-years old, her 18-year-old brother, and her one-year-old nephew. Claimant attends an elementary school (school) within the Los Angeles Unified School District (District), and is currently in the fourth grade.

2. In September 2025, Mother referred Claimant to Service Agency for an eligibility assessment.

3. On September 29, 2025, Service Agency Service Coordinator (SC) Jacqueline Arande conducted a psychosocial assessment of Claimant. On October 14

and 17, 2025, Psychological Associate Angela Hopseker, Psy.D., conducted a psychological evaluation of Claimant on behalf of Service Agency.

4. On November 25, 2025, Service Agency issued a Notice of Action informing Claimant she was not eligible for services under the Lanterman Act.

5. On January 5, 2026, Claimant submitted a timely Request for a Fair Hearing.

6. Jurisdictional requirements have been met.

Claimant's Assessments

PSYCHOSOCIAL ASSESSMENT

7. On September 29, 2025, SC Arande conducted a psychosocial assessment of Claimant. During the psychosocial assessment, SC Arande asked general intake questions of Mother and made preliminary observations of Claimant. SC Arande documented her findings in Claimant's Psychosocial Assessment report (Exh. 2).

8. SC Arande observed Claimant does not have challenges with mobility; Claimant has a normal gait and, per Mother's responses, is physically active, able to ride a bicycle and scooter without challenge. SC Arande also observed that while Claimant's speech is easily understood, she struggles to speak in complete sentences that express full ideas, and she often responds with delays, having difficulty organizing her thoughts.

9. Regarding self-care, Claimant has strengths in her ability to prepare herself food, such as by making a sandwich or warming up food in the microwave, and dressing herself. Claimant clears and washes her plates with some success, and places

her clothes in the washing machine. In addition, Claimant showers independently; however, even with reminders she only showers at most once per week. Finally, Claimant requires supervision when crossing the street.

10. Claimant struggles with communication and social, emotional, and behavioral challenges. Mother explained that Claimant fails to understand the impact of her statements. For example, Claimant stated to her 16-year-old sister, who is currently in remission from cancer, "You're bald because you have cancer"; and will make comments to others such as, "that's why you're fat." (Exh. 2, p. A25.)

11. Claimant is socially withdrawn and avoids public places. For example, Claimant chooses to not attend family events or have her own birthday celebrations, and declined an opportunity to go to Knotts Berry Farm, stating she preferred to be at home. Claimant is focused on animals, spending time with her guinea pig, visiting the animal shelter weekly, and going to PetCo and Pet Smart.

12. Claimant is emotionally dysregulated, often experiencing mood swings and displaying tantrums when her needs are not met. For example, while at PetCo, when Mother told Claimant she could not get a second guinea pig, Claimant threw herself to the floor in a tantrum and attempted to grab items off the shelves. Mother needed the assistance from her older daughter to contain Claimant and help her calm down. Claimant becomes similarly dysregulated when there is a change in plans.

13. Regarding academics, Claimant struggled in first and second grade, improved in third grade, but has been struggling during the current school year. Claimant attempts to avoid attending school and completing homework independently. Mother explained Claimant struggles with focus, comprehension,

concentration, and task completion. Claimant does not have an Individualized Education Program (IEP).

PSYCHOLOGICAL EVALUATION

14. On October 14 and 17, 2025, Psychological Associate Angela Hopseker, Psy.D., conducted a psychological evaluation of Claimant on behalf of Service Agency. Dr. Hopseker's explanation of the tests she administered to Claimant, observations, findings, and recommendations are summarized in her Psychological Evaluation report (report) (Exh. 3). Dr. Hopseker's evaluation and report were overseen and approved by Licensed Psychologist Belle Calkin, Psy.D.

15. Dr. Hopseker administered the following assessments to Claimant: Kaufman Assessment Battery for Children, Second Edition, Non-Verbal Index (KABC-II); Wide Range Achievement Test – 5th Edition (WRAT-5); Vineland Adaptive Behavior Scales, Third Edition Survey Interview Form (VABS-3); Autism Spectrum Rating Scale Short Form (ASRS); Autism Diagnostic Observation Schedule, Second Edition (ADOS-2); and the Autism Diagnostic Interview – Revised (ADI-R). Dr. Hopseker based her findings and recommendations on the results of the evaluations, her interviews with Mother and Claimant, and her clinical observations.

