BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

and

WESTSIDE REGIONAL CENTER,

Service Agency.

DDS No. CS0034015

OAH No. 2026021002

DECISION

Cindy F. Forman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 2, 2026, at Westside Regional Center in El Segundo, California.

Claimant's grandmother and mother represented Claimant. Claimant did not attend the hearing. The family's names are not identified to preserve their privacy.

Sonia Tostado, Service Agency's Appeal and Resolution Specialist, represented Westside Regional Center (WRC or Service Agency).

At the hearing outset, WRC requested a continuance because its psychologist was unavailable to testify. The Administrative Law Judge denied WRC's motion because of its inability to provide a date when a WRC psychologist familiar with Claimant's case would be available to testify and the immediacy of Claimant's need for full regional center services.

Testimony and documentary evidence were received, the record closed, and the matter was submitted for decision on April 2, 2026.

ISSUE

Whether Claimant is eligible to receive regional center services under Welfare and Institutions Code (Code) section 4512, subdivision (a)(1), of the Lanterman Developmental Disabilities Services Act, section 4500, et seq. (Lanterman Act).

EVIDENCE RELIED UPON

The Administrative Law Judge relied on the testimony of Mother, Grandmother, and Ms. Tostado, as well as Exhibits 1 through 17, and B through F, in evaluating this matter.

FACTUAL FINDINGS

1. Claimant is a three-year-old girl. Her date of birth is February 10, 2023. She lives with her mother and grandmother. Until her third birthday, Claimant received early intervention services from WRC pursuant to the California Early Intervention Services Act (Early Start program) (Gov. Code § 95000 et seq.).

2. In a letter dated January 7, 2026, WRC informed Mother that WRC's Interdisciplinary Team (Interdisciplinary Team) determined Claimant to be provisionally eligible for regional center services as of Claimant's third birthday on February 10, 2026, under Code section 4512, subdivision (a)(2). WRC further informed Mother that Claimant would be reassessed for Lanterman Act eligibility 90 days before her fifth birthday.

3. On January 7, 2026, WRC also issued a Notice of Action to Claimant. The Notice of Action stated Claimant did not meet the criteria for a developmental disability specified in Code section 4512, subdivision (a)(1) and (*l*). However, the Interdisciplinary Team determined Claimant is provisionally eligible for regional center services under Code section 4512, subdivision (a)(2), because Claimant has a disability not solely physical in nature with significant functional limitations in at least two of the five areas of major life activity.

4. On February 24, 2026, Claimant appealed WRC's denial of her eligibility to receive full regional center services under the Lanterman Act. In her appeal, Claimant requested reconsideration of her eligibility, a comprehensive developmental evaluation, and a fair hearing. Before the fair hearing, WRC requested Mother's consent to conduct another psychological assessment for Claimant, but Mother refused. At hearing, Mother withdrew her request for a new comprehensive developmental evaluation and limited her appeal to reconsideration of Claimant's eligibility for regional center services under subdivision (a)(1) of Code section 4512, asserting Claimant presented with the qualifying diagnosis of autism based on a recent evaluation conducted by a developmental-behavioral pediatrician.

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Background

5. Claimant was born prematurely at 35 weeks. Claimant's birth was induced following a car accident involving Mother, which resulted in Mother's placental abruption. At birth, Claimant weighed 5 pounds, two ounces, and measured 17 inches. She stayed in the Neonatal Intensive Care Unit (NICU) for eight days because of breathing difficulties, excessive amniotic fluid, and jaundice. The pregnancy was considered high risk because of Mother's medical condition. Claimant was not exposed in utero to drugs, tobacco, or alcohol.

6. Claimant began to roll over by six to seven months, sat by eight months, crawled by six to seven months, and pulled to stand by 13 months. Claimant walked at 15 months. She said her first words at eight or nine months. Claimant does not speak in two or three-word combinations. She is not yet toilet trained.

