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State Hearings Division

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GAVIN NEWSOM
GOVERNOR

RE-HEARING ACKNOWLEDGEMENT

March 13, 2024

RE: SHN-104946193

A rehearing request has been filed in this case. We got the request on March 13, 2024. Rehearing request filed by Claimant. A copy of the request is enclosed. For a free interpretation of the attached request, please call 800-743-8525.

Very important information about rehearing rights is also included with this letter. Please read it carefully.

We are reviewing the request. You may submit a statement supporting or objecting to the rehearing request. If you wish to submit a statement, please send it by one of the ways listed below. Send the information no later than five (5) calendar days after you get this letter.

State Hearings will either grant or deny the rehearing request after a careful review of the case record. This includes review of the case record, rehearing request, and any statement received before the review. We will send a separate letter about our decision.

You can contact the State Hearings Division at (916) 653-3836 or toll free (800) 743-8525. For hearing or speech impaired (TDD) 1-800-952-8349. You can also contact us by one of the ways listed below:

- **Online Appeals Account:** <https://acms.dss.ca.gov/acms/>
- **Email:** SHDRehearings@dss.ca.gov
- **Fax number:** 833-281-0908
- **Mail to: (Allow at least 5 days for mailing. Keep your originals.)**
State Hearings Division
744 P Street, Sacramento, CA 95814 / MS 21-39

STATE HEARINGS DIVISION

CC:

Sacramento County

PUB 512 – Rehearings

IMPORTANT INFORMATION ABOUT YOUR REHEARING RIGHTS

This document talks about getting a review of a decision that State Hearings issued when you disagree with the decision.

Review of Covered California Hearing Decisions

If you disagree with your hearing decision about Covered California coverage, you may appeal in writing to the Health Insurance Marketplace

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.

Asking for a Rehearing (Non-Covered California Cases)

Parties do not need to request rehearing to challenge a decision. Parties may appeal directly by filing a case in Superior Court.

Any party may ask for a rehearing if they disagree with all or part of the judge's decision. You got a document called "Appeal Rights" with the judge's decision. Please read it carefully because it has important information about rehearings.

A request for a rehearing must be in writing. Call if you cannot write. To ask for a rehearing contact State Hearings in any of the ways listed below.

You must request rehearing within 30 days from the date you get the decision. The request should state when you got the decision.

You can still ask for rehearing if you are past the 30 days. A judge will decide if there was a good reason for asking late. For Medi-Cal cases, the Department of Health Care Services (DHCS) will make this decision.

If you are asking for a rehearing to present additional evidence, the request should:

- describe the additional evidence
- tell us why you did not provide the evidence at the hearing
- state why the additional evidence is important to the case
- state why you think it will change the outcome of the hearing decision.

If the additional evidence is available, give it to State Hearings with the rehearing request. If a party wants to present new evidence to support a rehearing, the other party can respond about the new evidence.

What Happens When State Hearings Gets a Rehearing Request

For Medi-Cal cases: State Hearings sends a letter to the parties to say we got a rehearing request. The Department of Health Care Services (DHCS) decides whether to grant a rehearing.

For all other cases: A judge from State Hearings will review the rehearing request. State Hearings will send a copy of the request to the other party. The other party can send a statement in favor or against rehearing. That statement must be in writing. It must be sent no later than five calendar days after getting the copy of the rehearing request.

The judge will decide if the rehearing request is made on time. A State Hearing judge will decide if a rehearing should be granted or denied.

Expedited Rehearing Requests

State Hearings or DHCS can review a rehearing request sooner if there is an urgent need. This is called an Expedited Review. For Medi-Cal cases, an urgent need means when waiting for a regular rehearing review could risk your life or health, or your ability to reach, keep or get back maximum functioning. For other cases, an urgent need may be things like homeless assistance, emergency cash aid or food stamps, or something that may affect you going to work or school.

To ask for an expedited review, contact us by one of the ways listed below. Tell us why the rehearing request needs to be reviewed sooner. We will consider this request as soon as possible.

State Hearings will notify the parties if it granted or denied the request for expedited review. For Medi-Cal cases, DHCS will notify both sides if it granted or denied the expedited request.

