

APPEAL RIGHTS

Your hearing decision is attached to this letter.

Compliance Information

If there is an order for the agency or health plan to do something:

- They have to report to State Hearings what work they are doing to carry out the decision. This report is due 30 calendar days after the decision.
- Managed care plans (including Mental Health, Dental, and Substance Use Disorder plans) must carry out the decision within 72 hours.
- If the agency or Plan has not carried out or are not carrying out the decision, call 800-743-8525. We will follow up with the agency or health plan. You will be told the result.

If You Disagree with Your Hearing Decision

There are two ways to appeal. You can ask for a rehearing and you can also go to court. You may wish to call your local Legal Aid office. They may be able to help with your appeal. A list of Legal Aid organizations is on the State Hearings website. You may also call 411 and ask for the phone number of your local free Legal Aid organization.

Review of Your Hearing Decision (all except Covered California cases)

You can ask for a review of your decision. This is called a rehearing.

You must ask for a rehearing within 30 calendar days after you get the hearing decision. If you show a good reason for not asking for a rehearing within 30 calendar days, your time limit may be up to 180 days. In some cases, the time limit to ask for a rehearing may be longer.

In your rehearing request:

- List the date you got the decision

- Explain why a rehearing should be granted
- If you want us to review new evidence:
 - describe the new evidence
 - explain why you did not give it to the judge during the hearing or during any extra time given to turn in evidence
 - tell us how you think that evidence would change the decision
 - if you can, send us a copy of the new evidence

If your case is **not** a Covered California case, send a written request to the State Hearings Rehearing Unit. This can be done by:

- **Online Appeals Account:** <https://acms.dss.ca.gov/acms/>
- **Email:** SHDRehearings@dss.ca.gov
- **Fax number:** 833-281-0902
- **Mail to: (Allow at least 5 days for mailing. Keep your originals.)**

State Hearings Division

PO Box 944243, MS 9-16-431, Sacramento, CA 94244-2430

Review of Covered California Hearing Decisions

If you disagree with your hearing decision about Covered California, you may appeal in writing to Health Insurance Marketplace. This includes:

- Any decision regarding Covered California Health Plan eligibility and enrollment
- Advanced Payments of Premium Tax Credits
- Cost Sharing Reductions

You must do this within 30 calendar days after you get the decision. Your appeal may still be reviewed after 30 calendar days if you have a good reason for sending it in late. Explain the reason for the late appeal.

Send this request to: Health Insurance Marketplace, 465 Industrial Blvd., London, KY 40750-0061.

You can also fax in your appeal request. Include any copies of documents you think help your case. Fax to: 1-877-369-0130.

You have a right to get free help and information about your Covered California appeal.

Call 1-800-318-2596 for help in your language.

Court Review

For all decisions you can go to court without asking for a rehearing. You can also go to court after asking for a rehearing. You must ask for court review within one year of the date you got the decision. To ask for court review, you must file a "petition" in Superior Court. The law about this is found at California Code of Civil Procedure section 1094.5. You will not have to pay court filing fees. If you win in court, and had a lawyer represent you, you may be able to get reasonable attorney's fees and costs.

California Department of Social Services
Department of Health Care Services

PROPOSED DECISION

Adopted by the Director

February 07, 2024

California Department of Social Services

Hearing No. 104946193

In the Matter of Claimant(s):

Yang Xiong
9582 VILLAGE TREE DR,
ELK GROVE, CA 95758-1198
yangcounty@gmail.com

I submit the attached proposed decision for review and recommend its adoption.



Julie Warren
Administrative Law Judge
Cert Date: **February 7, 2024**

Hearing Information

Hearing Date: January 10, 2024 10:00 AM

Release Date: February 8, 2024

Aid Pending: N/A

Issue Codes: 642-2

Language: ENGLISH

Responsible Agency: Sacramento County

Attendees

Attendee Type **Attendee**

Hearing Rep: Yolanda Lewis, Sacramento County

CDSS State Hearings Division

Decision Cover Page

SUMMARY

The action of Sacramento County (County) denying the Minor Recipient protective supervision under the In-Home Supportive Services (IHSS) program, effective August 1, 2023, is sustained because the Minor Recipient does not meet all the regulatory requirements for authorization of protective supervision.

[642-2]

FACTS

By written Notice of Action, dated October 6, 2023, Sacramento County (County) notified the Claimant that the Minor Recipient was authorized to receive 6 hours 4 minutes per month effective August 1, 2023. The Notice of Action further informed the Claimant that the County denied protective supervision effective August 1, 2023 because the Minor Recipient does not need protective supervision to remain safely in their home based on the assessment of September 15, 2023.

On October 11, 2023, the Claimant requested a state hearing to challenge the County's denial of protective supervision, effective August 1, 2023, as reflected in the written hearing request. The Claimant in this matter is the Father of the Minor Recipient.

A noticed hearing was held on January 10, 2024. The Claimant, the Mother, the County Hearing Representative, and the County Social Worker appeared and testified in person.

Issue at Hearing

The parties agreed that the issue for hearing was the denial of protective supervision effective August 1, 2023. The Claimant confirmed that no other issues were in dispute.

Assessment at Issue

On September 15, 2023, the Social Worker conducted an initial assessment of the Minor Recipient's IHSS needs, as reflected in the Needs Assessment form (SOC 293) and case assessment narrative from that assessment. The assessment lasted one hour. The Minor Recipient, the Claimant, and the Social Worker were present.

Diagnosis and Functional Limitations

The Minor Recipient applied for IHSS on August 1, 2023. The Minor Recipient in this matter is a three-year-old male who has an undisputed diagnosis of legally blind as reflected in the Health Care Certification Form (SOC 873), dated August 15, 2023. The Minor Recipient lives with his parents, three other adults, and four other children.

The Assessment of Need for Protective Supervision for In-Home Supportive Services Program (SOC 821) dated September 20, 2023 lists his diagnosis as "legally blind." The First SOC 821 dated October 3, 2023 lists his diagnosis as "blind." The Second SOC 821 dated October 3, 2023 lists his diagnosis as "blindness and developmental delay."

Protective Supervision

County's Evidence

The Social Worker testified that at the time of the assessment, the Minor Recipient was not diagnosed with autism, but he knew that it was likely that the Minor Recipient had autism.

The Social Worker testified that the Minor Recipient's memory was assessed as Rank 2 due to moderate or intermittent memory deficit. The Social Worker testified the Minor Recipient can repeat what he hears and appeared to have age-appropriate memory.

The Social Worker testified the Minor Recipient's orientation was assessed as Rank 2 due to moderate disorientation or confusion. The Social Worker testified the Minor Recipient appears to know where he is when inside his home and knows the layout of the home. The Social Worker testified the Minor Recipient is not aware of where he is when outside the home due to blindness and his young age.

The Social Worker testified the Minor Recipient's judgment was assessed as Rank 2 due to mildly impaired judgment. The Social Worker testified the Minor Recipient may go places he should not, but that is not unlike many three-year-olds.

The Social Worker testified the Minor Recipient did not engage with the Social Worker. The Social Worker testified during the visit, the Minor Recipient had to be redirected several times as he was playing next to something that was dangerous (the edge of a table) or was told to get down from the sofa chair (he enjoyed standing on it and rocking it back and forth).

The Social Worker testified the Minor Recipient was self-directing. The Minor Recipient is very curious and wants to explore everything. Since the Minor Recipient cannot see, he puts things in his mouth. The Minor Recipient wandered over to a neighbor's house when his father turned away from for a few moments. The Minor Recipient likes to sweep his hands across tables to see what is there without regard for what is there. The Minor Recipient has turned the knobs on the stove and has attempted to touch the stove. When upset or not getting his way, the Minor Recipient will throw a tantrum and hit his head. If he loses a toy, the Minor Recipient can get upset and have a tantrum. The Minor Recipient moves quickly and will bump into things. The Minor Recipient does not sleep well; therefore, he can be up late or up early. The Minor Recipient jumped into the bathtub where his younger brother was bathing. The Minor Recipient co-sleeps with his parents; he does not like to be away from his mother. The Social Worker testified

that due to his age, the Minor Recipient cannot be left alone; however, if he was sighted, it does not appear he would get himself into so much trouble.

The Social Worker testified the Minor Recipient's limiting factor appears to be his blindness. If he could see something, he would not have to put things in his mouth to "see" what it is or run his hand across a table to "see" what is there.

The Social Worker testified the Minor Recipient needs more supervision than an unimpaired three-year-old child because he is blind. All three-year-old children must be monitored.

Claimant's Evidence

The Mother testified the Minor Recipient does not respond to his name. The Mother testified the Minor Recipient does not know his birthday or his age. The Mother testified the Minor Recipient calls her "Mom." The Mother testified the Minor Recipient recognizes his brother. The Mother testified the Minor Recipient's brother tries to play with him, but he does not respond.

The Mother testified the Minor Recipient does not know his address. The Mother testified the Minor Recipient can navigate his home. The Mother testified the Minor Recipient knows where the bathroom and bedroom are located and knows where to get food.

The Claimant testified the Minor Recipient is a special day class with 7 to 10 kids in the classroom. The Mother testified the Minor Recipient has a one-to-one aide with him at all times. The Mother testified the Minor Recipient recognizes his teacher. The Mother testified the Minor Recipient does not know his letters or numbers. The Mother testified the Minor Recipient is not able to navigate the classroom independently.

The Mother testified the Minor Recipient is not able to tell time. The Mother testified the Minor Recipient does not know the difference between a school day and not a school day. The Mother testified the Minor Recipient is up most of the night until 2 to 3 AM. The Mother testified the Minor Recipient will get out of bed and go search for things.

The Mother testified the Minor Recipient can feed himself dry food such as cookies and chips. The Mother testified the Minor Recipient is not potty trained. The Mother testified the Minor Recipient is not able to bathe himself. The Mother testified the Minor Recipient is not able to dress himself. The Mother testified they are trying to teach the Minor Recipient to put away his toys, but they have to physically prompt him.