KABC-II Non-Verbal Index

16. The KABC-II measures cognitive functioning. Dr. Hopseker selected the non-verbal index to minimize the potential for low scores caused by language deficits, or cultural biases or differences. Claimant's Full Scale score on the KABC-II was 82, placing her in the 10th percentile in the low average range for cognitive functioning. (Exh. 3, p. A39.) The KABC-II subtest scaled scores rank a score between 7 and 13 as average, and between 4 and 6 as below average. Claimant scored 5 on the Story

Completion subtest; scored 7s on the Triangles, Block Counting, and Pattern Reasoning subtests; and 10 on the Hand Movements subtest. The Story Completion subtest measures sequencing, fluid reasoning, and awareness of social conventions. The four remaining subtests measured visual motor coordination, abstract problem-solving, fluid reasoning, spatial reasoning and simultaneous processing, abstract reasoning, non-verbal concept formation, working memory, and concentration.

WRAT-5

17. The WRAT-5 measures basic academic skills of reading, spelling, and basic mathematical calculations, necessary for effective learning, communication, and thinking. Claimant scored low average on the spelling and math computation subtests and average on the word reading subtest.

VABS-3

18. The VABS-3 measures an individual's adaptive functioning, i.e., practical everyday skills required to function and negotiate environmental demands. The VABS-3 yields an Adaptive Behavior Composite Score with domain-skill area classification scores for Claimant's age group within the following areas: Communication (Receptive, Expressive, and Written); Daily Living Skills (Personal, Domestic, and Community); Socialization (Interpersonal Relationships, Play and Leisure Time, and Coping Skills); and Motor Skills (Gross Motor and Fine Motor).

19. Claimant's Adaptive Behavior Composite score was 70, placing her in the second percentile (meaning her score was greater than or equal to two percent of individuals in her age group). Claimant's Communication Domain score, which measures how well an individual exchanges information with others, was 71, placing her in the third percentile. Claimant's Daily Skills score, which measures an individual's

performance of practical everyday tasks of living, was 78, placing her in the seventh percentile. Claimant's Socialization score, which measures an individual's functioning in social situations, was 62, placing her in the first percentile.

20. The VABS-3 organizes testing results into categories of strengths or weaknesses. Claimant's VABS-3 scores showed Claimant's area of strength was in her community and domestic daily living skills and expressive communication. Claimant's areas of weakness were in socialization, both interpersonal relationship and play and leisure. On the maladaptive domain, which assesses problem behaviors, Claimant scored 22 for internalizing (emotional) and 20 for externalizing (acting out), scores which exceed the elevated range and place her in the clinically significant range for maladaptive behaviors.

ADI-R

21. The ADI-R is a diagnostic measure for ASD. The interview is conducted with parents or caretakers knowledgeable about the individual's current behavior and developmental history. The questions address the triad of symptoms related to ASD: Language and Communication; Reciprocal Social Interactions; and Restricted, Repetitive, and Stereotyped Behaviors and Interests. (Exh. 3, p. A34.)

22. Claimant's scores on the ADI-R exceeded the cutoff scores in all the Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition -Text Revision (DSM-5-TR), criteria for ASD. In the area of Abnormalities in Reciprocal Social Interaction, Claimant scored 13, where the ASD cut-off is 10. In the area of Abnormalities in Communication, Claimant scored 8, where the ASD cut off is 7; and in the area of Restricted and Stereotypic Patterns of Interest, Claimant scored 8, where the ASD cut off is 3.

23. Claimant demonstrated abnormalities in reciprocal social interaction as communicated by Mother and observed by Dr. Hopseker. Claimant does not engage in consistent eye contact with unfamiliar people, she does not always respond when her name is called, and she does not engage in social smiling. Claimant's facial expressions can be neutral or "blank," even when praised for effort, and she often laughs in inappropriate situations. (Exh. 3, p. A3.) Claimant does not like to share and her communication through eye contact and vocalizations is weakly integrated. Recently Claimant has interacted more with her peers, but she does not always express interest in doing so.

24. Claimant demonstrated abnormalities in communication. Claimant sometimes uses speech, but only with familiar people. Claimant engages in reciprocal conversations but only with certain people, and she provides brief responses to others. Claimant often uses stereotyped and idiosyncratic speech, and socially inappropriate speech.

25. Claimant demonstrated restricted, repetitive, and stereotyped patterns of behaviors. Claimant has a strong interest in animals and frequently talks about them. She becomes distressed when she is informed about a change of plans or when things occur unexpectedly. Claimant engages in repetitive speech and has difficulty sitting still, and fidgeted throughout the evaluation. Claimant is sensitive to loud noises at times, including crowded places with loud noises.

