

For assistance with the hearings process, you can contact the State Hearings Division at 1-855-795-0634. An interpreter will be provided to you at no cost.

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|----------------------|---|
| <b>SPANISH:</b>      | Para obtener asistencia con el proceso de audiencias, puede comunicarse con la División de Audiencias Estatales al 1-855-795-0634. Se le facilitará un intérprete sin costo alguno.   |
| <b>TRAD CHINESE:</b> | 有關聽證會流程的幫助，可撥打 1-855-795-0634 與州聽證處聯絡。我們將免費為您提供翻譯。  |
| <b>TAGALOG:</b>      | Para sa tulong sa proseso ng pagdinig, maaari kang makipag-ugnay sa Sangay ng mga Pagdinig ng Estado sa 1-855-795-0634. Isang tagasalin sa ibang wika ang ibibigay sa iyo nang walang gastos.   |
| <b>VIETNAMESE:</b>   | Để được trợ giúp về quy trình điều trần, quý vị có thể gọi Phòng Điều Trần Tiểu Bang ở số 1-855-795-0634. Quý vị sẽ được cung cấp miễn phí một thông dịch viên.   |
| <b>KOREAN:</b>       | 심리공청회 진행 과정에 도움이 필요하시면, 주 정부 심리공청회 사무국, 1-855-795-0634 번으로 연락하여 주십시오. 귀하에게 통역 서비스를 무료로 제공해 드립니다.  |
| <b>CAMBODIAN:</b>    | សូមបំប៉នយកមុខដំណើរការសវនាការណាមួយមកទាក់ទង State Hearings Division នៅ 1-855-795-0634 ។<br>អ្នកបកប្រែនឹងត្រូវបានផ្តល់ឱ្យអ្នកដោយឥតគិតថ្លៃ។   |
| <b>HMONG:</b>        | Yog xav paub tus txheej txheem ntawm cov rooj sib tham los mloog ob tog cov lus, koj yuav hu tau rau lub Xeev Qhov Chaw Tuav Dejnum Rau Kev Teem Rooj Sib Tham Los Mloog Ob Tog Cos Lus (State Hearing Division) ntawm 1-855-795-0634. Yuav npaj muaj ib tus kws txhais lus pub dawb rau koj. |
| <b>ARABIC:</b>       | للحصول على المساعدة بشأن عملية جلسات الاستماع، يمكنك الاتصال بقسم جلسات الاستماع في الولاية على الهاتف رقم 1-855-795-0634. سوف تزود بمترجم شفهي بدون أن تتحمل أي تكلفة.   |
| <b>ARMENIAN:</b>     | Եթե լսումս և բնութագրի գործընթացի վերաբերյալ ունեք օգնություն և կարիք, գանգառե՛ք Երևանի քաղաքում գտնվող լսումս և բնութագրի բաժինը: Հեղինակությունը կտրամադրվի:  |
| <b>FARSI:</b>        | برای دریافت کمک در روال رسیدگی قضایی، می توانید از طریق شماره تلفن 1-855-795-0634 با بخش دادرسی ایالتی تماس بگیرید. یک مترجم به صورت رایگان در اختیارتان قرار خواهد گرفت.   |
| <b>PUNJABI:</b>      | ਸੁਣਵਾਈ ਦੀ ਪ੍ਰਕਿਰਿਆ ਵਿੱਚ ਸਹਾਇਤਾ ਲਈ, ਤੁਸੀਂ 1-855-795-0634 'ਤੇ ਸਟੇਟ ਹਿਅਰਿੰਗ ਡਿਵੀਜ਼ਨ ਨਾਲ ਸੰਪਰਕ ਕਰ ਸਕਦੇ ਹੋ। ਤੁਹਾਨੂੰ ਬਿਨਾਂ ਕਿਸੇ ਕੀਮਤ 'ਤੇ ਇੱਕ ਦੁਬਾਸ਼ੀਆ ਮੁਹੱਈਆ ਕੀਤਾ ਜਾਵੇਗਾ।   |
| <b>RUSSIAN:</b>      | Для получения помощи в процессе проведения слушания вы можете обратиться в Отдел слушаний штата по телефону 1-855-795-0634. Вам будут предоставлены бесплатные услуги устного переводчика.  |
| <b>HINDI:</b>        | सुनवाई प्रक्रिया में सहायता के लिए, आप राज्य सुनवाई डिवीजन से 1-855-795-0634 पर संपर्क कर सकते हैं। आपको बिना किसी कीमत के एक दुभाषिया प्रदान किया जाएगा।   |
| <b>JAPANESE:</b>     | この聴聞手続について手助けを必要とされる場合は、州政府聴聞課（電話番号 1-855-795-0634）にご連絡ください。この場合、通訳のサービスが無料で提供されることとなります。   |
| <b>LAO:</b>          | ສໍາລັບການຊ່ວຍເຫຼືອໃນຂະບວນການໄຕ່ສວນພິຈາລະນາຄະດີ, ທ່ານສາມາດຕິດຕໍ່ພະແນກການໄຕ່ສວນຂອງລັດຢູ່ 1-855-795-0634. ຈະມີນາຍແປພາສາໃຫ້ທ່ານຟຣີ.   |
| <b>THAI:</b>         | ท่านสามารถติดต่อแผนกการพิจารณาคดีของรัฐที่หมายเลข 1-855-795-0634 เพื่อขอความช่วยเหลือในกระบวนการพิจารณาคดี จะมีการจัดเตรียมบริการล่ามให้คุณโดยไม่มีค่าใช้จ่าย   |

## **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.

# DECISION

## Re-Hearing No. 105019726

*In the Matter of Claimant(s):*

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

Pursuant to the authority of the Director, I adopt the attached final decision.