The Mother testified the Minor Recipient mouths objects. The Mother described that the Minor Recipient mouths any items, toys, Tupperware, and piece of metal. The Claimant testified the Minor Recipient does not eat the objects. The Claimant testified the Minor Recipient mouths objects approximately five times in an hour. The Claimant testified the Minor Recipient does not choke when he mouths objects. The Claimant testified there

has been no injuries from the mouthing. The Claimant testified the Minor Recipient mouths objects for a few seconds at a time. The Claimant testified the Minor Recipient does not happen at a certain time; it is throughout the day. The Claimant testified the Minor Recipient does not understand instructions. The Claimant testified you have to physically stop him from engaging in the behavior.

The Mother testified the Minor Recipient goes around the counter searching for items and touches the stove. The Claimant testified the Minor Recipient touches the stove whenever he is in the kitchen. The Claimant testified the Minor Recipient touches the stove approximately five times per day. The Mother testified the Minor Recipient had almost been burned one time. The Mother testified she had just finished cooking dinner and needed to step away to use the restroom. The Mother testified the Minor Recipient was hovering over the hot stove and she had to run to stop him from touching it. The Mother testified the Minor Recipient was counter searching and found a hot kettle. The Mother testified she had to run to stop him because was not responsive to verbal prompting. The Mother testified the Minor Recipient has attempted to play with the knobs but has never actually succeeded in turning on the stove. The Mother testified there are no locks on the stove.

The Mother testified the Minor Recipient throws objects such as small toys, laptops, and books five to six times per day. The video showed the Minor Recipient dropping items that were on the rocking chair to clear a space for him to climb on it. The Mother testified the Minor Recipient has never injured himself or anyone throwing objects. The Mother testified the Minor Recipient has never broken anything by throwing objects. The Mother testified the Minor Recipient just throws the object and is done. The Mother testified the behavior does not happen at a certain time of day. The Mother testified has to physically stop him because he does not respond to verbal prompting.

The Mother testified the Minor Recipient jumps on the rocking chair or sofa five to six times per day. The Mother testified the Minor recipient has been injured a couple of times from falling off. The Mother testified the Minor Recipient has had bumps and bruises but no concussions or hospitalizations from this behavior. The Mother testified the Minor Recipient jumps for 10 to 15 minutes. The Mother testified the behavior does not happen at a particular time of day. The Mother testified the Minor Recipient needs to be physically removed from the rock chair or couch.

The Mother testified the Minor Recipient engages in stimming near the counter and walls and falls down. The video showed the Minor Recipient bouncing up and down near the counter. The Mother testified the Minor Recipient hit his head on the counter and got a bump on his head. The Mother testified the Minor Recipient has hit his head 10 times on the corner of the counter. The Mother testified the Minor Recipient hits his head 2 to 3 times per day from stimming. The Mother testified the Minor Recipient has only had bumps and bruises from stimming. The Mother testified the Minor Recipient has had bumps and bruises but no concussions or hospitalizations from this behavior. The Mother testified the Minor Recipient says "ouch." The Mother testified the Minor Recipient continues to do what he was doing when he got hit. The Mother testified she

has to physically remove him from the dangerous area. The Mother testified she tries to redirect him to the living room as a safe place to stim.

The Mother testified the Minor Recipient plays in the toilet water three to four times per day. The Mother testified the Minor Recipient has not been injured from playing in the toilet. The Mother testified the Minor Recipient will play in the toilet water for 5 to 10 minutes if no one intervenes. The Mother testified the Minor Recipient will test the bathroom door all day long to see if it is locked. The Mother testified the Minor Recipient has been told many times that toilets are dirty, but he does not understand. The Mother testified the locks on the bathroom prevent him from going in. The Claimant testified the Minor Recipient has seven siblings who forget to lock the door.

The Claimant testified the Minor Recipient elopes. The Claimant testified the Minor Recipient will try to go out the door every opportunity he gets. The Claimant testified he was bringing groceries inside and the Minor Recipient took the opportunity to go outside. The Mother testified the Minor Recipient only made it to the neighbor's garage before they intervened and brought him back inside the house. The Claimant testified the Minor Recipient did not go into the street. The Mother testified the Minor Recipient has made it out the front door on five occasions and only into the driveway. The Mother testified the Minor Recipient goes searching for open doors three to four times per day. The Mother testified the Minor Recipient spends 10 to 15 minutes at various times per day testing all the doors.

Documentary Evidence

The County submitted a written statement of position setting forth its factual allegations and legal arguments in support of its action with the following documents attached: Individual Education Plan (IEP) dated May 29, 2023; SOC 873 dated August 15, 2023; SOC 293 and Case Assessment Narrative dated September 15, 2023; SOC 821 dated September 20, 2023; First SOC 821 dated October 3, 2023; Second SOC 821 dated October 3, 2023; and Notice of Action dated October 6, 2023.

The Claimant submitted a written statement of position with the following additional documents attached not already included above: Initial Functional Vision Assessment dated March 1, 2023 and April 17, 2023; Interdisciplinary Assessment Report dated April 17, 2023 to April 20, 2023; Orientation and Mobility Report dated May 9, 2023; Email to Social Worker dated September 21, 2023; Developmental Screening dated October 13, 2023; Social Assessment dated November 21, 2023; Caregiver/Teacher Questionnaire dated November 28, 2023; Psychological Evaluation dated December 13, 2023; Regional Center Letter of Eligibility dated December 27, 2023; Email to County Representative dated January 3, 2024; and Pediatrician Letter dated January 5, 2024.

The Claimant also submitted the Supplemental Security Income dated Ocular Oncology Letter dated May 23, 2020; November 19, 2020; SOC 873 dated August 15, 2023;

Health Summary dated August 16, 2023; IEP Amendment dated October 5, 2023; Individual Program Plan (IPP) dated January 9, 2024.

The documents were marked and admitted into evidence and the record was closed. All documentary and testimonial evidence was carefully considered. Below is a summary of the relevant information.

Initial Functional Vision Assessment dated March 1, 2023 and April 17, 2023

Observations

The Minor Recipient has a very good memory and remembers songs that the Examiner had done with him many weeks before.

Parent Input

The Minor Recipient can identify all of his toys by touch. He understands one-to-one correspondence up to 10 and can count to 20.

On the Minor Recipient's first day coming to preschool, the Minor Recipient was very attached to his parents and held onto his dad saying, "Home? Home?"

Conclusion & Recommendations

Despite his diagnosis with Persistent Hyperplastic Primary Vitreous, the Minor Recipient is a high-functioning child, with many age-appropriate skills, but also deficits associated with his blindness. In order to develop typical language and play skills, the Examiner recommended a preschool class composed at least partially of typically developing peers.

Interdisciplinary Assessment Report dated April 17, 2023 to April 20, 2023

Parent Interview

The parents reported the Minor Recipient has a good memory and likes to listen to music and sing. He likes spending time with his family and seeks out his siblings.

The Minor Recipient will verbalize and often repeats words/phrases. If he cannot say what he wants, he can get frustrated. He will say "no" when not wanting something. He does not say "yes". He will let others know he does want to do something or likes something by smiling and laughing. The Minor Recipient responds to no/stop and understands the routine. He responds when asked, "Where is the Minor Recipient?" He does not ask for help. He will say, "It don't work" when a toy is not working, or "I wash" when wanting a diaper change. The Minor Recipient can follow one-step directions as long as he knows where it is at. The Minor Recipient is able to maneuver at home independently. The furniture is kept the same.

Socially, the Minor Recipient does not like to share toys with his baby brother. He does like spending time with his older siblings and will share interests with them. When playing with toys, he has the tendency to bang them against his teeth, as a means of exploration. Other noted behaviors are that when the Minor Recipient is anxious or nervous, he often makes a gulping noise that leads him to intake too much air and may lead him to throw up. This has been observed to occur in unfamiliar settings or new people.

Classroom Readiness/Functional Skills

The Minor Recipient's parents reported at home, he is able to navigate himself independently around the house since he has become familiar with the setting and placement of furniture. The Minor Recipient's parents report he is okay with transitioning between activities.

Adaptive/Daily Living Skills

The Minor Recipient is not yet toilet trained and communicates that his diaper is soiled by saying "need wash." The Minor Recipient uses his fingers to feed himself dry finger foods and his parents feed him when utensils are needed. His parents report he is able to hold a spoon. The Minor Recipient is able to drink from a sippy cup and a plastic water bottle with support. The Minor Recipient can cooperate in the dressing and undressing routine.

Play and Social Skills

The Minor Recipient was not observed interacting with peers but was observed allowing peers to be near him as he played. Parent reports he will usually play on his own but will explore the nursery setting at Church but not interact with peers. Parents report he is okay with peers sitting close by and are working with him on interacting with peers.

Social Emotional/Behavioral

The Minor Recipient did not exhibit any excessive behaviors in the classroom throughout the week. His parent reports that they do not have any behavioral concerns currently.

Receptive Language

The Minor Recipient was reported to be able to identify body parts, follow one-step directions, respond to "no." understand familiar words/phrases, listen to books, understand some action words, and understand some adjectives.

The Minor Recipient was not able to follow two-step directions, identify clothing items, or demonstrate an understanding of preschool-level concepts.

Expressive Language

The Minor Recipient was reported to be able to shout for attention, give a toy upon request, use “no” meaningfully, name familiar objects, imitate two-word phrases, name familiar objects, imitate two-word phrases, use two-word phrases, use size words, and use some self-centered pronouns.

The Minor Recipient was not able to respond to his name without physical gestures, show items of interest, use exclamatory expressions, use name to refer to himself, answer questions, relate experiences using short sentences, ask questions with what, where, and when, use past tense forms, use plurals, or participate in storytelling.

Parent reports that the Minor Recipient does not have difficulty with chewing or swallowing. No drooling was observed.

Orientation and Mobility Report dated May 9, 2023

Home Observation

The Minor Recipient can be clingy in new situations. He can do stairs but tends to crawl up and down them.