ADOS-2

26. The ADOS-2, Module 3 is also a diagnostic measure administered to assess possible characteristics of ASD. During Dr. Hopseker's ADOS-2 observation, Claimant exhibited appropriate but limited eye contact and directed a limited range of

appropriate facial expressions to Dr. Hopseker and typically appeared blank. Claimant did not demonstrate shared enjoyment when engaged in conversation; although she used both nonverbal and verbal communication, she did so only in response to Dr. Hopseker's initiation, and Claimant did not engage in reciprocal communication. Claimant spoke at a low volume and did not use clear articulation; she nodded and shook her head, but she did not use other gestures. Overall, Claimant's score was consistent with a classification of ASD, with a high level of ASD-related symptoms.

ASRS

27. The ASRS, when used in combination with other information, can help determine the likelihood that a child has symptoms associated with ASD. Ratings on the Total Score scale indicate the extent to which the child's behavioral characteristics are like the behaviors of children diagnosed with ASD. Claimant's ratings on the ASRS scale yielded a T-score of 73, ranked at the 99th percentile, and fell in the Very Elevated range. (Exh. 3, p. A35.) Dr. Hopseker concluded Claimant's pattern of scores on the ASRS indicate she has symptoms strongly related to the DSM-5-TR diagnostic criteria of ASD, and she exhibits many of the associated features characteristic of ASD.

Conclusions and Recommendations

28. In review of the information gathered during the psychological evaluation, Dr. Hopseker concluded Claimant presents with ASD as defined in the DSM-5-TR, with accompanying language impairment and without cognitive impairment. Dr. Hopseker concluded that Claimant meets all the Criterion A deficits required by the DSM-5-TR regarding social communication and social interaction across contexts. Claimant demonstrated deficits in (1) social-emotional reciprocity, (2) nonverbal communicative behaviors, and (3) developing and maintaining relationships.

29. Dr. Hopseker further concluded that Claimant meets all the Criterion B patterns of behavior required by the DSM-5-TR regarding restricted, repetitive patterns of behavior, interests, or activities. Although only two symptoms are required for a diagnosis of ASD, Claimant demonstrated deficits in the following four areas: (1) stereotyped or repetitive speech, motor movements, or use of objects; (2) excessive adherence to routines, ritualized patterns of verbal or non-verbal behavior, or excessive resistance to change; (3) highly restricted, fixated interests that are abnormal in intensity or focus; and (4) hyper or hypo-reactivity to sensory input or unusual interest in sensory aspects of the environment.

30. Dr. Hopseker determined the severity level of Claimant's ASD to be at Level 2 in social communication, requiring substantial support, and Level 1 in repetitive and restrictive behaviors, requiring support. (Exh. 3, p. A36.) Claimant's limitations, for example, with communication and activities of daily living, were attributed to Claimant's ASD without other cause noted.

31. The DSM-5-TR provides information regarding what an ASD diagnosis of Level 1 and Level 2 means in terms of required support. (Exh. 5, p. A66.) Level 2 for social communication means the individual demonstrates the following:

Marked deficits in verbal and nonverbal social communication skills; social impairments apparent even with supports in place; limited initiation of social interactions; and reduced or abnormal responses to social overtures from others. For example, a person who speaks simple sentences, whose interaction is limited to narrow special interests, and who has markedly nonverbal communications.

32. The DSM-5-TR provides the following information to explain what a Level 1 level of support for restricted, repetitive behaviors means (Exh. 5, p. A66):

Inflexibility of behavior causes significant interference with functioning in one or more contexts. Difficulty switching between activities. Problems of organization and planning hamper independence.

33. Dr. Hopseker also concluded Claimant does not have an intellectual disability based on adequate cognitive functioning. Claimant does not assert she is intellectually disabled and that qualifying condition is not at issue.

34. Dr. Hopseker made the following recommendations for Claimant's future services and evaluations: Claimant receive supportive services to assist in the mitigation of her developmental delays; Claimant receive speech services to increase her ability to communicate verbally; Claimant be administered a behavioral assessment to reduce tantrums, resistance, and other maladaptive behaviors; Claimant undergo an occupational therapy evaluation to assess Claimant's sensory processing and provide intervention as needed; Claimant be evaluated by the school district and be provided with special education services with the eligibility of ASD; and Claimant be evaluated for cognitive functioning in approximately two years.

EDUCATIONAL

35. Claimant has not undergone any educational assessments. Mother inquired of Claimant's school about an IEP but was told (without an assessment) that Claimant would not be eligible for special education services because of her grades. Mother plans on renewing her request for educational assistance for Claimant.