7. Claimant has a history of urinary tract infections and ear infections. She was hospitalized in March 2024 for five days because of a urinary tract infection that turned septic, and in November 2024 to treat an adenovirus. Earlier this year, Claimant was hospitalized for two weeks at Cedars-Sinai Guerin Children's Pediatrics (Cedars Sinai) for an unspecified illness. According to Mother, Claimant sickens easily and has immune system challenges. To avoid infection, Claimant is currently under medical orders not to attend school. Mother has not returned to work because of Claimant's medical needs.

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Service Agency Interactions and Evaluations

INITIAL REFERRAL AND EVALUATIONS

8. Claimant's pediatrician referred Claimant to WRC sometime before January 16, 2025, because of concerns with Claimant's expressive language development. On January 16, 2025, when Claimant's chronological age was 23 months, 6 days old, and her corrected age was 21 months, 30 days, WRC performed a psychosocial assessment to assist in evaluating Claimant's eligibility for the Early Start program. During the assessment, Mother expressed concerns over Claimant's expressive language, repetitive behaviors, not responding to her name, and frustration when not understood. Mother told the evaluator that Claimant exhibited repetitive behaviors such as opening and closing cabinet doors, putting objects on and off the countertop, and holding spoons or forks. Mother also reported that Claimant had a habit of lining up objects and hiding things in her favorite spots, and often hit herself and occasionally hit others when she was not understood. Based on the intake counselor's observations and her interview with Mother, the intake counselor recommended that Claimant's case be referred to the Interdisciplinary Team for an eligibility determination.

9. Sometime thereafter, WRC determined Claimant was eligible to participate in the Early Start program. Through Early Start, Claimant received speech and occupational therapy twice a week. Claimant also attended the Brite Kids Center-Based Program preschool (Brite Kids) three days a week.

10. From January 2025 through October 2025, Claimant was assessed by a speech therapist, a physical therapist, and an occupational therapist, at WRC's request, to evaluate Claimant's communication, adaptive living skills, and mobility. The record

is unclear as to whether these assessments were conducted to determine the services Claimant required as part of the Early Start program or to assist the Interdisciplinary Team in evaluating Claimant's eligibility for continued regional center services either on a permanent or provisional basis.

11. Testing performed by the speech therapist when Claimant's chronological age was 23 months, and her adjusted age was 22 months, indicated Claimant's auditory comprehension was in the sixth percentile with an age equivalent of 14 months, and Claimant's expressive communication was in the tenth percentile with an age equivalent of 15 months. The speech therapist observed Claimant did not interrupt an activity when her name was called, but demonstrated functional, relational, self-directed, and pretend play. The speech therapist also observed Claimant did not respond to requests to show or give specific toys on request, presented with inconsistent eye contact, and moved from one activity to another quickly. When the assessment ended, Claimant did not return the therapist's goodbye wave. (Exhibit 8.) By August 2025, a speech and language progress report showed Claimant at 30 months had obtained a language comprehension age equivalent of 24 months and a language expression age equivalent of 21 to 24 months. (Exhibit 4, p. A30.)

12. The physical therapy development assessment showed that Claimant at 30 months scored in the borderline range in cognition and motor skills, with age equivalents of 20 months in cognition, 19 months in fine motor skills, and 17 months in gross motor skills. Claimant also scored in an extremely low range in language, with age equivalents of five months in receptive communication and 15 months in expressive communication. The physical therapist assessed Claimant's adaptive skills at 25 months. During the assessment, Claimant did not respond to her name when called and inconsistently followed simple verbal requests. According to the physical

therapist's report, Claimant made direct eye contact when babbling and when spoken to, but randomly stopped playing and stared. Claimant played with the toys as they were intended and jabbered expressively and vocalized in melodic rhythms to familiar songs. Claimant demonstrated sensory-seeking behaviors exemplified by her running and diving into the sofa or climbing on and off the sofa after a few minutes of participating in fine motor tasks. (Exhibit 7.)

13. An occupational therapy assessment when Claimant was nearly two years old found Claimant's age equivalent in cognitive function was 11 months, in receptive language was five months, and in expressive language was seven months, with a total language score in the extremely low range. (Exhibit 6.) When Claimant was 30 months, the occupational therapist found Claimant continuing to experience challenges, including sensory processing difficulties, decreased gross and fine motor skills, limited food range, decreased attention to tasks, and impulsivity for self-preferred play, all of which impacted Claimant's independence, behavioral organization, and age-appropriate play and self-care skills. (Exhibit B, pp. B8–B9.)