Information for Claimants While a Rehearing Request is Being Reviewed

Help with Your Case

You may wish to call your local Legal Aid office for help. A list of these 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. For more information about getting help, please see the PUB 412, "Help with Your Case."

New Notices of Action

If you get other Notices of Action that you disagree with while your rehearing request is pending, file a new appeal. To file an appeal, contact State Hearings by one of the ways listed below.

Contact State Hearings

If you move or change your phone number, tell us right away. If we do not have the right information, you may miss a notice about your rehearing request. Call us at 855-795-0634 or contact us by one of the ways listed below.

Aid Paid Pending

Aid Paid Pending means the continuation of benefits or services at the same level while waiting for the first (original) hearing decision. Aid Paid Pending is not available while we review a rehearing request made by either party.

If you won the hearing, the County or other party must comply with the decision until State Hearings decides the rehearing request.

Canceling the Rehearing Request

Only the party who asked for the rehearing may cancel it. To cancel the rehearing request, contact us right away by one of the ways listed below. We can cancel the request if State Hearings or DHCS has not already acted to grant or deny the request.

What Happens After the Rehearing Request is Reviewed

For Medi-Cal cases, DHCS will send the parties a letter explaining whether the rehearing request was granted or denied and the reasons. The letter will also explain what happens next. If DHCS grants the rehearing, State Hearings will then notify both parties of the date and time any new oral hearing. If the rehearing was denied, State Hearings will take no further action.

For all other cases, State Hearings will send both parties a letter granting or denying the rehearing request. The letter will explain the reasons for granting or denying the request.

If the rehearing request is granted, the letter will tell the parties how the rehearing will be held and the issues that will be decided at the new hearing. The rehearing may or may not include all the same issues discussed or requested at the first hearing. The rehearing may be held in two ways: either, a rehearing on the record (explained below), or you could have a rehearing where all the parties talk to the judge. (See below)

About the Rehearing

A judge from the California Department of Social Services will hear the rehearing. The judge does not work for the county, DHCS, or any Health Plan. There is a right to an in-person rehearing with a judge.

The letter granting the rehearing may say the rehearing will be “on the record.” This means a judge will use the testimony and documents from the original hearing to write a new hearing decision. Both parties can turn in additional statements or documents. Any evidence one party turns in must be given to other party for their response. Claimants only need to send their additional evidence to State Hearings. State Hearings will send the claimant’s additional information to the other party through the online hearing computer system.

Either party can ask that the rehearing be held in person. If this request is made, the parties will be able to talk to the judge. State Hearings will tell you the date and time of the rehearing and what type of hearing you will have. If you want to change to another type of hearing, please call (855-795-0634) right away. If you change the type of hearing, this may delay getting the hearing decision if we have to reschedule the hearing.

You can bring an authorized representative to the rehearing. The rehearing will include you and your representative (if you have one), a judge and a hearing representative from the county, DHCS, or the Health Plan. Both sides can bring witnesses and documents. It is an informal hearing and is not open to the general public.

What Happens at the Rehearing

A rehearing is like the first hearing but might not include all the issues discussed at the first hearing. Please read the PUB 412 that was sent with the letter telling the parties that a rehearing was granted. It has important information about the rehearing.

At the rehearing the judge will have the file from the first hearing. This includes the testimony and all the documents. The rehearing will still be held if a party does not appear at the rehearing. The case will be decided based on the information the judge has at the end of the rehearing.

Right to Review Your Case Records

You have the right to look at your case records and the rules that the county used in deciding your case. Please see the PUB 412 for more information.

Hearings for Persons with Disabilities

Persons with a disability or impairment who need special arrangements to participate in the rehearing process may call State Hearings toll free at 800-743-8525; for hearing or speech impaired (TDD) **1-800-952-8349**.

Non-Discrimination Policy

State Hearings complies with applicable Federal and State civil rights laws and does not discriminate. This means we do not discriminate on the basis of race, color, national origin, age, disability, sex, gender identity, gender expression, sexual preference, medical condition, or marital status. There are other anti-discrimination protections.

For information about filing a discrimination complaint, please look at the PUB 13 on the California Department of Social Services website or by contacting State Hearings by one of the ways listed below.