36. Mother provided Service Agency Claimant's 2024-2025 end of year progress report (progress report) (Exh. 4), which the Eligibility Team reviewed before making its determination. The progress report shows Claimant met grade level standards during the 2024-2025 school year for all content areas, except in the following areas in which she exceeded grade level standards: operations and algebraic thinking; number and operations in base 10; mathematical reasoning and explaining; dance; and physical education content and concepts. Claimant was reported to consistently demonstrate the following characteristics and behaviors: effectively communicate and collaborate; understand others perspectives; and think critically, solve problems creatively, and value evidence. The progress report also showed Claimant missed 25 days of school during the 2024-2025 school year.

37. At hearing, Mother submitted a letter written by the school's Assistant Principal (AP), Mr. Gonzalez (first name not provided on letter) on February 18, 2026. (Exh. A.) Mr. Gonzalez wrote the following:

On January 13, 2026, I was called to the parking lot to support a parent having difficulty dropping off her daughter at school. The student was [Claimant] who refused to step out of the car. The student was fixated on the shoes she brought to school. She insisted that she brought the wrong shoes and that she could not go to school. She has a very difficult time understanding other's point of view when fixated on her needs. On that occasion, she had to be carried into school while kicking and screaming. This repeated behavior has resulted in missing 33 out of 108 days this year.

Testimony of Laurie McKnight Brown, Ph.D.

38. Laurie McKnight Brown, Ph.D., testified on behalf of Service Agency. Dr. Brown has been a licensed psychologist since 2015 and the lead psychologist consultant for Service Agency since 2017. Dr. Brown's duties for Service Agency include reviewing the work of other Service Agency psychologists and assisting with Service Agency's Eligibility Team determinations and appeals.

39. Dr. Brown explained the Lanterman Act eligibility requirements: Claimant must have a qualifying condition (cerebral palsy, epilepsy, intellectual disability, ASD, or a disabling condition found to be closely related to ID or to require treatment similar to that required for individuals with ID); Claimant must be substantially disabled in at least three areas of daily life functioning as a result of a qualifying condition; and the qualifying condition must have developed within the development period, before Claimant was 18 years of age. Dr. Brown further explained that for a qualifying condition to constitute a substantial disability, it must impact at least three of the following seven major life activities: receptive and expressive language; learning; self-care; mobility; self-direction; capacity for independent living (CIL); and economic self-sufficiency.

40. Dr. Brown reviewed the evaluations of Claimant, found them valid, and agreed with the respective conclusions. Regarding Claimant's eligibility for regional center services, Dr. Brown explained Service Agency's Eligibility Team reviewed Claimant's request for eligibility and concluded Claimant has the qualifying condition of ASD, but that Claimant's ASD does not constitute a substantial disability and she is therefore not eligible for regional center services. Service Agency submitted the "Association of Regional Center Agencies Recommendations for Assessing 'Substantial

Disability' for the California Regional Centers" (ARCA Guidelines) (Exh. 10) in support of its conclusion.

41. Service Agency determined Claimant's ASD results in a significant functional limitation for Claimant in one area of major life activity, self-direction. Dr. Brown explained why Service Agency concluded Claimant's ASD did not result in a significant functional limitation in the other areas of major life activities.

42. Regarding mobility, Claimant's mobility is not impacted by her ASD. Regarding self-care, Service Agency considered that although Claimant may need some reminders to attend to her self-care, her limitations did not rise to the level of a substantial disability. Rather, Claimant's ability to prepare herself food, attend to her hygiene, and dress herself were age appropriate. Regarding economic self-sufficiency, Service Agency did not assess this area of major life activity because the ARCA Guidelines recommend assessing this area of major life activity only for individuals 16 years old or older. (Exh. 5, p. A58.)

43. Regarding receptive and expressive language, Service Agency considered that others can easily understand what Claimant says and despite her speech impediment Claimant has no history of speech services or an IEP. Regarding learning, Service Agency similarly considered that during the 2024-2025 school year Claimant met grade level standards and she does not have an IEP.

44. Dr. Brown explained that if Claimant were substantially disabled in the areas of learning or communication, she would have an IEP, her progress report would show she was struggling academically, and, regarding communication, Claimant would have a history of speech services.

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45. In support of Service Agency's determination that Claimant is not substantially disabled in the major life activity area of learning, Dr. Brown also opined that although Claimant's KABC-II standard score (or cognitive score) was below average, this was ostensibly because one subset score (Story Telling) "pulled" her standard score down. However, this explanation of Claimant's standard score misrepresents her subtest scores and incorrectly implies Claimant's cognition was stronger than depicted in her KABC-II standard score.