PSYCHOLOGICAL ASSESSMENT

14. On a date not made known in the record, WRC requested Carol Kelly, Ed.D., a licensed psychologist, to conduct a psychological assessment to determine Claimant's continued eligibility for regional center services. Dr. Kelly conducted an in-office assessment on August 29, 2025, and observed Claimant at Brite Kids preschool on September 10, 2025. Claimant was 30 months and 19 days at the time of the in-office assessment.

15. Dr. Kelly could not administer the Wechsler Preschool and Primary Intelligence Scale of Intelligence-IV to Claimant because Claimant refused to

cooperate. Based on Mother and Grandmother's responses to the Developmental Assessment of Young Children-Second Edition, Claimant scored in the borderline range in cognitive functioning, placing her age equivalency at 15 months. Claimant's scores on the Vineland Adaptive Behavior Scales-3, with Mother and Grandmother as informants, were in the mildly delayed range in communication, socialization, and daily living skills, and in the borderline range in motor skills. Claimant's score on the Autism Rating Scales-Revised, based on interviews with Mother and Claimant's teachers, did not reveal any behaviors suggestive of autism. Although Dr. Kelly's report states she administered the Childhood Autism Rating Scale, Second Edition (CARS-2), her report does not include the results of such testing.

16. In the testing session, Claimant smiled at Dr. Kelly, repeatedly opened and closed doors, and did not actively play with toys. Dr. Kelly observed Claimant established eye contact when her name was called and followed simple commands. When Dr. Kelly observed Claimant at school, Claimant did not have issues transitioning between activities, was able to imitate body movements, and seemed to have recognized Dr. Kelly. Dr. Kelly described Claimant's eye contact with her teachers as "excellent." (Exhibit 4, p. A31.) Claimant's teacher told Dr. Kelly that Claimant usually responds to her name unless she is involved in a favorite activity, she loves to play with baby dolls, and sometimes pretends to feed them. Claimant's teacher also said Claimant occasionally walks on her toes, but it does not occur often. The teacher also reported that Claimant does not present with any behavioral issues, always joins in play with peers, engages in functional play with toys, does not present with any self-stimulatory behaviors, or show any sensitivity to visual or auditory stimuli. (*Id.*, p. A32.)

17. Dr. Kelly reported that her observations of Claimant did not reveal behaviors suggestive of an autism spectrum diagnosis. Dr. Kelly found Claimant to be

delayed in language skills and may hit herself in the head when she cannot express herself. Dr. Kelly's diagnostic impressions were Language Disorder and Rule Out Global Developmental Delay. She recommended Claimant continue with speech and occupational therapy.

ELIGIBILITY DETERMINATION

18. On October 14, 2025, after reviewing Dr. Kelly's evaluation, the Interdisciplinary Team determined Claimant was provisionally eligible for regional center services. The Interdisciplinary Team, consisting of a pediatric neurologist and a psychology consultant, based their determination of a diagnosis of global developmental delay, although Dr. Kelly did not diagnose Claimant with global developmental delay, and Claimant's substantial disability in expressive and receptive language, learning, self-care, and self-direction. (Exhibit 5.) The Committee also recommended Claimant undergo a psychological assessment in November 2027 to clarify her diagnosis, cognitive level, and adaptive functioning.

School Assessments

19. Based on a February 26, 2026 Individual Education Plan (IEP), Claimant's school district determined Claimant met the definition of autism under the Education Code and therefore was eligible for special education services. Under the Education Code, autism is defined as a developmental disability "significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, and adversely affecting a child's educational performance. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(1).) Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

(*Ibid.*) (The definition of autism in the Education Code differs from the definition of autism spectrum disorder in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5). WRC and psychologists providing assessments for WRC rely on the DSM-5 definition of autism, and not on the Education Code definition, to determine eligibility for regional center services. (See Factual Finding 27.))