The Minor Recipient is a very curious boy and readily explores things around his immediate environment with his hands and asks questions about things he happens to be touching. At one point he sensed the assessing O&M Specialist’s presence on the family’s couch and came over to investigate who it was. He can identify circles, squares, and triangles. The Minor Recipient can point to various body parts including his nose, mouth, eyes, ears, head, toes, knees, feet, elbow, teeth, tongue, and neck. He can also touch body parts when their function is described. The Minor Recipient is able to identify activities by sound such as closing a door or washing dishes, as well as by smell.

The Minor Recipient will follow voices when walking with his cane and is good with using voice directionality. He has had exposure to using a cane and knows how to sweep with it.

Preschool Environment

When he first was exposed to the preschool assessment center classroom, the Minor Recipient at first just wanted to be held by his dad, but as he became used to the sound in the classroom, he initiated more independent exploration. During the preschool evaluation, the Minor Recipient freely explored the room in a systematic manner, going around the perimeter and walking slowly forward with his hands held out or trailing along the wall. When encountering objects along the wall such as on shelves, he would explore what the item was with his hands and ask questions about what he was feeling. He also used his hearing to direct himself to things that sounded interesting.

Summary & Recommendations

The Minor Recipient demonstrates age-appropriate knowledge of body image concepts and some positional concepts.

IEP dated May 9, 2023

The Minor Recipient receives special education services in a special day classroom. The Minor Recipient also receives specialized vision services and orientation and mobility services. There is no provision in the IEP for a one-to-one aide. The Minor Recipient receives extended school year services because he is at a critical point of skill acquisition or readiness and his ability to acquire skills may be lost or greatly reduced as a result of an interruption of services. There are no behavioral goals that are part of the IEP. There is no behavior intervention plan that is part of the IEP.

Strengths/Preferences/Interests

The Minor Recipient was reported to have a “good memory” and likes music. The Minor Recipient loves to sing. The Minor Recipient likes toys with buttons and big wheels.

Parent Input and Concerns

Parents are concerned about the Minor Recipient adapting to a new environment and separating from Mother, as well as making friends and getting along with friends.

Preacademic/Academic/Functional Skills

The Minor Recipient was observed exploring his environment by feeling what was around him. His parent was observed trying to use the sound of their voice or tapping of their foot to guide him as he navigated around the classroom setting. His parent reports at home, he is able to navigate himself independently around the house since he has become familiar with the setting and placement of furniture. Parent reports he is learning to use his cane outside to navigate.

Communication Development

The Minor Recipient demonstrates delays in receptive language and expressive communication in comparison with what is expected for his age. The Minor Recipient is not yet following multi-step directions or demonstrating an understanding of preschool-level concepts. With deficits in receptive language, it would be expected that the Minor Recipient will have a difficult time following classroom directions and discussions. Expressively, the Minor Recipient will likely have difficulty expressing his needs/wants, thoughts, and participating in back-and-forth interactions with others.

The Minor Recipient does not consistently respond to his name, communicate to share an experience/interest, or engage in turn-taking activities or conversations with others.

The Minor Recipient is not yet communicating for purposes other than to get his needs/wants met or engaging in interactive games with others.

Gross/Fine Motor Development

The parents reported the Minor Recipient will pick up goldfish snacks using a pincer grasp. The parents reported the Minor Recipient will feel walls to familiarize himself with his environment. The parents reported the Minor Recipient is independent and is familiar with each room in their home. The parents reported the Minor Recipient knows left versus right. The parents reported the Minor Recipient can use a spoon with assistance.

Social Emotional/Behavioral

The parents reported the Minor Recipient likes to play with toys that make sounds, pop-its, fidget toys, drums, and the wheels on his large monster truck toy. The parents reported that the Minor Recipient plays with his toys functionally.

The Minor Recipient does not exhibit any excessive behaviors during the week. His parents reported that they did not have any behavioral concerns at the time.

Adaptive/Daily Living Skills

The Minor Recipient is not yet toilet trained and communicates that his diaper is soiled by saying “need wash.”

The Minor Recipient uses his fingers to feed himself dry finger foods and the parents feed him when utensils are needed. The Minor Recipient reported he is able to hold a spoon. The Minor Recipient is able to drink from a sippy cup and plastic water bottle with support.

The Minor Recipient can cooperate in the dressing and undressing routine.

Log Period: August 29, 2023 to September 15, 2023

- 8/29, 10:05 PM – He would not sleep, kept jumping around, and hit his head on the wood beam that is used to fill the gap between the bed and the wall.
- 8/31, 6:18 PM – He couldn't find his rubber ducky, so he started hitting his ears.
- 9/1, 9:45 PM – Bumped his forehead into the corner of the table.
- 9/2, 9:20 AM – The Minor Recipient's head hit the cupboard trying to find his toy.
- 9/3, 4:15 PM – Bumped his forehead into the cabinet cover while opening it.
- 9/3, 6:05 PM – Walked into the corner table.
- 9/4, 3:25 PM – Walked into the wall corner in the hallway.
- 9/6, 7:18 PM – Took the phone charger from the wall and put the plug in his mouth.

- 9/7, 3:40 PM – Hit his head on the toy box from getting up.
- 9/9, 11:00 PM – Wouldn't go to sleep, was jumping up and down (stimming), ran into the dresser, and hit his head.
- 9/10, 12:22 AM – Still not asleep. Put him in bed, jumping, rolling around, and hitting his head on the wood.
- 9/10, 10:15 AM – The Minor Recipient kept banging his head on the wooden part of the rocking chair or the carpet or using his hand to hit his head because he could not find one of his toys. This happened throughout the day as he remembered asking for the toy, but we couldn't find it.
- 9/10, 3:36 PM – Fell off the bed, trying to get off.
- 9/12, 5:30 PM – 2nd time for the day going into the cupboard, taking out cooking wear to play.
- 9/12, 7:06 PM – Lost his toy. Had a meltdown. He doesn't understand that we were not able to find it. He started banging his head on the chair he was sitting on.
- 9/13, 6 PM – He walked into the diner, trying to go to the bedroom, and hit his head.

SOC 821 dated September 20, 2023

The form was completed by an Ophthalmologist who has been treating the Minor Recipient since March 11, 2021, and his diagnosis is listed as legally blind. The Ophthalmologist opined that the Minor Recipient has no memory deficit. The Ophthalmologist opined that the Minor Recipient has severe disorientation. The Ophthalmologist explained, "Child is blind." The Ophthalmologist opined the Minor Recipient has unimpaired judgment. The Ophthalmologist explained, "Appropriate for toddler/young child." The Ophthalmologist indicated the Minor Recipient suffered an injury or accident due to deficits in memory, orientation, or judgment and specified "Congenital anomaly of eyes s/p surgery."

Log Period: October 1, 2023 to October 31, 2023

- 10/1, 6:30 PM - While I was still chopping some vegetables, The Minor Recipient walked over to the stove and started searching for things. His hand was so close to getting burned if I had not seen it.
- 10/2, 7:00 PM - He found an AA battery and was about to put it in his mouth, but I caught him before he could put it in his mouth.
- 10/4, 1:15 PM - I was changing The Minor Recipient's baby brother's diaper, and when I saw The Minor Recipient, he was climbing on the table, trying to search for things. He got a hold of my cup of tea and spilled it over the table and on him. Luckily, my tea was cold.
- 10/5, 12:35 PM - Found him biting a lead on the pencil.
- 10/5, 3:20 PM - Got hold of a nail clipper and was eating it. I took it away, and he started hitting his head on the rocking chair.
- 10/6, 12:15 PM - He did his rollover and hit the corner wall with his back.

- 10/6, 2:25 PM - Got a hold of a glue bottle and was chewing the tip.
- 10/7, 4:00 PM - Found him messing with the outlet.
- 10/8, 2:05 PM - He pulled my charger from the wall and bit the cord.
- 10/10, 4:09 PM - Dropped his toy while jumping up and down, and he couldn't find it. He threw a fit and was banging his head on the rocking chair. When I asked him what was wrong, he couldn't tell me. He only got more irritated.
- 10/12, 4:40 PM - He was stimming and hit his head on the corner table.
- 10/12, 7:00 PM - Found him playing with the toilet water. He does not understand whether it's dirty or clean.
- 10/14, 10:30 PM - He walked into the kitchen, and his head hit the air purifier.
- 10/14, 11:50 PM - He was stimming in the bedroom, slipped, and hit his head on the corner bed.
- 10/15, 2 PM - Found him in the bathroom playing with the toilet water.
- 10/18, 7 PM - Fell off the dining chair while trying to get off.
- 10/23, 12:35 PM - He got into the cupboard, got a hold of a paint bottle, and banged it on his teeth.
- 10/25, 3:30 PM - He got a hold of my teacup from the counter and spilled it all over him; luckily, the tea had cooled down.
- 10/26, 6:30 PM - The Minor Recipient walked over to touch the stove after I had just finished cooking. I was able to run quickly enough to stop him.
- 10/28, 9:20 PM - Jumping on the rocking chair, falling off and hitting his head.
- 10/30, 8:05 PM - After the Minor Recipient finished drinking his bottle, he got out of bed. He hit his head on the wall while getting out of bed.

SOC 821 dated October 3, 2023

The form was completed by an Orientation and Mobility Specialist (OMS), who has been treating the Minor Recipient since August 14, 2023, and his diagnosis is listed as blind. The OMS opined that he was unable to address memory because it is outside their area of expertise. The OMS opined that the Minor Recipient has severe disorientation. The OMS opined the Minor Recipient has mildly impaired judgment. The OMS explained, "The Minor Recipient exhibits a lack of judgment or a clear understanding of his immediate environment due to his blindness, which makes him unsafe without consistent supervision during his waking hours." The OMS was not aware of any injury or accident that the Minor Recipient had suffered due to deficits in memory, orientation, or judgment.