For Medi-Cal cases, discrimination complaint information can be found online at:
https://www.dhcs.ca.gov/Pages/Language_Access.aspx

You can also call the DHCS Ombudsman at 888-452-8609.

Ways to File a Rehearing Request or Contact State Hearings for Any Other Reason

You can contact the State Hearings Division at (916) 653-3836 or toll free (800) 743-8525. For hearing or speech impaired (TDD) 1-800-952-8349. You can also contact us by one of the ways listed below:

- **Online Appeals Account:** <https://acms.dss.ca.gov/acms/>
- **Email:** SHDRehearings@dss.ca.gov
- **Fax number:** 833-281-0908
- **Mail to: (Allow at least 5 days for mailing. Keep your originals.)**
State Hearings Division
744 P Street, Sacramento, CA 95814 / MS 21-39

IHSS STATE REHEARING REQUEST

Date of Postmark on Envelope: February 12, 2024

Date Decision was Received: February 15, 2024

Date of Rehearing Request: March 12, 2024

- Case Name: Kaleb Xiong
- Claimant: Yang Xiong (Kaleb's father)
- Witness: Mary Xiong (Kaleb's mother)
- IHSS Case #: 1951916
- State Hearing Case #: 104946193
- Hearing Date: 1/10/2024 @ 10:00 AM
- Administrative Law Judge: Julie Warren
- Sacramento County Hearing Specialist: Yolanda Lewis
- Sacramento County Social Worker: Norman Choy

SUMMARY - WHY A REHEARING SHOULD BE GRANT

1. The 1/10/2024 hearing was unfair; there was an abuse of discretion.
2. The adopted decision is not supported by the evidence in the record.
3. The adopted decision does not address all the claims and issues we raised and is not supported by the evidence.

REASON 1: The 1/10/2024 hearing was unfair; there was an abuse of discretion.

Per Section 22-049.2 of the State Hearing and Request Review (Manual Letter No. CF-95-02), "The hearing shall be conducted in an impartial manner." Julie Warren, the ALJ who presided over the hearing, violated this requirement. Throughout the hearing, the ALJ made unprofessional and unnecessary remarks about our testimonies, which made us uncomfortable and derailed us from what we had planned to present.

At 13 minutes and 2 seconds through 16 minutes and 26 seconds of the hearing, during my time to question the County, as I got closer to making my point about how the County Hearing Specialist did not consider the

overwhelming evidence that supported Kaleb's qualification for Protective Supervision, the County Hearing Specialist turned to the ALJ for support. Sure enough, the ALJ intervened and defended the County Hearing Specialist, which distracted me from being able to make my points entirely the way I had initially planned. On the other hand, later in the hearing, when the ALJ questioned about Kaleb's 1:1 support at school (Hearing Timestamp 40:06 -40:50), the ALJ said nothing to disapprove of the County Hearing Specialist when she made remarks that were out of turn but supported the ALJ's position.

At 22 minutes and 27 seconds into the hearing, the ALJ remarked, *"But what's the dangerous behavior, right? Like, if he has an anxiety attack, that's not going to kill him, right?"* This statement was uncalled for. It made us feel as if she wanted our child to get hurt before she would hear us out. Shortly after, the ALJ dismissed and belittled our concerns about Kaleb's unusual behavior of covering his ears so tightly that he broke out with sweats by saying, *"I do that too,"* and then quickly changed the subject.

At 34 minutes and 28 seconds into the hearing, I tried to convey to the ALJ that while the ALJ had a lot of questions, many of her questions would be answered if I was permitted to present. The ALJ quickly cut me off before I could fully complete my sentence and then stated, *"I need to make sure that I get my questions answered because, yeah, my decision is based on, like, I know what's relevant, and I know what I need to know. So I don't want to go off on a huge tangent of stuff that I don't need to know."* This statement was inappropriate and shows that the ALJ was not there to hear me out. She was not there to be impartial as the law dictated.

Consequently, we were derailed and felt that we were on the stand and that the judge was the lawyer for the County. She took it upon herself to do the County's job so much that she did so much more than what the County put forth in their argument to deny Protective Supervision for Kaleb. In short, the hearing atmosphere was one in which the ALJ was not there to listen to our side of the issue so a fair and impartial decision could be made. The ALJ had already decided against us from the start, and she was trying to corner us throughout the hearing. Sure enough, the adopted decision confirmed our suspicion.