20. The IEP found Claimant eligible for special education services under the autism category based on assessments of Claimant's preacademic and functional skills, her communication and motor development, her social-emotional and behavioral competence, her adaptive and daily living skills, and her health. The IEP team found Claimant presented with significant delays in verbal communication, nonverbal communication, and social interaction. To address her deficits, the school district authorized Claimant to receive speech and language therapy and specialized preschool instruction. The school district also determined Claimant was eligible for extended school year services.

21. To reach its decision, the IEP team reviewed reports by a school psychologist, speech and language pathologist, occupational therapist, and special education teacher, each of whom personally observed Claimant, interviews with Mother and Claimant's Brite Kids teachers, Claimant's medical records, and assessments done on WRC's behalf. The IEP team cited Mother's responses to the Autism Diagnostic Interview- Revised, which indicated Claimant's profile is consistent with the presence of autism, and to the Autism Spectrum Rating Scales, which reflected Claimant's difficulty "using appropriate nonverbal communication, rarely responding when spoken to by peers, and limited understanding of social cues." (Exhibit B, p. B34.) The IEP team found the scores also closely matched the criteria used in the DSM-5 for autism spectrum disorder. (*Id.*, p. 23; see Factual Finding 27 below.)

The IEP team also credited Mother's report of Claimant's "inconsistent eye contact, limited pointing and shared attention, a tendency to play alone, and difficulty seeking to share enjoyment or comfort others." (*Ibid.*).

22. The school psychologist's interviews with Claimant's teachers at Brite Kids confirmed the IEP team's decision. In those interviews, Claimant's teacher reported Claimant "often appears 'in her own world," communicates needs primarily through gestures, and has difficulty engaging in reciprocal peer interactions during play." (Exhibit B, p. 34.) The school district evaluators who observed Claimant also found Claimant "demonstrated inconsistent responses to her name, limited sustained reciprocal play, and emerging joint attention skills, with engagement occurring primarily around preferred objects or activities." (*Ibid.*)

23. The IEP team summarized its autism findings as follows:

> [Claimant] demonstrates characteristics often associated with Autism. She engaged in repetitive activities and stereotyped movement and had unusual responses to sensory experiences. Results from the ASRS [Autism Spectrum Rating Scales] yielded Very Elevated scores in Stereotypy and Behavioral Rigidity and Elevated scores in Sensory Sensitivity and Attention/Self-Regulation, indicating repetitive behaviors, insistence on sameness, and atypical sensory responses. Parent report described repetitive behaviors such as lining up objects, running in circles, repeatedly opening and closing doors, and carrying preferred items, as well as distress when routines change and self-injurious behaviors (e.g., head banging) when

> upset. The teacher reported repetitive play patterns, including lining up toys and spinning objects, difficulty relinquishing preferred items, and covering her ears in response to loud crying. During observation, [Claimant] demonstrated repetitive engagement with preferred objects, resistance when asked to put away a favored item, and sensory-seeking behaviors such as mouthing objects.
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> These disabilities appear to be affecting [her] participation in appropriate activities. Based on current assessment results, it is estimated that [Claimant's] functional level is at the Sensorimotor Stage 6: Emerging Mental Representations (18 - 24 months). Academic assessment results indicate [Claimant] is demonstrating skills ranging from 0-24 months with relative strengths in Visual Perception: Blocks & Puzzles and Functional Use of Objects & Symbolic Play. Therefore, per parent report, direct observation, teacher interviews and assessment results indicate [Claimant] displays characteristics associated with Autism which impede academic performance and functioning in other areas. [Claimant] exhibits receptive, expressive, and pragmatic language skills that fall below developmental expectations for her chronological age.

(Exhibit B, pp. B34–B35.)

24. The IEP team found Claimant did not meet the eligibility criteria for special education based on a diagnosis of Speech and Language Impairment. The IEP

team explained their decision not to classify Claimant in this category as follows: "Although [Claimant] demonstrates significant delays across multiple areas of communication, the assessment data indicate that these challenges are most appropriately explained by her characteristics associated with Autism and are consistent with [her] autism-related profile rather than a standalone speech or language impairment." (Exhibit B, p. 35.)