SOC 821 dated October 3, 2023

The form was completed by a Pediatrician, who has been treating the Minor Recipient since birth, and his diagnosis is listed as blindness and developmental delay. The Pediatrician opined that the Minor Recipient has a severe memory deficit. The Pediatrician explained, "The Minor Recipient can retain some information but not in a meaningful way for safety. He has no sense of danger and every situation include(illegible) repeat safety issues, recur. He doesn't recall usual safety norms

appropriate for three years old, and because of this is under evaluation for autism spectrum disorder.” The Pediatrician opined that the Minor Recipient has severe disorientation. The Pediatrician explained, “The Minor Recipient has difficulty with orientating to person and safety. His environment poses safety threats without consistent supervision. Unexpected dangers (wet floor, things get moved, etc.) are examples. He will go with strangers without realizing he shouldn’t.” The Pediatrician opined the Minor Recipient has severely impaired judgment. The Pediatrician explained, “Due to his blindness and (illegible) for his developmental delays, the Minor Recipient lacks appropriate judgment for age. As mentioned above, the inability to retain age-appropriate information and his disorientation cloud his judgment. If not watched all the time, he is risk for eloping and safety.” The Pediatrician specified the Minor Recipient has sustained “minor injuries (bumping head) due to blindness and orientation. Self-soothes with hitting which also caused minor injuries.”

Developmental Screening dated October 13, 2023

The Minor Recipient’s results were below age expectations in communication, gross motor, fine motor, problem-solving, and personal social areas. The Development Screening Specialist referred the Minor Recipient for assessment for autism spectrum disorder.

Social Assessment dated November 21, 2023

Observations and Impressions

The Minor Recipient appeared to be alert and curious as to what was around him in this new setting and he had a flat affect. The Minor Recipient was observed to spend his time in the interview room playing with the toys on the ground, sitting on his mother’s lap as if he was tired and going to fall asleep, and playing at the kid’s table with the puzzles. This writer observed the Minor Recipient engage in many body movements, such as spinning around in a circle, jumping up and down, placing toys into his mouth/against his face, fidgeting with his hands, and plugging his ears. The Minor Recipient also appeared to explore the room by feeling the walls with his hands to help direct himself. When the Minor Recipient spoke, it appeared to be in a low tone of voice, and he was observed to only speak in single words or short 1-2-word phrases. He was observed to say the words “big” and “small” while holding onto toys in his hands, “circle,” “I’m three,” “The Minor Recipient,” “no,” “cars,” and “puzzles.” He also appeared to hold onto *The Very Hungry Caterpillar* book while saying “caterpillar” in a quiet tone of voice, and “turn the page” as he was reciting the words. At the end of the social assessment when this writer said “bye” to the Minor Recipient, he did not appear to verbally say anything in return as he was leaving.

Family Information

The Minor Recipient can say his name in Hmong with prompting.

Behavior Concerns

The Minor Recipient's parents described him as being a "routine kid" and shared that if there is a change in his routine then he will not want to transition to the next task. The Minor Recipient reportedly will show a "big reaction" towards pain when he gets hurt. Parents explained that if they do not happen to see what occurred when the Minor Recipient got hurt, then he will say "ow" but will not share with them what happened. It was indicated that the Minor Recipient tends to be overactive while in the home and appears to have a lot of energy. Parents mentioned that the Minor Recipient will show the daily repetitive behaviors of twirling, jumping, making finger motions (such as flicking and tapping his fingers), always having a toy in his hands, and placing objects into his mouth. Per parents, the Minor Recipient does not understand social cues due to his vision impairment, and they shared that he mostly would use his hands and his hearing when interacting with others. Mother stated that the Minor Recipient seems to become overly interested and attached to certain toys and that he will take them everywhere. She explained that the Minor Recipient is obsessed with squishy toys and that they "give confidence when he's nervous" and seem to make him feel "calm" when he is holding them. It was reported that the Minor Recipient can be affectionate towards certain people that he is comfortable with, such as his mother, but that he normally does not want to be around others. According to parents, the Minor Recipient does not appear to bolt/wander while he is out in public. Parents expressed that the Minor Recipient would drag them around and cling onto them, especially in new environments, because he may get "scared" of the sounds surrounding him. Per parents, the Minor Recipient will engage in "meltdowns," and he shows challenges with expressing himself. For example, parents shared that if the Minor Recipient loses a toy and cannot find it, then he will become frustrated and begin to hit himself and headbang. Parents shared that this is a daily behavior that occurs when the Minor Recipient is upset while at home. It was also reported that the Minor Recipient will engage in "vocal stemming," and he makes "swallowing noises" when he appears to be nervous.

It was reported that the Minor Recipient will show auditory sensitivity, and he will plug his ears when he is in a noisy environment. The Minor Recipient reportedly has oral texture issues when eating, and he does not enjoy mushy or slimy food textures. Parents explained that the Minor Recipient seems to prefer dry or crunchy food items such as cookies and chips. It was indicated that the Minor Recipient is used to wearing shorts and tends to roll up his pants and shirts when wearing them. The Minor Recipient is reported to show vestibular (movement) issues and enjoys the feeling of swinging and spinning around in a circle. Parents mentioned that the Minor Recipient will show proprioceptive (pressure) issues and said that he likes to cuddle with his mother while she holds onto his feet.

Social Functioning

It was reported by the Minor Recipient's parents that he mostly plays by himself and that he has no interest in socializing or playing with others. The Minor Recipient's teacher reported to his parents that he has not been able to learn how to make friends while he

is in the classroom. Parents indicated that while the Minor Recipient is at home, he does not like to play with his brothers, and he does not go on any playdates.

Early Development

The parents shared that when they would ask the Minor Recipient his name, he would sometimes respond correctly and at other times he would mix up his answer. The Minor Recipient also used to be interested in the piano, and he memorized the tune to the *Baby Shark* song but has now stopped playing the piano within the past year.

Medical History

Parents reported that his favorite foods to eat are rice, meat, broth, and grapes. The Minor Recipient reportedly struggles with sleeping, and his parents shared that he is “always” up every night and will sometimes wake up crying due to having a “night terror.” Parents indicated that the Minor Recipient would go to sleep at around 2:00 AM to 3:00 AM and wake up in the morning at 7:00 AM on school days. It was reported that the Minor Recipient does not show concerns for pica, but he will often try to put items and toys into his mouth.

Adaptive Skill Domains

Self-Care

The Minor Recipient’s parents reported that he is unable to dress himself, manipulate fasteners, or choose his own clothing to wear independently and that he needs assistance when completing these tasks. It was indicated that the Minor Recipient does not use utensils to eat and that he prefers to eat with his hands instead. Per parents, the Minor Recipient needs assistance with the grooming/hygiene tasks of washing hands, brushing teeth, and taking a bath/shower. The Minor Recipient reportedly is not currently toilet trained.

Receptive and Expressive Language

Per parents, the Minor Recipient struggles with participating in conversations with others, and he often does not ask questions to respond appropriately. It was indicated the Minor Recipient can follow one-step directions with prompting.

Learning

It was observed during the interview that the Minor Recipient can correctly point to body parts, and he knows his age. Parents reported that the Minor Recipient only knows shapes and colors by name. When this writer asked the Minor Recipient to recite the alphabet, he said “no” and then plugged his ears. According to the Minor Recipient’s parents, they said that he used to know how to recite the alphabet when he was around 1 year old and would do “well” with it. Now, his parents mentioned that the alphabet is “hit and miss” for the Minor Recipient and that he will sometimes skip letters or need to

“mimic” toys to help him recite them. During the interview, the Minor Recipient was observed to quietly count numbers 1-20, but he would skip numbers as he was reciting them. When this writer asked the Minor Recipient if he could spell his name, he said his name. Parents then reported that the Minor Recipient cannot spell out his name independently. It was reported by parents that the Minor Recipient can count to one hundred, but he needs assistance with clues and patterns from them.

Self-Direction

According to the parents, the Minor Recipient will self-initiate some tasks such as requesting food items (chips and cookies) when he is hungry. Parents mentioned that the Minor Recipient does not choose his clothing to wear and that he does appear to have trouble with adapting to change easily. Regarding safety concerns while in the home, parents mentioned that the Minor Recipient tends to feel all around the counters for objects. They stated that if the Minor Recipient does not like something, then he will toss it over, and that he has spilled hot tea over onto the table. Parents recalled that the Minor Recipient has run towards the hot stove, he enjoys touching toilet water, has tried to climb into the bathtub with his clothes on, and will place any object into his mouth. The Minor Recipient’s parents shared their concerns for his safety and mentioned that he is “not able to orient himself or know if he is in danger.” Per parents, the Minor Recipient has no sense of fear or danger, and they believe that he does not have any safety awareness with strangers. Mother stated that if someone were to try to give the Minor Recipient something, then he would try to go off with others that he does not know. It was reported that the Minor Recipient will engage in self-injurious behaviors (such as hitting himself and headbanging) when he is upset. Parents mentioned that the Minor Recipient does not show difficulty coping with fears, anxieties, and frustrations but said that it tends to take a while for him to “setting himself” in new environments.

Caregiver/Teacher Questionnaire dated November 28, 2023

The Questionnaire appears to have been handwritten but the handwriting is covered up with a note that says, “Please see attachment.” A typed copy is attached that is purportedly what is being covered up but under “strengths,” the first handwritten word is “qui” before it is cutoff, and the first word is “imitating” on the typed document.

Strengths

Imitating sounds, words, follows instructions (daily routine): cleans up, push in chair, washing hands. Will count if asking him to count.

Concerns/Weakness

Does not respond to simple what questions. Example: “What is your name?” “What are you doing?” The Minor Recipient often communicates by requesting and rejecting objects/activities. He greets other people with adult prompts. Does not often respond to greetings or to his name.

Peer Relationship/Social Skills

Does not seek interaction with peers, but knows they are there. Communicates very little with his peers. May say a peer's name, but not in a way to gain their attention or communicate.

Unusual Behavior

Often holds and puts objects in mouth.

Psychological Evaluation dated December 13, 2023

Observations

It was observed that the Minor Recipient did not orient towards others nor did he direct affect towards others at any point of the evaluation despite clearly knowing where his parents and this examiner were located. He primarily clung to his mother as his parents provided background history. The Minor Recipient was offered toys at the table, to which he briefly explored but then returned to his mother and fell asleep in her arms. Once he awoke, the Minor Recipient was observed to request items by repeating them over and over (e.g., pink, pink, pink, Cinderella, Cinderella, Cinderella). Once the Minor Recipient found his desired toy, he was observed to mouth it as well as tap it near his ear. The Minor Recipient did not engage with his toys in a functional manner. Rather, he only tapped them or placed them in his mouth. Furthermore, the Minor Recipient did not show or give items to others during the contact period. The Minor Recipient was unresponsive to his name being called by his parents or by the examiner. The Minor Recipient was generally aloof to the presence of others and did not respond when others gave directives or attempted to engage with him.