REASON 2: The adopted decision is inconsistent with the law and not supported by the evidence in the record.

Per ACL 15-25, the Minor Recipient (Kaleb Xiong) "... 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." The ALJ violated this regulation by focussing on whether Kaleb had sustained sufficient injuries from the dangerous behaviors instead of looking at whether Kaleb has "a history of a propensity for placing him/herself in danger."

The ALJ slyly reached her decision to uphold the County's denial of Protective Supervision for Kaleb by omitting critical information we had clarified about the Behavior Logs on Page 16 of my Claimant Statement of Position: "The two logs documented a total of 36 incidents, but these were only the incidents that had occurred. If we were to add all the times when we succeeded in preventing him from engaging in dangerous behaviors, the number of incidents would have been much higher."

Despite this candid disclaimer, the ALJ went out of her way to say that we had lied about how frequently Kaleb engaged in dangerous behaviors by claiming that what we documented on the Behavior Logs did not match what we said during the hearing. Clarifying this matter is crucial as it bears a significant weight on the decision. Below, we listed each behavior, the ALJ's position, and our response or the facts regarding the behavior.

MOUTHING OBJECTS**ALJ Position:**

"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."

Response - The Fact:

The ALJ neglected to consider our explanation of the Behavior Logs on Page 16 of my Claimant Statement of Position: "The two logs documented a total of 36 incidents, but these were only the incidents that had occurred. If we were to add all the times when we succeeded in preventing him from engaging in dangerous behaviors, the number of incidents would have been much higher."

The ALJ cited that the school did not notice this mouthing objects behavior even though Kaleb had been under their supervision for a sustained period. This assertion is a false statement. Kaleb had not started Pre-K when the Elk Grove Unified School District developed his IEP on 5/9/2023. While we concede that mouthing objects was not stated in the IEP, the ALJ neglected to acknowledge that this behavior was documented in Kaleb's Teacher Questionnaire, completed on 11/28/2023. By this time, Kaleb's teacher and aides have worked with Kaleb for about four months, a reasonably sustained period under the school's supervision.

But even more telling about how the ALJ neglected or deliberately omitted crucial evidence are the images of Kaleb mouthing objects shown in the video that the ALJ viewed at the hearing. There were multiple images of Kaleb mouthing objects. For the ALJ to conclude that Kaleb mouths objects just six times in 49 days is a gross error of facts and an understatement of the degree to which the behavior occurred. We testified during the hearing that Kaleb engages in this behavior about five times per hour (Hearing Timestamp 24:53 - 25:03). In fact, this is the one behavior that Kaleb engages most often DAILY. Our testimony was omitted from consideration, which was an improper act by the ALJ.

TOUCHING THE STOVEALJ Position:

“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.”

Response - The Fact:

The ALJ neglected to consider our explanation of the Behavior Logs on Page 16 of my Claimant Statement of Position: “The two logs documented a total of 36 incidents, but these were only the incidents that had occurred. If we were to add all the times when we succeeded in preventing him from engaging in dangerous behaviors, the number of incidents would have been much higher.”

For the ALJ to conclude that Kaleb attempted to touch the stove only two times in 49 days is a gross error of facts and an understatement of the degree to which the behavior occurred. We testified that Kaleb would attempt to touch the stove about four times per day (Timestamp 27:46 - 33:40). Our testimony was omitted from consideration, which was an improper act by the ALJ.

THROWING OBJECTSALJ Position:

“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.”

Response - The Fact:

To say that Kaleb is not throwing objects is a flat-out lie. The ALJ neglected to acknowledge the video she viewed during the hearing, in which Kaleb grabbed things from the rocking chair and threw them behind him.

JUMPING ON THE ROCKING CHAIR OR SOFA

ALJ Position:

“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.”

Response - The Fact:

The ALJ neglected to consider our explanation of the Behavior Logs on Page 16 of my Claimant Statement of Position: “The two logs documented a total of 36 incidents, but these were only the incidents that had occurred. If we were to add all the times when we succeeded in preventing him from engaging in dangerous behaviors, the number of incidents would have been much higher.”