Cedars Sinai Assessment

25. At her family's request, Claimant was evaluated at Cedars Sinai in February 2026 for developmental concerns. Nicole Nghiem, M.D., conducted the evaluation. Dr. Nghiem is a developmental-behavioral pediatrician who completed a three-year pediatrics residency at John Hopkins All Children's Hospital and a three-year fellowship in Developmental-Behavioral Pediatrics at Children's Hospital Los Angeles. She currently works as a Cedars Sinai staff physician.

26. Dr. Nghiem diagnosed Claimant with Autism Spectrum Disorder, DSM-5 Severity Level 3 (requiring very substantial support); Global Developmental Delay; Mixed Receptive-Expressive Language Disorder; and Sensory Processing Difficulties. Dr. Nghiem identified three areas in which Claimant was substantially disabled because of her autism: communication, learning, and self-care. According to Mother, Dr. Nghiem observed Claimant for three hours at the clinic. Dr. Nghiem also interviewed Mother and reviewed Claimant's developmental history in reaching her findings.

27. Dr. Nghiem based her diagnosis of Autism Spectrum Disorder on the criteria specified in the DSM-5. Those criteria are as follows:

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A. Persistent deficits in social communication and social interaction across multiple contexts, as manifested by the following, currently or by history . . .:

1. Deficits in social-emotional reciprocity, ranging, for example, from abnormal social approach and failure of normal back-and-forth conversation; to reduced sharing of interests, emotions, or affect; to failure to initiate or respond to social interactions.

2. Deficits in nonverbal communicative behaviors used for social interaction, ranging, for example, from poorly integrated verbal and nonverbal communication; to abnormalities in eye contact and body language or deficits in understanding and use of gestures; to a total lack of facial expressions and nonverbal communication.

3. Deficits in developing, maintaining, and understanding relationships, ranging, for example, from difficulties adjusting behavior to suit various social contexts; to difficulties in sharing imaginative play or in making friends; to absence of interest in peers.

B. Restricted, repetitive patterns of behavior, interests, or activities, as manifested by at least two of the following, currently or by history . . :

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1. Stereotyped or repetitive motor movements, use of objects, or speech (e.g., simple motor stereotypies, lining up toys or flipping objects, echolalia, idiosyncratic phrases).

2. Insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior (e.g., extreme distress at small changes, difficulties with transitions, rigid thinking patterns, greeting rituals, need to take same route or eat same food every day).

3. Highly restricted, fixated interests that are abnormal in intensity or focus (e.g., strong attachment to or preoccupation with unusual objects, excessively circumscribed or perseverative interests).

4. Hyper- or hypo reactivity to sensory input or unusual interest in sensory aspects of the environment (e.g., apparent indifference to pain/temperature, adverse response to specific sounds or textures, excessive smelling or touching of objects, visual fascination with lights or movement).

C. Symptoms must be present in the early developmental period . . . .

D. Symptoms cause clinically significant impairment in social, occupational, or other important areas of current functioning.

> E. These disturbances are not better explained by intellectual disability . . . or global developmental delay. Intellectual disability and autism spectrum disorder frequently co-occur; to make comorbid diagnoses of autism spectrum disorder and intellectual disability, social communication should be below that expected for general developmental level.

(Exhibit 12, p. A88–A89.)

28. Dr. Nghiem concluded Claimant met the DSM-5 Category A requirement for autism spectrum disorder because Claimant demonstrated persistent deficits in social communication and social interaction. According to Dr. Nghiem, Claimant exhibited deficits in social-emotional reciprocity by her preference for solitary play, her limited engagement with peers, awkward interactions, and her failure to respond to other children's attempts to communicate. Dr. Nghiem found Claimant had deficits in nonverbal communicative behaviors as shown by her failure to currently use nonverbal gestures (e.g., pointing, nodding, waving) to communicate needs or share attention. Claimant exhibited deficits in developing, maintaining, and understanding relationships through her limited interest in peer play and difficulty understanding and engaging in age-appropriate social interactions, consistent with Claimant's challenges in forming and maintaining relationships. (Exhibit F, pp. B68–B69.)