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### **Paula Clamurro**

Administrative Law Judge

Adopt Date: **September 03, 2024**

### **Re-Hearing Information**

*Re-Hearing Date:* July 29, 2024 01:00 PM

*Release Date:* September 4, 2024

*Aid Pending:* N/A

*Issue Codes:* 642-1

*Language:* ENGLISH

*Responsible Agency:* Sacramento County

Attendees

| <b>Attendee Type</b> | <b>Attendee</b> |
|----------------------|-----------------|
|----------------------|-----------------|

|                        |  |
|------------------------|--|
| <i>Authorized Rep:</i> | Nicole Stemet, Legal Services of Northern California |
|------------------------|--|

## **SUMMARY**

Sacramento County's determination the child is not eligible for Protective Supervision is not sustained. The county shall determine the child eligible for Protective Supervision effective August 1, 2023 because the child is nonself-directing, engages in potentially dangerous activities, requires significantly more time than routine childcare, and requires 24-hour supervision to remain safely in the home.

[642-1]

## **FACTS**

### Procedural History

By Notice of Action dated October 6, 2023, Sacramento County (county) approved IHSS for the claimants' child effective August 1, 2023. The county authorized IHSS for 6:04 (hours: minutes) per month and denied Protective Supervision effective August 1, 2023.

On October 11, 2023, the claimants, who are the parents, requested a hearing to dispute denial of Protective Supervision.

A noticed hearing was held on January 10, 2024 (State Hearing No. 104946193 [SHN 6193]). The county representative, claimants, and county social worker appeared and testified in-person. The parties agreed that the only issue for hearing was the denial of Protective Supervision effective August 1, 2023.

According to the Decision for SHN 6193 (adopted February 7, 2024), the Administrative Law Judge (ALJ) sustained the county's denial of Protective Supervision effective August 1, 2023 because the child did not meet all the regulatory requirements for the service.

The claimants timely appealed by requesting a Rehearing, which was granted on the basis the Decision did not adequately consider the child's propensity to place himself in danger.

A noticed rehearing was held on July 29, 2024. The claimants and claimants' counsel appeared by phone. The county appeared via submission of the record for SHN 6193.

### Documentary Evidence Submitted:

The record for SHN 6193 was incorporated. After the record was held open, the parties supplied the following documents:

1. County and Claimants' Position Statement; Claimant's written arguments and clarifications; Video compilation of the child;
2. State Hearing No. 104946193 Decision (adopted February 7, 2024)

3. 2020 Ocular Oncology Visit Summary;
4. 2020 Social Security Supplemental Security Income (SSI) benefit verification;
5. January 8, 2023 Individualized Program Plan (IPP);
6. March-April 2023 Initial Functional Vision Assessment;
7. April 2023 Interdisciplinary Assessment Report;
8. May 9, 2023 Orientation and Mobility Report;
9. May 9, 2023 Individualized Education Plan (IEP);
10. Parent's notes (August to September 2023);
11. August 2023 Medical Patient Health Summary;
12. August 15, 2023 IHSS Program Health Care Certification form (SOC 873);
13. September 15, 2023 Needs Assessment form (SOC 293) and Case Assessment Narrative;
14. September 20, 2023 Ophthalmologist Assessment of Need for Protective Supervision forms (SOC 821);
15. September 21, 2023 Claimant correspondence to County;
16. October 3, 2023 Orientation & Mobility Assessment of Need for Protective Supervision forms (SOC 821) and letter of support;
17. October 3, 2023 Pediatrician Assessment of Need for Protective Supervision forms (SOC 821);
18. October 6, 2023 Notice of Action (IHSS Approval);
19. October 11, 2023 Request for Hearing and Request Summary;
20. October 13, 2023 Early Development Screening correspondence;
21. November 21, 2023 Regional Center Social Assessment;
22. November 28, 2023 Caregiver/ Teacher Questionnaire;
23. December 13, 2023 Psychological Assessment;
24. December 27, 2023 Regional Center letter to Claimants;
25. January 3, 2024 Claimant correspondence to County;
26. January 5, 2024 letter of support from child's pediatrician;
27. May 1, 2024 Individualized Education Plan (IEP);
28. July 25, 2024 letter of support from child's speech therapist;
29. July 23, 2024 Individualized Education Plan (IEP); and
30. Age-Appropriate Guidelines.

The county was provided an opportunity to respond to new information provided by the claimants [post-January 5, 2024 documentary evidence], which was identified in the Open Record Letter. The documents were marked and admitted into evidence. No other documentary evidence was submitted, and the record was closed. All documentary and testimonial evidence was read, reviewed, carefully considered.

#### Assessment and Functional Limitations

An IHSS application was submitted on behalf of the child on August 1, 2023. The documentary evidence states that the child is blind with no light perception. Per the documentary evidence the child has Autism, Global Developmental Delay, with Language and/or Learning Disorder.

The child lives with family members, which includes six older and one younger sibling, in a single-family residence. On September 15, 2023, the county social worker completed an initial assessment of the child's need for IHSS. The child was three years and six months old at the time of the initial assessment. The Case Assessment Narrative documented the social worker's observations and child's functional impairment(s) and documentation reviewed.

Following the initial assessment, the county issued the October 6, 2023 Notice of Action, which concluded the child needed 6:04 (hours: minutes) per month in IHSS effective August 1, 2023 for help with Transferring. The county reviewed and considered the Age-Appropriate Guidelines regarding non-Protective Supervision needs and services.

The claimants confirmed that Protective Supervision remains the only service in dispute.

### Protective Supervision Testimony

#### County's Position

The county representative submitted documents in lieu of testimony. Per the county statements, that they do not dispute that the child has mental impairments. According to the case assessment narrative, the social worker noted the child has Developmental Delay and may be on the autism spectrum. During pendency of the hearings, the county became aware the child was diagnosed with Autism in the mild to severe range, with Language Disorder, and Global Developmental Delay.