46. Although Claimant's Story Telling subset score was 5, in the below average range (which ranges from 4 to 6), three of the other four subtest scores were 7, the lowest score possible in the average range (which ranges from 7 to 13). Claimant's score on the Hands Movement subtest was 10, notably higher than her other four subtest scores. Accordingly, Claimant's Story Telling subtest score did not stand out as a markedly low score given her other subtest scores and did not result in an unreliable KABC-II standard score which would help to justify Service Agency's conclusion that Claimant is not substantially disabled in the major life activity area of learning.

47. Regarding CIL, Service Agency did not assess for this area of major life activity. Dr. Brown explained that Service Agency only assesses this area for individuals 16 years old or older. However, she acknowledged the ARCA Guidelines do not put this age limitation on CIL, but rather the Guidelines offer age-appropriate issues to consider when assessing for CIL for preschool, school aged, and teenaged children. After reviewing the ARCA Guidelines section on CIL, Dr. Brown concluded that for the reasons already provided regarding Claimant's capacities in the other areas of major life activities, Claimant is not substantially disabled in CIL.

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Claimant's Evidence

48. Mother provided descriptive and consistent testimony, and her testimony is credited. Mother agrees that Claimant can prepare simple meals for herself. However, she disagrees with the presentation of self-care, explaining she must wash Claimant's hair and Claimant avoids showers. However, Mother is most concerned about Claimant's inability to engage socially with her peers or others, her avoidance of school and public places, her challenges with communication and transitions, and her rigidity and dysregulation when faced with changes to routine.

49. In addition to the information she provided to SC Arande and Dr. Hopseker, Mother explained that Claimant does not want to go to school and resists getting out of the car. Claimant becomes hyper-fixated on an issue, such as which shoes she is wearing or not wearing, and is unable to progress with whatever activity is before her, such as getting out of the car or continuing with shopping. In addition, Claimant does not socialize with peers or others in a way typical of her age. Rather, Claimant avoids interactions with others.

ARCA Guidelines

50. The ARCA Guidelines provide general guidance on the assessment of whether an individual's qualifying condition constitutes a substantial disability. (Exh. 10, pp. A159-A170.) The ARCA Guidelines state the following:

It is important to note that scores on adaptive functioning measures (such as the [VABS-3]) DO NOT solely determine the presence or absence of substantial disability, as these scores are not a direct, objective measure of an applicant's adaptive functioning abilities. As such, the Interdisciplinary

Eligibility Review Team should be vigilant to the potential for unintentional bias and/or the possibility of artificial over- or under-reporting of behaviors on these types of measures. . . . [A] wide variety of information, such as from an intake interview, psychological report(s), school and medical records, and provider and parent/caregiver interviews, should inform the determination of whether a substantial disability in three or more areas exists for each applicant.

(Exh. 5, p. A47.)

51. The ARCA Guidelines also provide a series of questions to be asked, or issues to be considered, when assessing substantial disability based on the age of the individual. The ARCA Guidelines do not recommend assessing economic self-sufficiency for individuals under 16 years of age.

52. Service Agency did not follow the ARCA Guidelines when assessing whether Claimant's ASD constitutes a substantial disability and did not adequately consider how Claimant's ASD impacts her major life activities. When the ARCA Guidelines are applied to the evidence presented at hearing, it is evident Claimant's ASD constitutes a substantial disability in four major life activities, i.e., self-direction, learning, receptive and expressive language, and CIL.

RECEPTIVE AND EXPRESSIVE LANGUAGE

53. When making the determination as to whether an individual's qualifying disability constitutes a substantial disability in the major life activity area of receptive and expressive language, the ARCA Guidelines provide the regional center's

assessment should determine whether the individual has noticeable limitations in both the comprehension and expression of verbal or nonverbal communication resulting in functional impairments. The individual must demonstrate impairment in both receptive and expressive language for receptive and expressive language to be an area of substantial disability.

54. The ARCA Guidelines also provide that the individual's pragmatic use of language be considered.

Regarding receptive language, this includes consideration of whether the individual experiences significant difficulty understanding a simple conversation or needs information to be rephrased to a simpler level to enhance understanding; whether the individual experiences significant difficulty following directions (not due to general noncompliance) or significant difficulty understanding and interpreting nonverbal communication (e.g., gestures, facial expressions of others).

Regarding expressive language, this includes consideration of whether the individual experiences significant difficulty participating in basic conversations (e.g., following rules for conversation and storytelling, tangential speech, fixation on specific topics), or significant difficulty communicating information effectively, or whether atypical speech patterns (e.g., jargon, idiosyncratic language, echolalia) significantly impair the individual's ability to communicate.