29. Regarding restricted, repetitive patterns of behavior, interests, or activities, Dr. Nghiem provided examples of Claimant's restricted, repetitive behavior in all four subcategories identified in Category B of the DSM-5 autism spectrum disorder analysis. According to Dr. Nghiem, Claimant exhibited stereotyped or repetitive motor movements and behaviors by frequently opening and closing doors and repeatedly

flipping lights on and off. Claimant insisted on sameness and an inflexible adherence to routines by lining up toys, showing particularity about how objects are arranged, maintaining rigid, ritualized behavior patterns, and having a limited food repertoire. Claimant had a highly restricted, fixated interest of abnormal intensity with kitchen objects, such as spoons and forks. Claimant exhibited hyper- or hypo-reactivity to sensory input by preferring specific clothing fabrics, frequently requesting clothing changes, and showing an aversion to hair-brushing.

30. Dr. Nghiem found Claimant's symptoms substantially impact her social engagement, communication, adaptive/self-care skills, and learning. Consequently, Claimant has frequent meltdowns, screams, hits, throws objects, and occasionally engages in self-injurious behavior when frustrated.

31. Dr. Nghiem concluded Claimant's symptoms are not better explained by her global developmental delay because they are disproportionate to and qualitatively different from what would be expected based on her cognitive developmental level alone. According to Dr. Nghiem, children with global delay at a cognitive level of 15 to 18 months should at least demonstrate social referencing and joint attention, which Claimant does not. Dr. Nghiem further asserted that Claimant's active avoidance of social interaction, such as Claimant's seeking isolated play and closing doors to be alone, her absence of nonverbal gestures, and lack of response to peer social overtures are not characteristic of global developmental delay alone. Additionally, Dr. Nghiem contends that the presence of multiple, restricted/repetitive behaviors further supports autism as a distinct diagnosis. (Exhibit F, pp. B69-B70.) Thus, Dr. Nghiem concluded that the dual diagnoses of autism and global developmental delay are clinically appropriate and necessary to fully characterize Claimant's presentation.

32. Dr. Nghiem also noted that Claimant's score of 34 on the Childhood Autism Rating Scale, Second Edition (CARS-2), fell within the mild-to-moderate range for autism spectrum disorder and reflected the reported and observed autism-related behaviors during Dr. Nghiem's evaluation. Dr. Nghiem explained Claimant required Level 3 (very substantial) support for her autism because of the profound functional impact of her symptoms on daily living. Thus, although Claimant's autism symptom presentation on the CARS-2 falls in the mild-to moderate range, Dr. Nghiem asserted the functional impact of these symptoms results in a need for very substantial support, consistent with Level 3.

Claimant's Position

33. Mother testified at hearing regarding Claimant's behaviors and the reason for the appeal. Mother reiterated the statements she made in the various interviews she had in connection with Claimant's school and Service Agency assessments. According to Mother, Claimant's delays have become more pronounced as she has gotten older. Claimant opens and closes doors, flicks lights on and off, and lines up toys, but becomes upset if Mother pulls a toy out of place. Mother described Claimant as continuously spinning in circles. Claimant does not like clothes and takes her clothes off multiple times. She is a very picky eater and will not eat at all if her food is not prepared to her liking. She is sensitive to loud noises like the blender. She does not like brushing her teeth or getting her hair done. She will go into the closet and shut the door. Claimant does not gravitate to the other kids in the park or participate in children's parties. Mother characterized Claimant as inflexible and will tantrum or hit herself. Although Claimant makes eye contact, she looks through you, staring, and often does not respond to her name. Claimant does not show emotions or understand emotions.

34. In her interviews with members of Claimant's IEP team, Mother reported Claimant displays a moderately high number of disruptive, impulsive, and uncontrolled behaviors as she is always in constant motion, often acts without thinking, and often is overly active. Mother further reported Claimant has difficulty maintaining necessary levels of attention at school, is easily distracted, and generally seems disconnected from her surroundings. Claimant sometimes seems unaware of others, sometimes does strange things, and sometimes shows feelings that do not fit the situation. She sometimes avoids other children, is seemingly alone, and has trouble making new friends. Claimant also has difficulty performing simple daily tasks such as using a zipper and fastening buttons.