Per the Statement of Position, the county completed a home visit on September 15, 2023. Concerning the child's functional impairments, the assessment narrative states the child is totally blind and has developmental delays.

According to the case assessment narrative, the child did not engage with the social worker. The child was observed to complete transfers on and off the couch. The child was playing and twirling around in a circle. During the visit, the child was walking around the living room, and had to be redirected several times as he was playing next to the edge of a table or told to get down from the sofa chair. The social worker noted the child can transfer at time times, but he cannot see how or where to get up and down from.

The assessment narrative states the child appeared to enjoy standing in the sofa chair and rocking it back and forward. It was reported the child likes to twirl, repeats things he has heard and flap his arms. The social worker noted the child mimicked sounds and sometimes repeated what the social worker said. The social worker also noted the child can identify sounds and smells. It was reported the child always wants his mother nearby, and if his mom is not nearby, he becomes upset.

Per the case assessment narrative, the social worker noted the documents presented by the parents, which were (1) the parent's personal summary, (2) the school's teacher

report, (3) the school's vision assessment, (4) the Individualized Education Plan (IEP), (5) School's Interdisciplinary Assessment Report, (6) SSI award letter, (7) Medical Center Health Summaries and the Health Care Certification form (SOC 873), and (8) three Assessment of Need for Protective Supervision form (SOC 821) forms.

The social worker documented that the Health Care Certification form (SOC 873) states the child is legally blind, needs assistance with eating, bathing, dressing and other instrumental activities (play time, learning) for age, has blindness and developmental delay. The social worker cites the three Assessment of Need for Protective Supervision form (SOC 821) forms and the examiners' diagnoses while noting differences, missing information, and opinions on the child's mental functioning, including opinions where the child has severely impaired memory, orientation, and judgment. The social worker noted there is an additional letter written by the specialist explaining the need for supervision.

The social worker noted in the assessment narrative that an Interdisciplinary Assessment report list the child as delayed. The social worker noted that the May 2023 Individualized Education Plan (IEP) suggests the child has a good memory and likes music. The social worker noted the school reported the child has a good memory and recalls songs. The social worker noted the school reported the child can walk independently; he walks on his own with a cane, can use his hands to guide himself and follows the wall as he walks, and uses his feet to tell the texture difference from hard floor from carpet.

The social worker noted the child's goals in the IEP were to locate and orient to Braille-language books, use a Braille writer, learn to take turns with his peers, and to use words to get his feelings across. The social worker noted that the IEP reported that due to deficits in receptive language, the child would have a difficult time following classroom directions and discussions. When it comes to social and behavioral concerns, the social worker noted the report indicated the child did not exhibit any excessive behaviors during the week and his parents reported to the school they did not have behavioral concerns currently.

The social worker opined the child has age-appropriate memory, the child appears to know where is his inside the home and knows the layout but will not be aware of his surroundings when outside the home due to blindness and young age.

Regarding reported behaviors, the social worker noted that for judgment the child may go places he should not and opined that this behavior is age appropriate. The social worker reasoned that the child is totally blind, he is very curious and wants to explore. He has wandered over to a neighbor's house when his father turned away from for a few moments. Because the child can't see, he puts things in his mouth. He will unplug plugs and put the plugs in his mouth. He moves quickly and will bump into things. He doesn't sleep well, therefore he can be up late or up early. He jumped into the bathtub where he younger brother was bathing. He likes to sweep his hands across tables to see what is there, without regard for what is there. He has turned the knobs on the stove and has attempted to touch the stove. The child tantrums when upset or not

getting his way, he will throw a tantrum and has hit his head. If he loses a toy, he can get upset and have a tantrum.

Based on the assessment, the child has moderate or intermittent memory deficit (Rank 2); no disorientation (Rank 1); and judgment is mildly impaired (Rank 2).

According to the county's position statement, the social worker concluded that the supervision that the child needs is for a medical condition and that Protective Supervision cannot be authorized when the need is caused by a medical condition or for medical supervision. The social worker states in the assessment narrative that:

"If he was sighted, it does not appear he would get himself into so much trouble. ... If child was not blind, he could avoid some dangers. Protective Supervision is not based on vision. ... While [the child] is blind and may be on the Autism spectrum, his blindness appears to be the limiting factor, if he could see something, he would not have to put in his mouth to 'see' what it is or run his hand across a table to 'see' what is there. ... It appears his needs for Protective Supervision is more for his vision vs. memory, orientation, and judgement."

#### Claimant's Position

The claimants testified the child is completely blind, has severe autism, and unknowingly places himself in harmful situations every day. Because of Autism and Developmental Delay:

- The child has propensity for wandering and elopement. The child has attempted to leave the house and wander around the neighborhood. He succeeded in eloping to the neighbor's garage door when the front door was open. If he leaves, he does not know where he is, where he is going, or how to get back home. The parents ensure the door to the bathrooms and front and back door are always locked.
- The child climbs and plays on furniture unsafely, jumping or falling off furniture, spinning, swinging from objects and he sustained some minor self-injuries and fell off a dining chair.
- The child plays with and mouth any object that he finds in his environment. He has put a charging cable in his mouth after unplugging it from the wall. The child tries to touch unsanitary areas like inside the toilet during potty training.
- The child has a habit of playing with things in the kitchen, including glass objects, the stove, and will indiscriminately without understanding trail his hands along the counters where he could touch hot surfaces or dangerous items.
- The child stims in the form of jumping or twirling around while singing or engaging in echolalia. He twirls or spins in circles and is unaware of any potential hazards around him. He is not aware of proximity and does not show regard to

his relative closeness to other children, walls, furniture, etc. While engaging in sensory seeking behaviors he will lose balance and hit his head against the wall and other hard surfaces. Even after sustaining an injury from getting his head bumped at a corner, he still twirls at the same place and repeatedly gets hurt until someone intervenes.