IPP dated January 9, 2024

Client/Family Assessment

The Minor Recipient does not often respond to greetings or to his name without adult prompt. To get his attention, his parents have to go up to him and talk to him directly or physically guide him.

The Minor Recipient can only follow one-step directions. He cannot retain too much information when it is given to him at once. He does not initiate social interaction with peers his age or his siblings. He plays by himself. He likes to put non-food items in his mouth and tends to lick them as he plays with them.

Activities of Daily Living

Both parents must assist him while brushing his teeth. He cannot wash himself and always requires his parents' supervision. He is unable to use the toilet independently.

He wears diapers. He needs full physical assistance with getting dressed from his parent. He prefers to eat crunchy and dry foods. He is unable to use utensils when he is eating. When he eats by himself, he will use his fingers.

Behaviors

The Minor Recipient likes routine. For example, because his Mother has been the primary person taking him to school, it is very hard for him to accept others like his Father to take him to school. He has a difficult time transitioning from one activity to another. To calm his anxieties and frustration, he engages in self-injurious behaviors like banging his head on the floor, wall or hitting himself in the head with his hand. His tantrum can last up to an hour. He likes the feeling of spinning around in a circle, jumping up and down, and swinging back and forth. He puts everything in his mouth before he plays with the items. He also would lick it as he plays with the item regardless of whether the item is clean, sharp, or dirty.

Sleeping Patterns

The Minor Recipient has a difficult time falling asleep and sleeping throughout the night. He does not fall asleep until 2 to 3 AM on most nights. He jumps and twirls and loses his balance resulting in injuries to his head and body. Sometimes he wakes up with nightmares and will not go back to sleep.

Safety Awareness

The Minor Recipient does not have any understanding of safety awareness. He will leave with strangers without realizing that his parents are not there. He does elope when he gets the opportunity. There was an incident where he wandered to the neighbor's garage. He likes to climb and is unaware of how high it is. There have been incidents where he fell off the rocking chair due to rocking really fast on the rocking chair.

Findings of Fact

Mouthing Objects

It is found that the Minor Recipient is not mouthing objects with the frequency which the Mother testified. This finding is supported by the fact that the Behavior Logs only record six incidents of mouthing during the period from August 29, 2023 to September 15, 2023 and October 1, 2023 to October 31, 2023. The IEP does not mention the mouthing behavior. Considering that the child is under the supervision of the school for a sustained period, and the school is charged with the child's safety, it stands to reason that if the behavior were a danger, the IEP would indicate the behavior was occurring with such frequency that there is or would be a plan to prevent the behavior while in school. However, the IEP indicates nothing of the sort. The conclusion to draw then is that the behavior is not happening or is not happening frequently enough to pose a

danger. Therefore, the Minor Recipient engages in the behavior of mouthing objects at the rate of six times in 49 days.

Touching the Stove

It is found that the Minor Recipient is not attempting to touch the stove with the frequency with which the Mother testified. This finding is supported by the fact that the Behavior Logs only record two incidents of attempting to touch the stove during the period from August 29, 2023 to September 15, 2023 and October 1, 2023 to October 31, 2023. Therefore, the Minor Recipient engages in the behavior of attempting to touch the stove two times in 49 days.

Throwing Objects

It is found that the Minor Recipient is not throwing objects with the frequency with which the Mother testified. This finding is supported by the fact that the Behavior Logs do not record any incidents of the Minor Recipient throwing anything during the period from August 29, 2023 to September 15, 2023 and October 1, 2023 to October 31, 2023. Therefore, the Minor Recipient does not regularly throw objects.

Jumping on the Rocking Chair or Sofa

It is found that the Minor Recipient is not jumping on the rocking chair or sofa with the frequency with which the Mother testified. This finding is supported by the fact that the Behavior Logs only record two incidents of the Minor Recipient jumping on the rocking chair during the period from August 29, 2023 to September 15, 2023 and October 1, 2023 to October 31, 2023. There are an additional three incidents of the Minor Recipient jumping in bed but none of him jumping on the sofa. Therefore, the Minor Recipient engages in the behavior of jumping on the rocking chair or sofa two times in 49 days.

Hitting His Head While Stimming

It is found that the Minor Recipient is not hitting his head while stimming with the frequency with which the Mother testified. This finding is supported by the fact that the Behavior Logs only recorded three incidents of the Minor Recipient hitting his head while stimming during the period from August 29, 2023 to September 15, 2023 and October 1, 2023 to October 31, 2023. Therefore, the Minor Recipient engages in the behavior of hitting his head while stimming at the rate of three times in 49 days.

Playing in Toilet Water

It is found that the Minor Recipient is not playing in toilet water with the frequency with which the Mother testified. This finding is supported by the fact that the Behavior Logs only recorded two incidents of the Minor Recipient playing in toilet water during the period from August 29, 2023 to September 15, 2023 and October 1, 2023 to

October 31, 2023. Therefore, the Minor Recipient engages in the behavior of playing in toilet water at the rate of two times in 49 days.

Eloping

It is found that the Minor Recipient is not attempting to elope with the frequency with which the Claimant testified. This finding is supported by the fact that the Behavior Logs do not record any incidents of the Minor Recipient attempting to elope during the period from August 29, 2023 to September 15, 2023 and October 1, 2023 to October 31, 2023. Therefore, the Minor Recipient does not regularly attempt to elope.

LAW

All regulations referred to herein are set forth in the Manual of Policies and Procedures (MPP) issued by the Department of Social Services (DSS) unless otherwise specified.

State Hearings

A recipient who is dissatisfied with a county action or inaction regarding the application or receipt of aid has the right to request a state hearing. (§ 22-003.1; Welf. & Inst. Code § 10950.)

The issues at the hearing shall be limited to those issues which are reasonably related to the request for hearing or other issues identified by either the county or the claimant which they have jointly agreed to discuss. (§ 22-049.5.)

The state hearing decision shall determine only those circumstances and issues existing at the time of the county action in dispute or otherwise agreed to by the parties. (§ 22-062.4.)

In administrative hearings, the party asserting the affirmative of the issue generally has the burden of proof. (*Cornell v. Reilly* (1954) 127 Cal.App.2d 178, 273.)

The county has the burden of going forward in the state hearing to support its determination. (§ 22-073.36.)

The burden of proof is the obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court. Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence. (Evid. Code § 115.)

A “preponderance of the evidence” means “more likely than not”. (*Tellabs, Inc. v. Makor Issues & Rights, Ltd.* (2007) 127 S.Ct. 2499, 2513, 168 L.E.2d 179, 196.)

Once the party asserting the claim has met its burden of proving its claim, the burden to prove otherwise shifts to the other party. (*In re Cipro Cases I & II* (2015) 61 Cal.4th 116, 157.)

Evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to relying on the conduct of serious affairs. (§ 22-050.2.) The Administrative Law Judge shall not be bound by rules of procedure or evidence applicable in judicial proceedings. (§ 22-050.21.) The Administrative Law Judge shall be permitted to exclude evidence that is irrelevant, cumulative, or unduly repetitious. (§ 22-050.22.)

Although evidence may be admissible under Section 22-050.2, the Administrative Law Judge shall consider the nature of the evidence in assessing its probative value. (§ 22-050.3.)

In determining what inferences to draw from the evidence or facts in the case against a party, the trier of fact may consider, among other things, the party's failure to explain or to deny by his testimony such evidence or facts in the case against him, or his willful suppression of evidence relating thereto, if such be the case. (Evid. Code § 115.)

The Administrative Law Judge's experience, technical competence, and specialized knowledge may be used in evaluating evidence. (Gov't Code § 1425.50(c).)

Direct testimony may be disbelieved where it appears unreliable, contradictory, or inherently improbable. (See *South Bay Transp. Co. v. Gordon Sand Co.* (1988) 206 Cal.App.3d 650, 657; *Quock Ting v. United States* (1891) 140 U.S. 417, 420-421.)

IHSS Program Generally

The term IHSS is often used to refer generally to four distinct state/county programs that provide in-home services to disabled populations. The four programs are: Personal Care Services Program, IHSS Plus Option, Community First Choice Option, and IHSS Residual. (Welf. & Inst. Code §§ 12300, 14132.95, and 14132.97; ACL 14-60.)

The In-Home Supportive Services (IHSS) Program provides assistance to those eligible aged, blind and disabled individuals who are unable to remain safely in their own homes without this assistance. IHSS is an alternative to out-of-home care. Eligibility and services are limited by the availability of funds. (§ 30-700.1.)

IHSS Needs Assessment

County services staff shall conduct a needs assessment of applicants and recipients. In making this assessment, the services staff shall determine the total amount of hours per week needed for the various services set forth in the program content. (§ 30-763.2.)

No services shall be determined to be needed which the recipient is able to perform in a safe manner without an unreasonable amount of physical or emotional stress. (§ 30-761.25.)

Social service staff shall determine the need for services based on the recipient's physical/mental condition or living/social situation, the recipient's statement of need, the available medical information, and other information social service staff consider necessary and appropriate to assess the recipient's needs. (§ 30-761.26.)

When authorizing services for the following 12 IHSS program services that have corresponding Hourly Task Guidelines (HTGs): (1) Preparation of Meals; (2) Meal Cleanup; (3) Feeding; (4) Bowel and Bladder Care; (5) Routine Bed Baths; (6) Dressing; (7) Menstrual Care; (8) Ambulation; (9) Transfer; (10) Bathing, Grooming, and Oral Hygiene; (11) Rubbing Skin and Repositioning; and (12) Care and Assistance with Prosthetic Devices. The application of TPT in these 12 services is not allowed under existing program regulations. (§ 30-757.11 to § 30-757.14(k).) However, social workers may still need to factor in the necessary frequency of need to determine the appropriate time, under certain circumstances for these 12 HTG services. Such circumstances include but are not limited to: HTG exceptions, assignment of Functional Index (FI) rank 2, the application of Alternative Resources, Refused Services, or Voluntary Services to the total time authorized, or the consideration of Age Appropriate Guidelines when assessing minors. (ACIN 1-82-17, December 5, 2017.)