35. Mother asserts that Dr. Nghiem's autism diagnosis is sufficient evidence that Claimant has a qualifying developmental disability, i.e., autism. Mother disagrees with Dr. Kelly's findings. She believes a second regional center evaluation will not reach a different conclusion than that reached by Dr. Nghiem, and Mother does not want to wait for a second regional center evaluation to be completed. Mother contends Claimant has not received needed services based on her provisional eligibility status under the Lanterman Act; Claimant is currently waitlisted for Applied Behavior Analytics (ABA) therapy and other needed therapies, and Mother receives no respite assistance. Mother believes she can better attend to Claimant's needs through the Self-Determination Program, but she can only take advantage of the program if Claimant has a qualifying developmental disability. Provisionally eligible regional center consumers are not eligible to participate in the Self-Determination Program.

36. In addition to Dr. Nghiem's analysis, Mother submitted an undated letter by one of Claimant's caregivers, Breanna Adams. Ms. Adams has known Claimant since birth and has worked with children across multiple settings with a range of

developmental and other disabilities. Ms. Adams works with Claimant two to three days a week. In her letter, Ms. Adams noted Claimant often does not respond to her name, makes limited eye contact, and does not maintain back-and-forth interactions. She has observed Claimant often communicates through babbling, whining, or vocal sounds. According to Ms. Adams, Claimant does not appear able to learn or carry out new games or activities in the way a child her age typically would. Even with repetition, Claimant requires full physical guidance. Claimant also tends to hyperfocus on patterns and organization, and she more often chooses solo play over group interactions. (Exhibit E.)

Service Agency's Position

37. WRC did not offer evidence to rebut the findings of the school district or Dr. Nghiem that Claimant presents with autism. Ms. Tostado acknowledged that Dr. Kelly's evaluation did not include a formal evaluation for autism. Ms. Tostado asserted that WRC, after reviewing the school district and Dr. Nghiem's findings, would like to complete another psychological evaluation of Claimant with a different psychologist to clarify and update Claimant's diagnosis and determine Claimant's Lanterman Act eligibility before Claimant turns five. WRC offered to perform a full psychological evaluation for Claimant, but Mother declined the offer.

Analysis

38. The only evidence offered by WRC in opposition to Claimant's appeal is Dr. Kelly's report. However, that report is based on observations and assessments conducted more than six months ago, and Mother testified Claimant's behavior has recently worsened. Recent observations by the school psychologist and other school district assessors of Claimant's behaviors contradict many of Dr Kelly's observations.

39. Additionally, Dr. Kelly's report is incomplete. The report contains no analysis of Claimant's conduct according to the DSM-5 criteria for autism; it fails to include the Autism Spectrum Rating Scales scores, which Dr. Kelly contended did not suggest an autism diagnosis; and it fails to include any results of Claimant's CARS-2 assessment. Dr. Kelly also appeared to elevate the observations of Claimant's preschool teachers over those of Claimant's family and other evaluators, even when Dr. Kelly observed the same behavior. For instance, Mother informed Dr. Kelly that Claimant constantly opens and closes doors, which Dr. Kelly observed Claimant doing as well in her office. But because Claimant's teachers stated that they did not observe the behavior, Dr. Kelly did not consider the conduct significant. Dr. Kelly also did not credit Mother's observations that Claimant did not respond to her name or have appropriate eye contact, even though the same conduct was observed earlier in the assessments conducted by the WRC-referred speech and language therapist as well as the WRC-referred physical therapist.

40. In contrast, Dr. Nghiem's evaluation was recent and noted specific examples of Claimant's behaviors that matched the DSM-5 criteria for autism. WRC did not question Dr. Nghiem's qualifications, the credibility of her findings, or note any error in her analysis. Although the school district's autism finding is not dispositive here, the observations of the school district professionals who assessed Claimant as part of her IEP are helpful to the extent they note indicia of autism. Specifically, the observations by the school district psychologist and the preschool teachers she interviewed are consistent with Dr. Nghiem's findings and corroborate Mother's observations. Mother's responses to the Autism Spectrum Rating Scales now support a diagnosis of autism, contrary to Dr. Kelly's findings. Under these circumstances, and in the absence of any rebuttal evidence, Dr. Nghiem's findings that Claimant presents with autism under the DSM-5 criteria are credible and persuasive.