55. The ARCA Guidelines suggest the interview questions for receptive language include the following:

Can the applicant usually follow a simple conversation?

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Do information or requests frequently need to be rephrased to a simpler level to enhance understanding?

Does the applicant follow directions? How many directions at a time?

Does the applicant have a noticeable difficulty making sense of nonverbal communication such as gestures and facial expressions?

Is language use usually appropriate for social context?

If the applicant is near age level on receptive language test scores, is social language used in a typical manner?

Pragmatic deficits should be considered in assessing substantial disability for receptive language.

(Exh. 5, p. A49.)

56. The ARCA Guidelines suggest interview questions for expressive language include the following:

How does the applicant communicate needs and wants? (e.g., nonverbal gestures, speaks in single words, phrases, or sentences)

Is verbal language used for social purposes? Can the applicant have a comfortable back-and-forth conversation with others? Ask appropriate questions?

Does the applicant use nonverbal communication when speaking, such as eye contact, facial expressions, and hand gestures?

Does the applicant tend to speak mainly about preferred interests, rather than social chat? . . .

If the applicant is near age level on expressive language test scores, is social language used in a typical manner? . . .

(Exh. 5, pp. A49-A50.)

57. Service Agency did not assess how Claimant's ASD impacts her receptive and expressive language in accordance with the ARCA Guidelines. Service Agency focused on Claimant's educational performance and lack of educational services, which are not points of inquiry on the ARCA Guidelines under the area of receptive and expressive language, and did not meaningfully assess Claimant's pragmatic use of language.

58. Considering the ARCA Guidelines, Claimant's ASD constitutes a substantial disability in the major life activity of receptive and expressive language. Regarding receptive language, Dr. Hopseker concluded Claimant's receptive language was an area of weakness. Claimant does not speak in complete sentences and is often delayed in her response to questions. In addition, Claimant's language use is not appropriate for the social context, as she makes statements which are rude or insensitive. Regarding expressive language, Claimant displays minimal eye contact and facial expressions and does not reciprocate communication in conversations.

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LEARNING

59. Regarding the major life activity of learning, the ARCA Guidelines direct the regional center's assessment to consider whether the individual has noticeable impairment in the ability to acquire and apply knowledge or skills to new or recurring situations. As can be seen by review of the ARCA Guidelines, whether a qualifying condition constitutes a substantial disability in the area of learning requires an assessment including consideration of the individual's interaction with the learning environment and community. An individual may be capable of the academic challenges presented to him or her and yet substantially disabled in the ability to access learning based on limitations with social and peer interaction and the emotional stressors that may arise on a given day in the classroom.

60. In addition to the individual's general intellectual ability and achievement levels, the ARCA Guidelines suggest the following considerations and interview questions for the major life activity of learning:

Are symptoms of the applicant's qualifying condition impacting an ability to learn and participate meaningfully in the school environment (e.g., significant sensory sensitivities, engagement in atypical behaviors that disrupt the school day)?

Is there consistency across the records in terms of the applicant's present or past functioning in a structured learning environment? (For school-age children, consider a direct clinical observation of the child in a school setting if more clarity is needed.) [¶] . . . [¶]

Is the child receiving Special Education services? What is your estimation of the child's reading level or math level?

Can the child tell time on an analog clock at least by the hour? Identify coins and values?

What was the last task the child recently learned how to do? What was it like teaching them?

Does the child appear to have an excessive difficulty with learning, regardless of participation in intervention services? Is the child able to maintain mastery of a newly attained skill?

(Exh. 5, pp. A51-A52.)

61. Service Agency did not assess whether Claimant's ASD constitutes a substantial disability in the major life activity area of learning in accordance with the ARCA Guidelines. Rather, Service Agency determined Claimant's learning was not impacted by her ASD because of her KABC-II subset cognitive scores, her educational performance, and because she does not receive educational services. However, as provided in the ARCA Guidelines, the assessment of the impact of a developmental disability on the major life activity of the area of learning requires a broader assessment than these considerations, including whether Claimant's ASD symptoms are impacting her ability to participate meaningfully in the school environment.

62. As described by Mother and AP Gonzales, and as is documented in Claimant's progress report, Claimant missed 25 days of school during the last academic year; in addition, Claimant has already missed 33 days out of 108 days of

school this academic year, nearly one-third of her schooling this year. As described by AP Gonzales, these absences are due to Claimant's fixations and emotional dysregulation and occur frequently. The evidence established that Claimant's avoidance of public places, fixations, and emotional dysregulation cause significant disruptions to Claimant's school days and to her meaningful participation in the school environment.