The remaining 13 non-HTG services within the program may (1) have time guidelines without specific ranges for each FI ranking (e.g., Domestic Services at 6:00 hours/month), and may require time to be authorized beyond these guidelines, based on the applicant's/recipient's special needs or circumstances; (2) require calculations based on actual time needed (e.g., Accompaniment to Medical Appointments); and/or (3) require one-time limited services (e.g., Heavy Cleaning). (ACIN 1-82-17, December 5, 2017.)

The following are general regulatory standards that apply to all functions. The standards for each function are defined in more detail in the individual scales that follow.

- Rank 1: Independent: Able to perform a function without human assistance although the recipient may have difficulty in performing the function, but the completion of the function, with or without a device or mobility aid, poses no substantial risk to his/her safety. A recipient who ranks a "1" in any function shall not be authorized the correlated service activity.
- Rank 2: Able to perform a function but needs verbal assistance such as reminding, guidance, or encouragement.
- Rank 3: Can perform the function with some human assistance, including, but not limited to, direct physical assistance from a provider.

Rank 4: Can perform a function but only with substantial human assistance.

Rank 5: Cannot perform the function with or without human assistance.

Rank 6: Paramedical Services needed.

(ACIN No. I-97-20, December 30, 2020, Attachment B.)

To guide in determining where within the range an applicant's/recipient's needs fall and to properly assign time, consider the following ranges as indicated on the tool:

1. Low – less time needed than typical based on the applicant's/recipient's functional abilities/limitations within the range of that rank in a service category.
2. Middle – typical time needed (i.e., average level of need for assistance) based on the applicant's/recipient's functional abilities/limitations within the range of that rank in a service category.
3. High – more time needed than typical based on the applicant's/recipient's functional abilities/limitations within the range of that rank in a service category.

(ACIN No. I-82-17, December 5, 2017, p.7.)

The applicant or recipient shall be required to cooperate to the best of their ability in the securing of medical verification that evaluates their present condition, their ability to remain safely in their own home without IHSS services, their need for either medical or nonmedical out-of-home care placement if IHSS were not provided, and the level of out-of-home care necessary if IHSS were not provided. (§ 30-763.11.)

If the recipient's functioning varies throughout the month, the functional rank should reflect the level of functioning that occurs a majority of the time in a given week or month, as appropriate to a specific service. If the recipient needs more time outside the range for that chosen rank, the social worker is required to document an exception for the additional time allotted.

(ACIN No. I-82-17, Attachment B, December 5, 2017.)

Counties must use Hourly Task Guidelines (HTGs) when conducting an initial assessment or reassessment of an individual's need for supportive services. The HTGs establish a range of time normally required for each supportive service task necessary to ensure the health, safety, and independence of the recipient. The HTGs also provide criteria to assist county workers in determining when an individual's service needs fall outside the range of time provided in the guidelines. Whenever a county authorizes a task time that falls outside the range provided in the guidelines, the county shall document the need for the authorized service level.

(§ 30-757.1; Welf. & Inst. Code § 12301.2; ACL 22-57, July 22, 2022.)

Protective Supervision

The IHSS Program content includes Protective Supervision. Protective Supervision consists of monitoring the behavior of non-self-directing, confused, mentally impaired, or mentally ill recipients/applicants in order to safeguard the recipient/applicant against injury, hazard, or accident. (§ 30-757.171.)

Social Services staff shall discuss the need for 24-hour-a-day supervision with the recipient/applicant, or the recipient's/applicant's guardian or conservator, and will discuss the appropriateness of out-of-home care as an alternative to Protective Supervision. (§ 30-757.174.)

If a person is identified by County staff to potentially need Protective Supervision, the County shall request that the form SOC 821 (11/05), Assessment of Need for Protective Supervision for In-Home Supportive Services Program, be completed by a qualified physician or other appropriate medical professional to certify the need for Protective Supervision and returned to the County. The form shall not be determinative but shall be used in conjunction with other pertinent information, such as an interview or report by the social service staff or a Public Health Nurse, to assess the person's need for Protective Supervision. Recipients may also request Protective Supervision. Recipients may obtain documentation (such as the SOC 821) from their physicians or other appropriate health care professionals for submission to the County social service staff to substantiate the need for Protective Supervision. (§ 30-757.173.)

Protective Supervision is available when social services staff determines that a 24-hour need exists for Protective Supervision and that the recipient/applicant can remain at home safely if Protective Supervision is provided. Services staff shall determine that the entire 24-hour need for Protective Supervision can be met through any of the following, or a combination of the following: IHSS; alternative resources; or a reassurance phone service when reasonable and appropriate. (§ 30-757.171 and .173.)

Mentally Impaired/Mentally Ill and Nonself-Directing

A person must be both mentally impaired or mentally ill and non-self-directing to be eligible for Protective Supervision. It is not sufficient for someone to just be mentally impaired/mentally ill, there must also be evidence that he/she is non-self-directing. This policy is based on the court rulings in *Marshall v. McMahon* (1993) 17 Cal.App.4th 1841, and *Calderon v. Anderson* (1996) 45 Cal.App.4th 607 cases.

"Non-self-directing" is the inability, due to a mental impairment/mental illness, to assess danger and the risk of harm, and therefore, the individual would most likely engage in potentially dangerous activities that may cause self-harm. (ACL 15-25, March 19, 2015.)

A recipient is considered non-self-directing if he/she is unable to assess danger and the risk of harm. (ACL 17-95, September 12, 2017.)

Mental Functioning

The recipient's mental function shall be evaluated on a three-point scale (Ranks 1, 2, and 5) in the functions of memory, orientation, and judgment. This scale is used to determine the need for Protective Supervision.

(§ 30.756.37.)

Memory

Recalling learned behaviors and information from distant and recent past.

Rank 1: No problem: Memory is clear. The recipient can give accurate information about his/her medical history; can talk appropriately about comments made earlier in the conversation; and has good recall of past events. The recipient can give detailed information in response to questions.

Rank 2: Memory loss is moderate or intermittent: The recipient shows or reports evidence of some memory impairment, but not to the extent where he/she is at risk. The recipient needs occasional reminding to do routine tasks or help recalling past events.

Rank 5: Severe memory deficit: The recipient forgets to start or finish activities of daily living that are important to his/her health and/or safety. The recipient cannot maintain much continuity of thought in conversation.

(ACIN I-82-17, December 5, 2017, Attachment B, pp. 19-22.)

Orientation

Awareness of time, place, self, and other individuals in one's environment.

Rank 1: No problem: Orientation is clear. The recipient is aware of where he/she is and can give reliable information when questioned about activities of daily living, family, etc.; is aware of the passage of time during the day.

Rank 2: Occasional disorientation and confusion are apparent, but the recipient does not put himself at risk: The recipient has a general awareness of the time of day and can provide limited information about family, friends, age, daily routine, etc.

Rank 5: Severe disorientation which puts the recipient at risk: The recipient wanders off; lacks awareness or concern for safety or well-being; is unable to identify significant others or relate safely to environment or situation; and has no sense of time of day.

(ACIN I-82-17, December 5, 2017, Attachment B, pp. 19-22.)

Judgment

Making decisions so as not to put themselves or property in danger. The recipient demonstrates safety around the stove. The recipient has the capacity to respond to changes in the environment (e.g., fire, cold house). The recipient understands the alternatives and risks involved and accepts the consequences of decisions.

Rank 1: Judgment unimpaired: Able to evaluate environmental cues and respond appropriately.

Rank 2: Judgment mildly impaired: Shows lack of ability to plan for self; has difficulty deciding among alternatives but is amenable to advice; and social judgment is poor.

Rank 5: Judgment severely impaired: The recipient fails to make decisions or makes decisions without regard to safety or well-being.

(ACIN I-82-17, December 5, 2017, Attachment B, pp. 19-22.)

Physical Ability to Engage in Potentially Dangerous Activities

Protective Supervision involves not only the observation of behavior to safeguard the individual against harm but also the intervention to prevent harm when the individual engages in potentially dangerous conduct. Protective Supervision is available to those IHSS beneficiaries who are non-self-directing and who would most likely engage in potentially dangerous activities. (*Calderon v. Anderson* (1996) 45 Cal.App.4th 607, 616.)

The *Calderon* case involved an individual, Calderon, who at 35 years of age suffered from severe mental retardation, physical deformities, and cerebral palsy, which rendered him completely bedridden. Calderon had no use of his extremities, which remained in a fixed position, could not move his head, was nonverbal, and was unable to care for himself. The Court in *Calderon* held that Protective Supervision was not warranted because, although Calderon was non-self-directing, his physical condition made it impossible for him to engage in any activities that would require observation or preventive intervention. (*Id.* at 616.)

Protective Supervision recipients must be physically capable of harming themselves. In *Calderon v. Anderson*, the court held that the plaintiff was not entitled to Protective Supervision under the IHSS Program because his physical condition made it impossible for him to engage in any activities that would require observation or preventative intervention, and Protective Supervision was not available merely to provide constant oversight in anticipation of environmental or medical emergencies. However, a mentally impaired or mentally ill individual who is bedridden, or in a wheelchair, is not necessarily incapable of engaging in activities that would require observation or preventative intervention under Protective Supervision. The specific factual circumstances of the individual must be considered when determining whether s/he has the physical ability to engage in potentially dangerous activities. (ACL 15-25, March 19, 2015.)

Actual Injury vs. Propensity to Harm Self

It is DSS' policy that a person does not have to suffer actual injury to be eligible for Protective Supervision, but only have a history of a propensity for placing him/herself in danger. (ACL No. 15-25, March 19, 2015.)

Evidence of a propensity for placing him/herself in danger may come from doctor evaluations, Individualized Education Plans (IEPs), and other relevant reports. (ACL No. 15-25, March 19, 2015.)