- The child has difficulty sleeping and staying asleep which requires additional supervision and will engage in stimming behaviors throughout the night such as hitting his head on a bed frame, placing objects in his mouth.
- For self-soothing purposes and as ways to communicate different forms of anxieties, the child engages in self-injurious behaviors when he can't communicate, which includes hitting himself with his hand, banging his head on the couch, floor, and wall, and rolling all over the floor, which leads to bumping into walls and the legs of chairs, tables, and other objects.
- The child engages in meltdowns. During meltdowns hits himself and hits his head against any nearby surfaces.

He will typically forget safety instructions and directions after the next day. He may stop temporarily, but he will engage in the same behavior again. The child does not understand when he is being corrected or told not to do something.

The child's gross motor skills are not a concern. His fine motor skills, speech, and cognition are areas of concern and can place the child in potentially dangerous situations. The child is not able to use sentences to communicate consistently. According to the child's speech therapist, he does not engage in reciprocal conversation. The child is completely unresponsive to the nonverbal communication of others, or changes in tone and sounds denoting danger.

The child is unable to follow multi-step directions. He has to be either verbally or physically directed through each step of a task and does not initiate self-care and grooming related tasks on his own.

The child currently speaks in single- or 2-word phrases. The child frequently uses both immediate and delayed echolalia making it often unclear if he is comprehending safety instructions or directives. The child does not respond to his name and will only respond to directives about his safety after numerous attempts. Moreover, the child does not have the ability to differentiate strangers from people he knows.

#### Protective Supervision Findings of Fact

It is acknowledged that documentary evidence from early 2023 has little to support the child engages in the later reported behaviors. For example, the August 15, 2023 Health Care Certification (SOC 873) fails to mention the child has a mental impairment, stating

only that the child “legally blind; needs assistance with eating, bathing, dressing, and other instrumental activities of daily living (playtime, learning) for age.” The March-April 2023 Initial Functional Vision Assessment states the child is a high-functioning child and has many age-appropriate skills, but also with deficits associated with his blindness. The parents reported the child has a very good memory with songs and per the April 2023 Interdisciplinary Assessment Report and May 2023 Individualized Education Plan (IEP), there were no behaviors that appeared to be sensory based. The social worker’s summation of the documentary evidence that was provided at the time was also accurate. This is aligned with the Decision in State Hearing No. 6193 (adopted February 7, 2024), with some minor clarifications herein.

It is acknowledged that the child was not diagnosed with Autism until December 2023, for which behaviors may have been previously overlooked as typical for a toddler or solely due to blindness. According to the May 2024 Individualized Education Plan (IEP), the parents expressed concerns that the prior IEPs were not fully considering the child’s additional medical diagnoses of Autism, Language Disorder, and Global Developmental Delay, and how these will be considered in the development of the IEPs. The parents shared that the child has always demonstrated behaviors that are consistent with his formal Autism diagnosis, as well as his Language Disorder and developmental delays. The parents shared that they wish for the child’s educational team to be familiar with his medical diagnoses so that they can factor these needs.

The county was informed of the unfolding circumstances as the child developed. The county had an opportunity to propose a reassessment after multiple requests, as well as respond to the evidence in this hearing. Since that option passed and the county deferred to an administrative decision, which was expressed in their September 2023 correspondence, the 2024 documentary evidence is deemed more comprehensive to the child’s functional impairments and are incorporated into the August 1, 2023 effective date.

Additionally, the December 2023 Psychological Assessment is given more weight than the April 2023 Interdisciplinary Assessment Report. The April report states the child’s cognitive functioning skills could not be directly measured due to vision impairment and the scores are still cautioned due to the child’s vision needs and speech/language delays. The December report is thus found to be more complete, comprehensive, and closer in time to the disputed time period. Starting in December 2023 the child was diagnosed with Autism as well as Speech Delay and Global Developmental Delay. The April 2023 Interdisciplinary Assessment Report is not disregarded entirely, however, since much of the information is consistent with the majority of the other documentary evidence.

As to specific behaviors:

Based on the documentary evidence, it is found that the child is not attempting to elope from the home. Per the November 2023 Regional Center Social Assessment, the parents reported the child does not bolt/wander while his is out in public. Parents

expressed that the child would cling onto them, especially in new environments, because he may get scared of the sounds surrounding him.

Concerning wandering, it is understood that the child uses touch to feel his way around a room to become familiar with objects and places. The November 2023 Regional Center Social Assessment and May 2023 Orientation and Mobility Report states when walking in outdoor and indoor environments the child will explore his surroundings and follow the wall and trail with his hands or will walk in free space, holding his hands out in front of himself to contact what he is walking towards. Outdoors he uses his cane to explore in front of his house, tapping it against different surfaces to hear how they sound. They state the child uses the cane to trail along to wall and taps it against the garage door when walking along that area. It states the child is very comfortable and familiar moving independently in his home and will independently travel between rooms where he knows the arrangement of furniture and doors. Therefore, there is no eloping due to confusion.

According to the documentary evidence, the child is aware of when he is in a different place and not at home. For example, the 2023 Initial Functional Vision Assessment states that on the first day of coming to the assessment Center Preschool, the child was very attached to his parents and held onto his dad saying "home?", "home?" After a little while though he started exploring the preschool environment independently.

However, if the door is left open even inadvertently, as with any unimpaired child of comparable age, they may go outside. Per the case assessment narrative, the parents reported they left the door open briefly for errands and the child went outside. An unimpaired child of comparable age would not be aware of the potential risks of traffic to stop before crossing streets or know how to get back home. An unimpaired child of comparable age will likely become lost if they get too far from the home. The child's functional impairment does not create the likelihood of the parents leaving the door open. Based on the claimants' report to the social worker that they keep all the doors closed and locked, this indicates that the doors being closed and secured effectively deters the child from attempting to elope. Therefore, the time that door was left open was an isolated incident.