For the ALJ to conclude that Kaleb jumps on the rocking chair or sofa only two times in 49 days is a gross error of facts and an understatement of the degree to which the behavior occurred. We testified that Kaleb would jump on the rocking chair or sofa 5 - 6 times per day (Hearing Timestamp 44:45 -

46:56). Our testimony was omitted from consideration, which was an improper act by the ALJ.

HITTING HIS HEAD WHILE STIMMING

ALJ Position:

“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.”

Response - The Fact:

The ALJ neglected to consider our explanation of the Behavior Logs on Page 16 of my Claimant Statement of Position: “The two logs documented a total of 36 incidents, but these were only the incidents that had occurred. If we were to add all the times when we succeeded in preventing him from engaging in dangerous behaviors, the number of incidents would have been much higher.”

The ALJ's conclusion that Kaleb hit his head while stimming only three times in 49 days is a gross error of facts and an understatement of the degree to which the behavior occurred. We testified that Kaleb stimmed every day everywhere throughout the home and that he hit his head two to three times per day (Hearing Timestamp 49:52 - 50). The ALJ saw this behavior occurring multiple times throughout different days in the video she viewed on the day of the hearing. Yet, our testimony was omitted from consideration, which was an improper act by the ALJ.

PLAYING IN TOILET WATER

ALJ Position:

“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.”

Response - The Fact:

The ALJ neglected to consider our explanation of the Behavior Logs on Page 16 of my Claimant Statement of Position: “The two logs documented a total of 36 incidents, but these were only the incidents that had occurred. If we were to add all the times when we succeeded in preventing him from engaging in dangerous behaviors, the number of incidents would have been much higher.”

For the ALJ to conclude that Kaleb engaged in the behavior of attempting to touch the toilet water only two times in 49 days is a gross error of facts and an understatement of the degree to which the behavior occurred. We testified Kaleb tried to play with the toilet water 3-4 per day (Hearing Timestamp: starting at 53:40). Yet, our testimony was omitted from consideration, which was an improper act by the ALJ.

ELOPING

ALJ Position:

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.

Our Response - The Fact:

The ALJ neglected to consider this fact as stated on Page 16 of the Claimant Statement of Position regarding the frequency of the dangerous behaviors documented in the Behavior logs: "The two logs documented a total of 36 incidents, but these were only the incidents that had occurred. If we were to add all the times when we succeeded in preventing him from engaging in dangerous behaviors, the number of incidents would have been much higher."

The ALJ's conclusion that Kaleb does not regularly attempt to elope is a gross error of facts and an understatement of the degree to which the behavior occurred. We testified that Kaleb had tried to elope about five times (Timestamp: starting at 58:55). Yet, our testimony was omitted from consideration, which was an improper act by the ALJ.

In addition to the above, the ALJ had errors throughout the "FACTS" section of the written decision. A couple of examples are the following: Under the sub-section "Diagnosis and Functional Limitations" on Page 1, the ALJ failed to include that Dr. Aita had diagnosed Kaleb with Autism Spectrum Disorder, Learning Disorder, and Global Developmental Delay. Under the sub-section "Claimant's Evidence" on Page 3, the ALJ wrote that Kaleb's mother testified that Kaleb knows where to get food. That is false. Kaleb's mother never said that.

In summary, for all of the behaviors cited, the ALJ twisted the facts and drew ridiculous conclusions. Thus, as the ALJ insisted that Kaleb had not engaged enough in dangerous behaviors, she violated ACL 15-25, which states that Kaleb "... does not have to suffer actual injury to be eligible for Protective Supervision, but only have a history of a propensity for placing himself/herself in danger."

REASON 3: The adopted decision does not address all the claims and issues we raised and is not supported by the evidence.

I provided a thorough 19-page Claimant Statement of Position in which I addressed all of the criteria for Protective Supervision, showing how Kaleb had met each criterion while refuting all of the County's claims, not only by

our testimonies but also by the testimonies and findings of third-party professionals (school personnel and medical professionals). Yet, the ALJ disregarded and even misrepresented and downplayed the statements made by medical professionals, namely Kaleb's pediatrician, Dr. Yee-Guardino.