When reassessing for Protective Supervision, changes in a recipient's physical mobility may impact their eligibility for Protective Supervision. Also, changes in the recipient's behavior or condition which indicates that he/she no longer has the same propensity to engage in potentially dangerous activities may impact their eligibility for Protective Supervision. (ACL No. 15-25, March 19, 2015.)

Fluctuating/Episodic Behavior

Per § 30-757.173, Protective Supervision only is available when at the time of the initial assessment or reassessment, a need exists for 24 hours a day of supervision in order for the recipient to remain at home safely.

Protective Supervision requires a 24-hour-a-day, seven-day-a-week need, so if the behavior in question is considered predictable, and the need for supervision is at certain times of the date, there is no Protective Supervision eligibility because there is not a 24-hour-a-day need. Alternatively, unpredictable episodic behavior does meet the 24-hour-day-day, seven-day-a-week requirement, as the need for supervision is constant. The unpredictable, episodic behavior must be frequent and long enough that constant supervision is necessary. (ACL No. 15-25, March 19, 2015.)

It is DSS' policy that leaving a recipient alone for some fixed short period of time, is not, by itself, a reason to deny Protective Supervision. Although this concept is derived from language from the *Garrett* court order, it is DSS' policy that this should apply to adults and children alike; therefore, an adult or a child may be eligible for Protective Supervision to safeguard them from dangerous and fluctuating/episodic behavior, even if that behavior allows the person to be left alone for short periods of time. (ACL No. 15-25, March 19, 2015.)

Assessing Minor Recipients for Protective Supervision

A county social worker should always assess an IHSS-eligible child for mental functioning. (§§ 30-756.1, 756.2, 761.261; Cal. Welf. & Inst. Code §§ 12300(d)(4), 12301.1, 12309(b)(1)(2)(c).)

If the minor is mentally impaired/mentally ill, the following provides a four-step process for counties to use when applying the terms of the *Garrett v. Anderson* stipulated judgment:

1. Is the minor non-self-directing due to the mental impairment/mental illness? If the answer is no, then the recipient is not eligible for Protective Supervision pursuant to *Calderon v. Anderson* and *Marshal v. McMahan*, and Protective Supervision should not be granted. The county should document that because the child is self-directing, the recipient does not meet the *Garrett* criteria of needing more supervision than another recipient of the same age without a mental impairment/mental illness. Counties also should document the underlying facts which are the basis for this determination. If the answer is yes, then move to question 2;
2. If the minor is mentally impaired/mentally ill and non-self-directing, is he/she likely to engage in potentially dangerous activities? Consider here whether the recipient retains the physical ability to put him/herself at risk of harm. If the answer is no, then the recipient is not eligible for Protective Supervision under the *Calderon v. Anderson* court decision, and Protective Supervision should not be granted. The county should document that because the child is not likely to engage in potentially dangerous activities, the recipient does not meet the *Garrett* criteria of needing more supervision than another recipient of the same age without a mental impairment/mental illness. If the answer is yes, then move to question 3;
3. Does he/she also need more supervision than a recipient of comparable age who is not mentally impaired/mentally ill pursuant to the *Garrett v. Anderson* court order? "More supervision" can be more time, more intensity, or both. The additional supervision required must be significantly more than routine childcare, and not only be related to the functional limitations of the child but also allow the child to remain safely in their own home with this assistance. If the answer is no, then the recipient is not eligible for Protective Supervision under the *Garrett v. Anderson* court order and Protective Supervision should not be granted. The county should document that because the child does not need more supervision than another child of the same age without a mental impairment/mental illness, the recipient does not meet the *Garrett* criteria of needing 24 hours a day of supervision. If the answer is yes, then move to question 4;
4. When it is found that "more supervision" is needed, is 24 hours-a-day supervision needed in order for the recipient to remain at home safely pursuant to § 30-757.173? If the answer is no, then the recipient is not eligible for Protective Supervision, and it should not be granted. If the answer is yes, the recipient qualifies for Protective Supervision, if otherwise eligible.

A 24-hour care plan is needed to enumerate how the recipient will be protectively supervised for IHSS or Alternative Resources.

(ACL 15-25, March 19, 2015.)

Environmental Modifications/Safety-Proofing to Eliminate Need for Protective Supervision

Environmental modifications such as removing knobs from the stove or adding safety latches can be used and should be encouraged, to eliminate the need for Protective Supervision. If the modification eliminates the hazard, then there is no longer a need for Protective Supervision and Protective Supervision should not be authorized.

(ACL No. 15-25, March 19, 2015.)

Environmental modifications are not required to eliminate the need for Protective Supervision; however, if environmental modifications already exist, Protective Supervision would not be authorized if those modifications eliminate the safety hazard that puts the recipient at risk. (ACL No. 17-95, September 12, 2017.)

Environmental modifications may be discussed with the recipient or the recipient's representative, as a possible means to address these optional safeguards. (ACL No. 17-95, September 12, 2017.)

Modifications or restraints such as locking the recipient in a room, shall not be considered an appropriate modification. (ACL No. 17-95, September 12, 2017.)

Excluded Needs and Behaviors under § 30-757.172

The exclusions listed under Section 30-757.172 are applicable if a recipient is otherwise eligible for Protective Supervision in that he/she has the requisite mental impairment/mental illness, is non-self-directing, and would likely engage in potentially dangerous activities. Section 30-757.172 states Protective Supervision shall not be authorized:

- (a) For friendly visiting or other social activities;
- (b) When the need is caused by a medical condition and the form of supervision required is medical;
- (c) In anticipation of a medical emergency;
- (d) To prevent or control anti-social or aggressive recipient behavior;
- (e) To guard against deliberate self-destructive behavior, such as suicide, or when an individual knowingly intends to harm himself/herself.

The IHSS program is not intended to prevent or control dangerous behaviors, and IHSS providers are not trained to intervene when recipients are displaying such behaviors. The non-IHSS program remedy for suicide attempts and other dangerous behavior still is to call 911. (ACL 15-25, March 19, 2015.)

Assessing Protective Supervision eligibility, due to a recipient's combative behavior, shall be evaluated based upon the willfulness of that behavior. As with all services, the

recipient's age and specific behavior shall be considered. (ACL 17-95, September 12, 2017)

When assessing for Protective Service eligibility, a recipient must have a mental impairment/illness and determined to be non-self-directing, due to the mental impairment/illness. The recipient would be considered non-self-directing if he/she is unable to assess danger and the risk of self-harm. A recipient who meets these criteria and displays self-destructive behaviors, such as head banging, as a manifestation of the mental impairment/illness, may be eligible for Protective Supervision. However, a recipient who has a mental impairment/illness and is determined to be non-self-directing, due to the mental impairment/illness, but exhibits anti-social or aggressive behavior (e.g., pulling hair, scratching, hitting) directed to harm another individual, would be ineligible for Protective Supervision. (§ 30-757.172 (d).)

Additionally, a recipient who displays intentional self-destructive behavior, with the knowledge that the activity may cause self-harm, would not be Protective Supervision eligible (§ 30-757.172(e).) This type of behavior may include tantrums or head-banging as a way to achieve a desired result. In this case, the recipient would be considered self-directing, as there is knowledge that the activity may cause self-harm; therefore, he would be ineligible for Protective Supervision. (ACL 17-95, September 12, 2017)

Routine Child Care

Protective Supervision cannot be authorized for routine childcare or supervision. This policy is based on the requirement that Protective Supervision must be related to the functional limitations of the child as set forth in Welfare and Institutions Code Section 12300(e)(4). This policy also is supported by Section 30-763.456(d), and it is DSS' interpretation that this criterion applies to all providers, not just parent providers.

CONCLUSION

Protective Supervision

In this case, Sacramento County (County) denied protective supervision.

Protective supervision is available for monitoring the behavior of a non-self-directing, confused, mentally impaired or mentally ill recipient, likely to engage in potentially dangerous activities to safeguard the recipient against injury, hazard, or accident. Protective supervision requires a need for 24-hours-a-day of supervision.

For a minor to be eligible for protective supervision, they must: (1) be mentally impaired or mentally ill; (2) be non-self-directing due to the mental impairment or mental illness; (3) be likely to engage in potentially dangerous activities; (4) need significantly more supervision than a child of comparable age who is not mentally impaired or mentally ill; and (5) need 24-hour-a-day supervision to remain safely at home. The minor must meet

each of these requirements. If the minor does not meet any one of these requirements, the minor is not eligible for protective supervision.

According to IHSS rules, a minor may not be denied protective supervision solely on the basis of their age, although age may be one factor in determining if protective supervision should be granted.

Mental Impairment or Mental Illness

At the time of the September 15, 2023 in-home assessment, the Minor Recipient had no official diagnosis of mental impairment. The Social Worker in his report acknowledged that the Minor Recipient had “autistic behaviors.” The Claimant argued that Section 30-757.171 does not require an official diagnosis as it states, “Protective Supervision is available for observing the behavior of non-self-directing, confused, mentally impaired, or mentally ill persons only.” However, ACL 08-18, dated April 23, 2008, provides that a mental health diagnosis can only be made by a mental health professional. Here, the SOC 873 dated August 15, 2023; SOC 821 dated September 20, 2023; and the first SOC 821 dated October 3, 2023 all simply list the Minor Recipient’s diagnosis as “blind.” The Second SOC 821 dated October 3, 2023 also lists “developmental delay” and explains the Minor Recipient is under evaluation for autism spectrum disorder. Although there was no official diagnosis of autism spectrum disorder until December 13, 2023, the developmental delay is a mental impairment.

Non-Self Directing Due to Mental Impairment or Mental Illness

Because the Minor Recipient is mentally impaired, the next step in the analysis for protective supervision is to determine whether the Minor Recipient is non-self-directing as a result of their mental impairment.

“Non-self-direction” is an inability, due to a mental impairment or mental illness, for individuals to assess danger and the risk of harm, thereby causing the individuals to most likely engage in potentially dangerous activities that may cause self-harm. An applicant or recipient’s mental functioning shall be evaluated on a three-point scale (Ranks 1, 2, and 5) in the functions of memory, orientation, and judgment. This scale is used to determine the need for protective supervision.