Next, the claimants testified the child tries to touch unsanitary areas like inside the toilet during potty training. The claimant further contend the child attempts to put his hands in his mouth after having touched his excrement. This is found inconsistent with the November 2023 Caregiver/ Teacher Questionnaire and May 2024 Individualized Education Plan (IEP) which state the child has a low tolerance for touching select textures, various slimy, silky, sticky substances etc., due to possible tactile defensiveness. The documentary evidence states the child is not yet toilet trained, however makes no mention of the child's tendency to lack hand hygiene or unsafe behaviors with toileting. It does state that the child imitates the sound of the toilet flushing. Therefore, it is found the child is not attempting to manipulate feces or touch unsanitary areas of the toilet.

This is further supported by the December 2023 Psychological Assessment which states the child has a propensity for slamming doors. Relating to the finding above, this infers the child is slamming the doors inside the home. Because the doors are closed, the parents are trying to reduce the propensity for slamming, but not for the purpose of preventing the child from going into the bathroom.

The claimant testified the child does not have the ability to differentiate strangers from people he knows. It is found the child is not disorientated or lacks memory to be unable to decipher friends, family, or strangers. Per the case assessment narrative and other documentary evidence, the child always wants his mother nearby, and if his mom is not nearby, he becomes upset. According to the November 2023 Regional Center Social Assessment, the child 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. Per the December 2023 Psychological Assessment, he primarily clung to his mother. According to the assessment reports, the child goes to specific siblings when he wants a particular activity that sibling is known to engage with him.

It is understood that the child displays limited stranger awareness and will approach others if they have something that he wants. This is not eligible for Protective Supervision since an unimpaired child of comparable age can be expected to want something that someone else has and be unaware the particular person may have ill intentions. The child's functional impairment does not create the likelihood of this exigent or circumstantial risk.

Regarding the interplay between the child's co-occurring functional impairments, the social worker concluded that the supervision that the child needs is for a medical condition, and that were the child not blind, the child would not engage in potentially dangerous activities. The county would be correct if the supervision was solely medical in nature or if it was to prevent a medical emergency. Per the regulations, the examples include a person who has diabetes and the need for Protective Supervision is to help if or when the recipient has an episode of hypoglycemia. Conversely, Protective Supervision would be authorized for a recipient considered to have fall risk tendencies if she is unable to walk unassisted, but due to a mental impairment, she forgets and frequently attempts to walk on her own.

In this case, it is difficult to separate the risks caused by blindness versus behaviors due to Autism and Developmental Delay. It is pure speculation to opine that the child would not be putting himself in danger if he was not blind. As noted in the December 2023 Psychological Assessment, "It is in this examiner's opinion that regarding his cognitive skills, the child's delays are above and beyond influence of his blindness." Likewise, per the January 5, 2024 letter of support from child's pediatrician, the doctor stated that despite blindness, which is a medical condition, the child's needs primarily lay with Developmental Delay and Autism. It goes on to say that the parents made accommodations to support the child's independence for his visual impairment, but as the child grew, the difficulties of managing him became greater due to Autism. The doctor states that even if the child were not blind, his moderate to severe range of

Autism would create a challenging care environment. Per the December 2023 Psychological Assessment, the child was ranked Level 3 (requiring very substantial support) for social communication and Level 2 (requiring substantial support) for restrictive, repetitive patterns of behavior.

It is found that the protection the child needs is not medical in nature, nor is it to prevent a medication condition from happening. There is no medical intervention or prevention for the child's blindness, and the parents cannot prevent the child from blindness nor suffering physiological (physical/ bodily) medical effects of blindness, whatever that may be. Moreover, blindness is not a potentially dangerous condition because as the letter of support from child's pediatrician states, many adapt to their environment.

While blindness and Autism have different effects on the body, the co-occurring functional impairments nonetheless affects the other. Indeed, the May 2024 Individualized Education Plan (IEP) states that there can be an overlap in behaviors that are consistent with Autism and students who have total blindness, and it can be difficult to tease out the cause of these behaviors. In the April 2023 Interdisciplinary Assessment Report, it states that children with visual impairments often exhibit more repetitive play and spend less time exploring, which has negative impacts on social development. It states that as children get older and play becomes more complicated, children with visual impairments may get left behind and miss out on peer interactions. It also states many children with visual impairments require explicit instruction in order to understand and navigate social situations. In the 2023 Initial Functional Vision Assessment it states that sighted children can glance around the room and see what their peers are doing, but this child is unable to do that, so it will be important for him to understand the routine of a school day and what that means in terms of the physical behaviors expected of him.

The issue for this child is whether he adapts to his environment via memory, orientation, and judgment notwithstanding blindness and Autism, which is discussed below.

## **LAW**

All the regulations cited refer to the Manual of Policies and Procedures [Man. Pol. & Pro.], unless otherwise noted.

### State Hearings

If any applicant for or recipient of public social services is dissatisfied with any county department action relating to an application for or receipt of public social services, if the county does not act upon the application with reasonable promptness, or if any person who desires to apply for public social services is refused the opportunity to submit a signed application, they shall be given an opportunity for a state hearing. (Man. Pol. & Pro. §22-003.1; Welfare and Institutions [Welf. & Inst.] Code § 10950)

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. Preponderance of the evidence means “more likely than not.” The county has the initial burden of proof in the state hearing to support its determination. Once the party asserting the claim has met its burden of proving its claim, the burden to prove otherwise shifts to the other party. (Cal. Evid. Code § 115; *In re Cipro Cases I & II*, 61 Cal. 4<sup>th</sup> 116, 157 (2015); *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 127 S.Ct. 2499, 2513 (2007); Man. Pol. & Pro. § 22-073)

Although evidence may be admissible, the Administrative Law Judge shall consider the nature of the evidence in assessing its probative value. (Man. Pol. & Pro. §22-050.3). The Administrative Law Judge’s experience, technical competence, and specialized knowledge may be used in evaluating evidence. (Gov’t Code § 1425.50(c).)