LEGAL CONCLUSIONS

1. Jurisdiction exists to conduct a fair hearing in the above-captioned matter, pursuant to Code section 4710 et seq., based on Factual Findings 1 through 4.

2. Because Claimant is the party seeking governmental services, she bears the burden of proving, by a preponderance of the evidence, that she is eligible for such benefits or services. (See Evid. Code, §§ 115, 500.) Claimant has met her burden of proving she is eligible for regional center services under subdivision (a)(1) of Code section 4512.

Applicable Law

3. A developmental disability, as defined by the Lanterman Act, "is a disability which originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual." (Code, § 4512, subd. (a)(1).) The Lanterman Act defines a developmental disability to include intellectual disability, cerebral palsy, epilepsy, and ASD, as well 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," otherwise known as a "fifth category" condition.

4. California Code of Regulations, title 17 (CCR), section 54000, subdivision (c), specifies those conditions that are not considered developmental disabilities. The excluded conditions 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 [intellectual disability], 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 a need for treatment similar to that required for [intellectual disability].

5. To prove the existence of a developmental disability within the meaning of section 4512, a claimant must show she has a "substantial disability." (Code, § */;* CCR section 54001 defines "substantial disability" to mean:

(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.

6. A child who is under five years old is provisionally eligible for regional center services if the child has a disability that is not solely physical in nature and has significant functional limitations in at least two of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, and self-direction. A child is not required to have one of the developmental disabilities identified in Code section 4512, subdivision (a)(1), to be provisionally eligible for regional center services. (Code, § 4512, subd. (a)(2).)

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7. A child found to be provisionally eligible under the Lanterman Act, the child will receive services based on their needs and pursuant to an Individual Program Plan. Those children who are approved for Lanterman Act provisional eligibility are not eligible for services through the Self-Determination Program. To participate in the Self-Determination Program, a child must be diagnosed with a developmental disability. (Code, § 4685.8, subd. (d)(1).) The provisional eligibility program does not require a developmental disability diagnosis for a child to receive all other regional center services.

Disposition

8. As shown by Factual Findings 38 through 40, Claimant has proven that she presents with autism, a qualifying developmental disability under the Lanterman Act. Dr. Nghiem, a physician specializing in developmental disabilities, diagnosed Claimant with autism, level 3, under the DSM-5 criteria. Dr. Nghiem's diagnosis of Claimant was corroborated by observations of a variety of school specialists who were part of Claimant's IEP team, as well as by the observations of Mother and others. Although Dr. Kelly's observations, testing, and interviews with Claimant's teachers suggest otherwise, the preponderance of evidence, as demonstrated by the observations and testing by Dr. Nghiem, the school district professionals who observed Claimant, Claimant's preschool teachers, Claimant's family, and others, supports a diagnosis of autism under the DSM-5.

9. The parties do not dispute Claimant is substantially disabled in at least three of the five relevant life activities identified in CCR section 54001. The Interdisciplinary Team found Claimant is substantially disabled in expressive and receptive language, learning, self-care, and self-direction. The school district assessors found Claimant substantially disabled in learning as well as in expressive and receptive

language. Dr. Nghiem found Claimant to be substantially disabled in expressive and receptive language, learning, and self-care.

10. There is no evidence Claimant's deficits stem from a learning disability, a psychiatric disorder, or are solely physical in nature.

11. Accordingly, Claimant meets the requirements of Code section 4512, subdivision (a)(1) and (*J*), based on her autism diagnosis combined with her substantial disability in at least three life activities. She therefore is eligible to receive full Lanterman Act services, including the right to participate in the Self-Determination Program.

ORDER

Claimant's appeal is granted. Claimant is eligible to receive regional center services under Welfare and Institutions Code section 4512, subdivision (a)(1).

DATE:

CINDY F. FORMAN
Administrative Law Judge
Office of Administrative Hearings

NOTICE

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

decision to a court of competent jurisdiction within 180 days of receiving the final decision.