Memory

Memory is recalling learned behaviors and information from distant and recent past.

The Claimant argues the Ophthalmologist incorrectly assessed that the Minor Recipient has unimpaired memory on the SOC 821 dated September 20, 2023. However, the parents reported in the Initial Functional Vision Assessment dated March 1, 2023 and April 17, 2023; Interdisciplinary Assessment Report dated April 17, 2023 to April 20, 2023; and the IEP dated May 9, 2023 that the Minor Recipient has a “good

memory.” There are no reports that the Minor Recipient has a memory deficit until after the October 6, 2023 Notice of Action.

The Orientation and Mobility Specialist declines to make an assessment as to memory because “memory is outside of [their] area of expertise” in the First SOC 821 dated October 3, 2023. The Pediatrician opines the Minor Recipient has a severe memory deficit in the Second SOC 821 dated October 3, 2023. The Pediatrician explained, “The Minor Recipient can retain some information but not in a meaningful way for safety. He has no sense of danger and every situation include(illegible) repeat safety issues, recur. He doesn’t recall usual safety norms appropriate for three years old, and because of this is under evaluation for autism spectrum disorder.” However, the Pediatrician does not define what safety norms a three-year-old is supposed to know because in general children under the age of five require close supervision at all times. A three-year-old child such as the Minor Recipient should not be left alone in quarters, play outside unattended, or be left in a car unattended.

The Minor Recipient shows clear memory for a three-year old in that, according to the Interdisciplinary Assessment Report date April 17, 2023 to April 20, 2023 and IEP dated May 9, 2023, he is able to feed himself finger foods, communicates that his diaper is soiled by saying “need wash,” and cooperates in the dressing and undressing routine, showing he can recall learned behaviors from the distant and recent past. The Minor Recipient was reported in the Interdisciplinary Assessment Report dated April 17, 2023 to April 20, 2023 to be able to identify body parts, follow one-step directions, and respond to “no,” showing he can recall information from the distant and recent past.

Based on the foregoing, it is determined that the Minor Recipient’s memory is functional Rank 1 and has a clear memory because the Minor Recipient had a “good memory” according to his parents prior to the denial of the protective supervision in the Notice of Action dated October 6, 2023.

Orientation

Orientation is awareness of time, place, self, and other individuals in one's environment.

In the Initial Functional Vision Assessment dated March 1, 2023 and April 17, 2023, the Minor Recipient was reported to be very attached to his parents, showing he is oriented to family members. In the Interdisciplinary Assessment Report dated April 17, 2023 to April 20, 2023, the parents reported the Minor Recipient “seeks out his siblings” and “likes spending time with his older siblings and will share interests with them,” showing again he is oriented to his family members. In the IEP dated May 9, 2023, the Minor Recipient was able to navigate his classroom using the sound of his parents’ voices, showing he is attuned to and recognizes his parents’ voices. In the Interdisciplinary Assessment Report dated April 17, 2023 to April 20, 2023 and IEP dated May 9, 2023, the parents reported the Minor Recipient can navigate the home independently despite being blind, showing the Minor Recipient is oriented to familiar places. In the Interdisciplinary Assessment Report dated April 17, 2023 to April 20, 2023 and the

Caregiver/Teacher Questionnaire dated November 28, 2023, the parents reported the Minor Recipient understands the routine, showing he understands sequencing. In the Orientation and Mobility Report dated May 9, 2023, the Minor Recipient was able to identify activities by sound such as closing a door or washing dishes, as well as by smell, showing high sensory orientation to his environment.

However, three-year-old children such as the Minor Recipient generally sleep through the night, and the Mother testified the Minor Recipient is up most of the night until 2 to 3 AM, showing some disorientation to time of day. Some of this disorientation to time of day, as supported by all three of the SOC 821s, is due to the Minor Recipient's lack of vision and not due to developmental delay.

Based on the foregoing, it is determined the Minor Recipient is a functional Rank 2 with occasional disorientation and confusion because he is generally oriented to his family, his home, and his routine, but does have difficulty falling asleep at night.

All three of the SOC 821s opine that the Minor Recipient has severe disorientation. The SOC 821 dated September 20, 2023 and the First SOC 821 dated October 3, 2023 explained it was due to the Minor Recipient's blindness. The Pediatrician explained, "The Minor Recipient has difficulty with orientating to person and safety. His environment poses safety threats without consistent supervision. Unexpected dangers (wet floor, things get moved, etc.) are examples. He will go with strangers without realizing he shouldn't." As discussed above, the evidence shows the Minor Recipient is oriented to his family, so he does show some orientation to people in his environment. In addition, "unexpected dangers (wet floor, things get moved, etc.)" is another allusion to the Minor Recipient's blindness. However, the disorientation must be related to a mental impairment. As the high ranking is primarily due to the Minor Recipient's blindness, the SOC 821s are not persuasive as to severe disorientation.

Judgment

Judgment is making decisions so as not to put self or property in danger.

Based on the findings above, the Minor Recipient is not mouthing objects, touching the stove, throwing objects, jumping on the rocking chair or sofa, playing in toilet water, and eloping with a higher frequency than an unimpaired three-year-old such that it can be deduced that the maladaptive behavior is the result of impairment rather than age. In addition, the manner in which the Minor Recipient is engaging in maladaptive behaviors, such as placing inedible items in his mouth without eating them, exploring his environment with his hands because he cannot see, jumping on the rocking chair or sofa, playing in toilet water when the bathroom door is left unlocked, and eloping when the door is left open while his parents bring in groceries consistent with action one would expect of an unimpaired, blind three-year-old such as the Minor Recipient. In particular here, the Minor Recipient is not only three years old but blind and many of the behaviors presented are of a child learning to navigate a world while lacking vision.

Arguably this shows sound judgment in that the Minor Recipient has a desire to understand his world.

Considering a high rate of stimming is not a typical behavior for a three-year-old, hitting his head while stimming might indicate a judgment deficit. However, based on the findings above, the frequency with which the behavior is occurring does not indicate a severe judgment deficit. Further, the Behavior Log records numerous incidents of the Minor Recipient bumping his head because he ran into tables, cabinets, wall corners, etc. that he cannot see such that it can be deduced that the Minor Recipient more frequently hits his head because he is blind and not because he is stimming.

Based on the foregoing, it is determined that the Minor Recipient's judgment is functional Rank 2 and has mildly impaired judgment. Given the low frequency of the maladaptive behaviors, the evidence shows that the Minor Recipient engages in maladaptive behaviors more frequently due to his age than any mental impairment. This determination is consistent with the First SOC 821 dated October 3, 2023 in which the OMS opines the Minor Recipient has mildly impaired judgment.

In the SOC 821 dated September 20, 2023, the Ophthalmologist opined that the Minor Recipient has unimpaired judgment. The Ophthalmologist explained, "Appropriate for toddler/young child." As discussed above, the Minor Recipient's judgment deficits appear to be age-related. However, as also discussed above, stimming is not a typical behavior and does indicate some judgment deficit related to a mental impairment.

In the Second SOC 821 dated October 3, 2023, the Pediatrician opined the Minor Recipient has severely impaired judgment. The Pediatrician explained that the Minor Recipient lacks appropriate judgment for his age "due to blindness." Again, the judgment deficit must be related to a mental impairment and not blindness. Therefore, the Second SOC 821 dated October 3, 2023 is not persuasive as to a severe judgment deficit.

The Minor Recipient is Self-Directing

Given the above rankings for memory, orientation, and judgment, it is determined the Minor Recipient is self-directing because the Minor Recipient shows he is self-directing for a three-year-old child by advocating for his needs. For example, in the Social Assessment dated November 21, 2023 the parents reported the Minor Recipient makes requests for food items, and in the Interdisciplinary Assessment Report dated April 17, 2023 to April 20, 2023 and IEP dated May 9, 2023, the parents reported the Minor Recipient communicates that his diaper is soiled by saying "need wash." He acts with sufficient judgment, and sound memory and orientation consistent with an unimpaired three-year-old, and any heightened deficiency has not placed the Minor Recipient in imminent risk of out-of-home placement as he listens to direction or complies with physical prompting. Moreover, the Minor Recipient's blindness adds a layer that might cause additional needs but that doesn't result in non-self-direction due

to the Minor Recipient's "developmental delay" because physical limitation aside, the child navigates the world consistent with a three-year-old level of care.

As it has been determined that the Minor Recipient is self-directing, it is not necessary to proceed to the other elements of protective supervision. Nevertheless, this decision will touch on how the behaviors fail Likely to Engage in Potentially Dangerous Activities.

Likely to Engage in Potentially Dangerous Activities

The next step in the protective supervision analysis requires a determination of whether the Minor Recipient is likely to engage in potentially dangerous activities, considering whether they retain the physical ability to put themselves at risk of injury, hazard, or accident.

Based on the findings above, the Minor Recipient did not throw any objects or attempt to elope with any frequency in 49 days. Therefore, the behaviors are not likely to occur.

Based on the findings above, the Minor Recipient attempts to touch the stove, jump on the rocking chair or sofa, and play in toilet water at the low frequency of two times in 49 days. Therefore, the behaviors are not likely to occur.

Based on the findings above, the Minor Recipient hits his head while stimming at the low frequency of three times in 49 days. Therefore, the behavior is not likely to occur.

Based on the findings above, the Minor Recipient is likely not mouthing with sufficient frequency to conclude it is a danger to him. Alternatively, if the Mother is to be taken at her word that the Minor Recipient mouths items five times per hour equal to roughly 80 times per day. That would mean that the Minor Recipient places inedible objects in his mouth 29,200 times a year. Yet, the Mother testified the Minor Recipient does not choke on the objects he mouths. So, the Minor Recipient is so adroit at mouthing objects that he avoided choking 29,200 times per year. In either alternate scenario, there is no danger indicated.

Based on the above statutes, regulations, findings of fact, and the preponderance of the evidence, it is determined the County's action denying protective supervision effective August 1, 2023 is sustained.

ORDER

The claim is denied.