### IHSS Program Generally

In-Home Supportive Services (IHSS) is a program which provides a range of supportive services to qualified individuals who are unable to perform the services themselves and who cannot safely remain in their homes or abodes of their own choosing unless these services are provided. The IHSS program is funded through four subprograms: Community First Choice Option (CFCO), the Personal Care Service Program (PCSP), the IHSS Plus Option (IPO), and the IHSS Residual program (IHSS-R). (Welf. and Inst. Code §12300)

### Protective Supervision

Protective Supervision consists of observing recipient behavior and intervening as appropriate to safeguard the recipient against injury, hazard, or accident.

Protective Supervision is available for observing the behavior of nonself-directing, confused, mentally impaired, or mentally ill persons only. (Man. Pol. & Pro. § 30-757.17 effective June 26, 2006 and revised effective Feb. 5, 2007).

### Mentally Impaired/Mentally Ill and Nonself-Directing

In addition to all other relevant eligibility criteria, a person must be both mentally impaired or mentally ill and nonself-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 they are nonself-directing.

For Protective Supervision eligibility, nonself-direction is an inability, due to a mental impairment/mental illness, for individuals to assess danger and the risk of harm, and therefore, the individuals would most likely engage in potentially dangerous activities that may cause self-harm. (All County Letter No. 15-25 (Mar. 19, 2015)).

Mental Health 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. (Man. Pol. & Pro. § 30-756.37).

ACIN No. I-97-20 (Dec. 30, 2020), Attachment B Annotated Assessment Criteria, provides the following:

Memory: Recalling learned behaviors and information from distant and recent past.

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

Rank 2: Memory loss is moderate or intermittent: Recipient shows or reports evidence of some memory impairment, but not to the extent where s/he is at risk.

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

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

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

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

Rank 5: Severe disorientation which puts recipient at risk: 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; has no sense of time of day.

Judgment: Making decisions so as not to put self or property in danger. Whether recipient has capacity to respond to changes in the environment (e.g., fire, cold house) and understands alternatives and risks involved and accepts 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; social judgment is poor.

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

(All County Information Notice No. I-97-20 (Dec. 30, 2020)).

### SOC 821 – Assessment of Need for Protective Supervision

The "Assessment of Need for Protective Supervision for In-Home Supportive Services Program," (Form SOC 821) should be completed by a physician or other appropriate medical professional to certify the need for Protective Supervision and returned to the county. The form SOC 821 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. The completed form SOC 821 shall not be determinative but considered as one indicator of the need for Protective Supervision. Other pertinent information such as the social worker's interview with the recipient is part of the overall assessment, as well as Regional Center services/reports, school reports, other social service/ community/ medical collateral contacts, use of Durable Medical Equipment, etc. (Man. Pol. & Pro. § 30-757.173; All County Information Notice No. I-97-20 (Dec. 30, 2020)).

### Fluctuating/Episodic Behavior

Protective Supervision is only available under the following conditions as determined by social service staff: (a) At the time of the initial assessment or reassessment, a need exists for twenty-four-hours-a-day of supervision in order for the recipient to remain at home safely; (b) If the behavior in question is considered predictable, and the need for supervision is at certain times of the day, there is no Protective Supervision eligibility because there is not a 24 hour-a-day need. Alternatively, unpredictable episodic behavior does meet the 24/7 requirement, as the need for supervision is constant. The unpredictable episodic behavior must be frequent and long enough that constant supervision is necessary. Leaving a recipient alone for some fixed short period of time, is not, by itself, a reason to deny Protective Supervision. (Man. Pol. & Pro. § 30-757; All County Letter No. 15-25 (Mar. 19, 2015)).

### Actual Injury vs. Propensity to Harm Self

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. For example, a person with a documented history of nonself-direction, who has a tendency to open the front door and start walking away, does not necessarily have to make it into the street in order for this to be considered potentially hazardous behavior. Other evidence of a propensity for placing oneself in danger may come from doctor evaluations,

Individualized Education Plans (IEPs), etc. (All County Letter No. 15-25 (Mar. 19, 2015)).

#### Protective Supervision and Fall Risk

For Protective Supervision eligibility, the reason for the fall risk must be related to the individual's mental impairment/illness. Protective Supervision shall not be authorized solely because of one's inability to ambulate safely, thereby creating an increased risk of fall. For example, Protective Supervision would be authorized for a recipient considered to have fall risk tendencies if she is unable to walk unassisted, but due to a mental impairment, she forgets and frequently attempts to walk on her own. (All County Letter No. 17-95 (Sept. 12, 2017)).

#### In Anticipation of Emergencies or Exigent Circumstances

Protective supervision is not available merely to provide constant oversight in anticipation of environmental or medical emergency or exigent circumstances. For example, a mentally ill/mentally impaired recipient who would not know how to exit their home in the event of a fire is not eligible for Protective Supervision based on that behavior (or lack of appropriate response/behavior) alone. (All County Letter No. 15-25 (Mar. 19, 2015)).

#### Protective Supervision- Excluded Needs and Behaviors

Protective Supervision shall not be authorized when the need is caused by a medical condition and the form of the supervision required is medical (examples include a person who has diabetes and the need for Protective Supervision is to help if or when the recipient has an episode of hypoglycemia or a person who has diabetes and the need for Protective Supervision is to help if or when the recipient has an episode of hypoglycemia); In anticipation of a medical emergency. (All County Letter No. 15-25 (Mar. 19, 2015)).