CAPACITY FOR INDEPENDENT LIVING

63. Regarding the major life activity of CIL, the ARCA Guidelines direct the regional center's assessment to consider whether the individual has a noticeable impairment in the ability to perform age-appropriate daily living skills without the assistance of another person. The regional center should consider whether the individual lacks a basic safety awareness for protecting oneself from physical injury during daily living activities and whether the individual can access and navigate through the community independently as appropriate to age.

64. The ARCA Guidelines suggests the following interview questions for the major life activity of CIL:

What chores is the child expected to perform at home?

Can they pick up and put away toys? Take own dish to sink?

Set table? Take out trash? Vacuum/dust? Make a bed?

Can the child prepare simple snacks or meals (e.g., bowl of cereal, simple sandwich)?

Can the child be left unsupervised/home alone as appropriate to age? Does the child play with dangerous

items? Touch a hot stove? Run/wander off (at home or in public)?

Does the child call for help if someone is hurt? Know to call 911 in an emergency?

Can the child use a phone to make a call to a family member or friend?

Can the child make a small purchase independently? Does the child receive an allowance?

Can the child save up for something special?

(Exh. 5, p. A56.)

65. Service Agency's Eligibility Team did not assess whether Claimant's ASD constitutes a substantial disability in the area of CIL in accordance with the ARCA Guidelines. Rather, despite the ARCA Guidelines providing CIL considerations for children as young as preschool-age, Service Agency determined Claimant was too young to be assessed for CIL.

66. When asked during hearing to assess Claimant's CIL, Dr. Brown concluded that Service Agency did not have much information regarding this topic, and noted that on the VABS-3 activities of daily living skills domain Claimant scored borderline, but not low, and Claimant is able to prepare herself food. This assessment did not consider Claimant's VABS-3 maladaptive domain scores which reached the clinically significant level in both internalizing and externalizing behavior problems.

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67. Claimant showed capacity to perform activities of daily living that are similar to self-care, such as preparing a meal, washing her dishes, and performing basic chores. However, Claimant's ASD symptoms significantly impact her ability to perform age-appropriate daily living skills that require navigating the community.

68. At 10 years old, it is age appropriate for a child to be able to cross the street without assistance, exit a vehicle to enter school without kicking and screaming, and walk through a store without throwing herself to the ground and grabbing items off shelves, and needing the assistance of two people to help her self-regulate. However, Claimant's ASD symptoms cause Claimant to experience frequent dysregulation and tantrums at school and in the community and which are not age appropriate. Claimant's conduct and behaviors put herself and others at risk of harm and demonstrate Claimant's ASD symptoms significantly impact and impair her CIL.

LEGAL CONCLUSIONS

Jurisdiction

1. The Lanterman Act governs this case. An administrative "fair hearing" to determine the rights and obligations of the parties is available under the Lanterman Act. (§§ 4700-4716.) (Factual Findings 1-6.)

Burden and Standard of Proof

2. The party asserting a condition that would make the individual eligible for a benefit or service has the burden of proof to establish that he or she has the condition. (*Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 160.) In this case, Claimant bears the burden of proving by a preponderance of the

evidence that she has a developmental disability as defined by the Lanterman Act and is eligible for regional center services. (Evid. Code, § 115.)

3. The preponderance of the evidence standard requires petitioner to present evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

4. "The 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, italics omitted.)

Lanterman Act Eligibility Requirements

5. A developmental disability is a disability that originates before an individual turns 18 years old. The disability must be expected to continue indefinitely and must constitute a substantial disability for the individual. Developmental disabilities are limited to cerebral palsy, epilepsy, ASD, Intellectual Disability (ID), or a disabling condition found to be closely related to intellectual disability or to require treatment similar to that required for an individual with an intellectual disability (5th Category). Developmental disabilities do not include other handicapping conditions that are solely physical in nature, or which are solely psychiatric disorders or learning disabilities. (§ 4512, subd. (a); Cal. Code Regs., tit. 17, § 54000.)

SUBSTANTIAL DISABILITY

6. "Substantial disability" means:

(a) (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.

(Cal. Code Regs., tit. 17, § 54001, subd. (a); see § 4512 (1)(1).)

Analysis

7. It is undisputed that Claimant has ASD, a qualifying condition, and that she is substantially disabled in the major life activity of self-direction. (Factual Finding 41.) When assessing whether Claimant's ASD constitutes a substantial disability in the remaining areas of major life activities, a wide variety of information, including the

evaluations, testimony, and letter from AP Gonzalez, should inform the decision. (Factual Finding 50, citing Exh. 5, p. A47.)