For example, on Page 34 of the ALJ's written decision, the ALJ wrote, "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."

A careful review of the statement that the ALJ referenced shows that the complete sentence says something entirely different from how the ALJ presented: "Due to his blindness & more so for his developmental delays, pt lacks appropriate judgement for age. As mentioned above, the inability to retarin age appropriate information and his disorientation clouds his judgment; if not watched all the time, he is risk for eloping and safety." This pattern of the ALJ leaving out critical information can be found throughout her written decision.

The ALJ went out of her way to cherry-pick statements supporting her position. A document that the ALJ used often to support her position was a very old Interdisciplinary Assessment Report, conducted from 4/17/2023 to 4/20/2023. There were a few statements found in that report that appear to say that Kaleb had no mental impairment. Still, if we look at the conclusions drawn in that same report, Kaleb is behind or delayed compared to other young children his age in most areas of development. The ALJ either neglected or purposely did not consider or mention these crucial findings. The findings were the following:

- Cognitive Functioning Skills: Delayed range compared to peers of the same age.
- Adaptive Functioning Skills: Delayed range when compared to peers of the same age.
- Speech and Language Development: Delayed in receptive language and expressive communication compared to what is expected for his age.

- Orientation & Mobility: While ambulatory with a cane, unaware of time, place, self, and other people in his environment.
- Social-emotional/Behavior Functioning: Delayed range, when compared to same age peers.

Furthermore, as recorded in a Teacher Questionnaire dated November 28, 2023, Kaleb's teacher, Mr. Jim Thao, stated that while Kaleb had some strengths, "He will often repeat a word or phrase that is being taught or just hearing from another person. A form of echolalia. As a result, some learning occurs, but Kaleb does not always understand what a word or phrase means for communication in a functional manner." Kaleb "Does not seek interaction with peers Communicates very little with his peers. May say a peer's names, but not in a way to gain their attention to communicate with." Kaleb "Closes ears for some musical sounds. Intense interest in some objects (pepperoni from board game). **Often hold and put objects in mouth** Kaleb often hold small items that have bumps in his hands for comfort and not to interact w/ other students...."

Similarly, Dr. Morgen Aita, Licensed Clinical Psychologist, on December 13, 2023, diagnosed Kaleb with Autism Spectrum Disorder in the moderate to severe range, Language Disorder, and Global Developmental Delay, and he made this very pertinent observation: "Kaleb displays a significant lack of safety and environmental awareness. He requires constant supervision as he engages in elopement, climbing onto furniture, or will attempt to touch dangerous items. Furthermore, Kaleb is unresponsive to his parents' warnings and verbal instructions to "stop" or "don't touch" items in his environment. Kaleb appears to not retain previously learned information. He will typically forget such information after approximately 1-2 days."

In a January 5, 2024 letter by Kaleb's pediatrician, Dr. Yee-Guardino stated that "If Kaleb were not blind, this family [the Xiong family] would still have a very challenging time caring for Kaleb, as he was categorized in the moderate to severe range of Autism. While the visual impairment adds a different dimension to Kaleb's care and safety, it is not the cause of Kaleb's global delays. Children with blindness still retain the ability to develop normal social communication skills as well as comprehension, and thus the ability to learn. Kaleb currently speaks in single- or 2-word phrases, which is the expected range for a 1-2 year old. It is the significant developmental

delays associated with Autism that place him at risk for safety concerns, resulting in his need for constant supervision.”

In addition to the above, one final example of how the ALJ either neglected or deliberately left out essential information about Kaleb’s level needs and services, which would have impacted the adopted decision, is Kaleb’s need for a 1:1 aide at school. We testified, and it was also written into Kaleb’s IEP about Kaleb having this service, yet the ALJ claimed that there was no such service in his IEP. This kind of bold and erroneous claims can be found throughout the ALJ’s decision. Facts and errors were twisted to support the position of the ALJ.

THEREFORE, a rehearing should be granted. A fair and thorough review of the records, evidence, and especially our Claimant Statement of Position will show that Kaleb has met every criterion for Protective Supervision. He needs constant prompting to be redirected from engaging in dangerous behaviors. Kaleb is not self-directed due to his mental impairment of Autism in the moderate to severe range. A rehearing must be granted.