#### 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 WIC § 12300(e)(4). This policy is also supported by MPP § 30-763.456(d), and it is CDSS' interpretation that this criterion applies to all providers, not just parent providers. (All County Letter No. 15-25 (Mar. 19, 2015)).

A minor may not be denied protective supervision solely based on their age, although age may be one factor in determining if protective supervision should be granted. It also mandates that when a minor is non-self-directed and mentally ill/impaired, the county must determine whether the minor needs more supervision because of their mental impairments than a minor of the same age without such impairment. (*Lam v. Anderson*

and in *Garrett v. Anderson*, San Diego County Superior Court No. 712208, Stipulation for Entry of Final Judgment and Judgment, June 12, 1998; All County Letter No. 98-87 (Oct. 30, 1998)).

### Assessing Minors for Protective Supervision

A county social worker must always assess an IHSS eligible minor for mental functioning (memory, orientation, and judgment) on an individualized basis and must not presume a minor of any age has a mental functioning score of 1 (unimpaired). In doing so, the worker must request the parent or guardian to obtain available information and documentation about the existence of a minor's mental impairment. A county social worker is not required to independently obtain such information and documentation but must review any information provided. (Welf. and Inst. Code §§ 12300, 12301, 12309; Man. Pol. & Pro. § 30-756).

### Four-Step Process for Assessing Minors for Protective Supervision

Counties must assess all eligible minors, which include anyone up to the age of 18 years old, for a mental impairment/ mental illness and mental functioning.

If the child is mentally impaired/mentally ill, All County Letter No. 15-25 provides the following four-step process for counties to use when applying the terms of the *Garrett v. Anderson* stipulated judgment:

- 1) Is the minor nonself-directing due to the mental impairment/mental illness?  
If the answer is no, then the minor is not eligible for Protective Supervision pursuant to *Calderon v. Anderson* and *Marshall v. McMahon*, and Protective Supervision should not be granted. The county should document that because the child is self-directing, the minor does not meet the *Garrett* criteria of needing more supervision than another minor of the same age without a mental impairment/ mental illness. Counties should also document the underlying facts which are basis for this determination. If the answer is yes, then move to question 2;
- 2) If the minor is mentally impaired/mentally ill and nonself-directing, is the minor likely to engage in potentially dangerous activities?  
Consider here whether the minor retains the physical ability to put him/herself at risk of harm. If the answer is no, then the minor 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 minor does not meet the *Garrett* criteria of needing more supervision than another minor of the same age without a mental impairment/mental illness. If the answer is yes, then move to question 3;
- 3) Does the minor also need more supervision than a minor 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 minor 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 minor 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 hour-a-day supervision needed for the minor to remain at home safely pursuant to MPP § 30-757.173? If the answer is no, then the minor is not eligible for Protective Supervision, and it should not be granted. If the answer is yes, the minor qualifies for Protective Supervision, if otherwise eligible.

(All County Letter No. 15-25 (Mar. 19, 2015)).

## CONCLUSION

### Protective Supervision Analysis

In this case, Sacramento County (county) denied Protective Supervision.

Protective Supervision is available for the monitoring of behavior of a nonself-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.

A four-step analysis is used to determine whether a minor who has a mental impairment or mental illness is entitled to Protective Supervision. The minor must: (1) be nonself-directing due to her/his mental impairment/illness, (2) be likely to engage in potentially dangerous activity, (3) need more supervision than a minor of comparable age who is not mentally impaired/mentally ill, and (4) need 24-hour-a-day supervision for the minor to remain safely at home. The minor must meet all four requirements. If the minor does not meet all four requirements, the minor is not entitled to Protective Supervision.

### Mental Impairment

There is no dispute between the parties that the child has Developmental Delay as of the initial assessment, which is a mental impairment. Therefore, it is determined that this element is met. There is also no dispute the county was made aware the child was subsequently diagnosed with Autism and Speech Delay.

The next step then is whether the child is nonself-directing because of his mental impairment.

Nonselself-Direction

“Nonselself-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. Based on the preponderance of the evidence, it is determined that the child’s memory meets a rank 5 (severe memory deficit). Severe deficit in memory is when the recipient cannot maintain continuity of thought in conversation, and he forgets to start or finish activities of daily living that places him at risk of injury, hazard, or accident.

There are times where the child shows good memory. Per the documentary evidence, the child remembers songs he likes and avoids others he does not by covering his ears. The child can sometimes communicate in his own way via gesturing and limited words to convey the things that he likes and does not like. An IEP states the child’s academic skills are emerging. However, based on the preponderance of the documentary evidence and testimony, the child has severe memory deficit which puts him at risk.

The December 2023 Psychological Assessment states that based on observed deficits in language and/or attention, the child has severely low intelligence. Regarding his cognitive skills, the child’s delays are above and beyond influence of his blindness.

The child cannot maintain continuity of thought in conversation. It is commonly anticipated that an unimpaired child of comparable age would use communication in some consistent way to convey needs or wants. The December 2023 Psychological Assessment states the child made no attempts at social engagement. The April 2023 Interdisciplinary Assessment Report states the child will verbalize and often repeats words/phrases with most utterances being two-word phrases. The parent reported that sometimes the child repeats words/phrases when parents ask him a question, rather than giving a direct response which leads to confusion and having to interpret his behaviors to meet his needs. Per the November 2023 Regional Center Social Assessment and December 2023 Psychological Assessment, the child’s verbal skills are delayed in that his spontaneous language consisted primarily of echolalia and did not have a social component. Per the reports, these words were not directed to another person nor spoken for social purposes. His verbal communication was a mixture of minimal meaningful speech and peculiar speech such as jargon, echolalia, or pronoun reversal. The child frequently imitates others’ verbalizations in an echolalic manner with no sense of social communication evident.