8. The evidence did not establish that Claimant is substantially disabled in the major life activity areas of mobility, self-care, or economic self-sufficiency. (Factual Finding 42.) However, Claimant met her burden of proof to establish by a preponderance of the evidence that Claimant's ASD results in a major impairment of her social functioning, representing sufficient impairment to require interdisciplinary planning and the coordination of special or generic services to assist her in achieving maximum potential. Claimant further met her burden of proof to establish by a preponderance of the evidence that Claimant's ASD results in significant functional limitations in the following three additional areas of major life activity, as appropriate to her age: receptive and expressive language, learning, and CIL. (Factual Findings 8, 10-13, 36-37, 48-68; Legal Conclusion 6.)

9. On meeting her burden of proof, it must be considered that Service Agency did not properly assess Claimant's ASD to determine if it is substantially disabling. Service Agency did not engage in a thorough evaluation of Claimant pursuant to the ARCA Guidelines recommended considerations or interview questions which resulted in an incomplete and inadequate assessment. (Factual Findings 43-47.)

10. In considering the question of substantial disability, all the evidence presented must be considered. Dr. Hopseker and SC Arande completed comprehensive psychological and psychosocial evaluations of Claimant, respectively. Although these evaluations, and the testimony of Mother and letter written by AP Gonzalez, did not address every question or consideration recommended by the ARCA Guidelines, this evidence provided sufficient information to determine Claimant is

substantially disabled in the major life activity areas of receptive and expressive language, learning, and CIL.

11. At a base level, the fact of Dr. Hopseker's conclusion that Claimant has Level 2 ASD in the area of social communication means, per the DSM-5-TR, that Claimant has "[m]arked deficits in verbal and nonverbal social communication skills; social impairments apparent even with supports in place; limited initiation of social interactions; and reduced or abnormal responses to social overtures from others." (Factual Finding 31.) In addition to Dr. Hopseker's conclusion, the evidence also shows Claimant demonstrates significant limitations in her receptive and expressive language that are not appropriate to her age. For example, Claimant, at age 10, does not speak in complete sentences, provides often delayed responses to questions, uses language that is not appropriate for the social context, and does not engage in reciprocal conversation. (Factual Findings 8, 10, 24-27, 29.)

12. Claimant also demonstrated significant limitations in the major life activity area of learning, limitations that are not age appropriate. Initially, Service Agency's reliance on Claimant's lack of IEP is not persuasive on the topic of learning because the school's or the District's failure to properly assess Claimant's educational needs does not mean Claimant's learning is not significantly impacted by her ASD. Further, although Claimant met or exceeded grade level standards during her third grade year, Claimant struggled the two previous years and is currently struggling with academics. Nonetheless, Claimant's academic achievement is just one consideration recommended by the ARCA Guidelines. (Factual Findings 59 & 60.)

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13. In addition to Claimant's avoidance of schoolwork, she avoids school to the point she has missed nearly one-third of her scheduled school days this year; when she attends school, her dysregulation and fixation is frequent, repeatedly requiring the assistance of AP Gonzalez and significantly impacting Claimant's ability to learn and participate meaningfully in the school environment. In addition, Claimant's withdrawal from and avoidance of social and public settings is further impacting her ability to develop peer relationships in the school setting. (Factual Findings 13, 36, 37, 48, 49.)

14. Finally, Claimant demonstrated significant limitations in the major life activity area of CIL, limitations that are not age appropriate. Dr. Hopseker diagnosed Claimant with Level 1 ASD in the area of restricted, repetitive behaviors which means, pursuant to the DSM-5-TR, that Claimant has inflexible behavior which causes significant interference with functioning in one or more contexts and which hampers her independence. (Factual Finding 32.) In addition to this finding, the evidence demonstrated that Claimant's restrictive and repetitive behaviors significantly impact Claimant's ability to navigate through the community, including school, and is not age appropriate. Rather, Claimant requires assistance to ensure she can safely and appropriately navigate such settings, assistance not typically required of a ten-year-old.

15. Claimant met her burden to prove by a preponderance of the evidence that her ASD constitutes a substantial disability in the major life activities of self-direction, receptive and expressive communication, learning, and CIL. Accordingly, Claimant's appeal is granted.

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ORDER

Claimant's appeal is granted. Claimant is eligible for regional center services under the Lanterman Act.

DATE:

CHANTAL M. SAMPOGNA
Administrative Law Judge
Office of Administrative Hearings

NOTICE

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