The child cannot accurately recall comments made earlier in the conversation. It is commonly anticipated that an unimpaired child of comparable age could respond or follow to prompts in some consistent way or used previously learned information to relate to another. The April 2023 Interdisciplinary Assessment Report states the child does not demonstrate understanding of preschool-level concepts (spatial, use of objects, pronouns). The May 2023 Individualized Education Plan (IEP) states he is also not understanding concepts such as same/different, prepositions, or descriptive word [size, texture, shape, etc.]. Both reports state the child's social emotional development is significantly below age and was not able to respond to his name without physical gestures. The December 2023 Psychological Assessment states the child does not respond to his name being called even if repeated. It also states the child does not respond to social praise and will generally will not follow a whole classroom or small group instruction without it being repeated by an instructional paraprofessional.

The October 2023 Pediatrician Assessment of Need for Protective Supervision form (SOC 821) states the child's memory is severely impaired. The pediatrician explains that the child can retain some information, but not in a meaningful way for safety. It states the child has no sense of danger, and every situation includes repeat safety issues. It states the child does not recall usual safety norms appropriate for three-year olds.

The child cannot recall learned behaviors and information from the distant or recent past. Per the May 2024 Individualized Education Plan (IEP), the parents are concerned that the child will repeat words that he hears but has not been able to use these words correctly in novel situations. For example, he will use the term "walking, walking" to protest having to leave a preferred activity. The April 2023 Interdisciplinary Assessment Report and May 2023 Individualized Education Plan (IEP) also state the child demonstrates delays in receptive language and expressive communication in comparison with what is expected for his age. Expressively he communicates using body language, gestures, and verbal language that is often repetitive, but he is not yet relying on verbal language for a variety of pragmatic purposes, responding to questions, or telling simple stories. He does not answer questions. The April 2023 Interdisciplinary Assessment Report states the child was not observed to communicate for all pragmatic functions; instead, he primarily communicated to label or request. He was not observed to use verbal language to ask for help, gain attention, share/ show items or interest, or request repetition. The November 2023 Regional Center Social Assessment states he does not know how to use "yes" and "no" in certain situations and the child struggles with participating in conversations with others, and he often does not ask questions or respond appropriately. It also states the child needs information to be rephrased to a simpler level to enhance his understanding. The child's parents stated that tasks need to be broken down into simple steps to aide in his learning of a new task/subject.

The child cannot convey accurate information about himself. The November 2023 Caregiver/ Teacher Questionnaire states the child often communicates by requesting and rejecting objects/activities but does not often respond to greetings or to his name. When answering questions, he is often prompted from an adult to answer. The

November 2023 Regional Center Social Assessment states the child will show a "big reaction" towards pain when he gets hurt but will not indicate what happened.

The child cannot convey information in response to questions. The December 2023 Psychological Assessment does not use others' hand as a tool or to gesture. He does not point to items of interest or desired items. The child does not point or nod his head to signify "yes" or "no". The child does not use conventional or instrumental gestures. The child imitates the noises and words, but not behaviors of others. It states the child can complete some simple instructions if they are simplified and repeated. However, the child is generally unresponsive to communication from others. The child uses some speech to alert caregivers to immediate needs or wants, but little or no purely social use of verbalizations. He evidences little or no reciprocal conversation. Furthermore, he evidences very little spontaneous speech as the majority of his verbalizations are echolalic in nature. His phrases are almost exclusively stereotyped utterances.

It is determined that the above qualifies as severely impaired memory because these are the basic necessities in memory for an unimpaired child of comparable age to keep themselves safe.

#### Orientation

Orientation is awareness of time, place, self, and other individuals in one's environment. Based on the preponderance of the evidence, it is determined that the child's orientation meets a rank 2 (apparent occasional disorientation and confusion). Occasional disorientation and confusion is when the recipient has general awareness of time of day and can provide limited information about family, friends, age, and daily routine, etc.

It is noted there are times when the child shows severe disorientation. The December 2023 Psychological Assessment observed the child did not orient towards others nor did he direct his vocalizations towards others despite clearly knowing where his parents and this examiner were located. He did not reciprocate communication with others. The child shows few or no attempts to share enjoyment with others. He does not offer comfort to others. He did not request items, nor did he attempt to engage with others. He was unresponsive to his name being called by his parents or by the examiner. He was generally aloof to the presence of others and did not respond when others gave directives or attempted to engage with him. The December 2023 Psychological Assessment also states the child does not respond to others' change in voice tone.

Regarding self-awareness and emotional reactions, the December 2023 Psychological Assessment states the child shows a markedly limited range of facial expressions. His parents further noted that it is difficult to discern his emotional state except when he is engaging in tantrum behaviors. It states the child overreacts and underreacts to sounds to an extremely marked degree, regardless of the type of sound. He will cover his ears for some noises but can tolerate other noises of similar frequency and volume.

The child's orientation is not severely impaired the majority of the time. The child has general awareness of time of day and routines. According to the December 2023 Psychological Assessment, the child follows a specific daily routine in which he will explore various parts of his home and engage in specific rigid behaviors unique to each location. For example, he requires his mother to give him his bottle and she must hold his feet while he feeds. The child also isolates specific behaviors and interactions for specific people. For example, he will go to his sister for her to play a specific song, he will go to his father for a specific type of play and go to his mother for a specific type of comfort. The child also will add additional steps that he feels is part of a sequence in a repetitive manner. If his mother directs him to put away a toy and he knows where to put it, he will still approach her before putting the toy in the bin. However, the November 2023 Regional Center Social Assessment states the child appears to have trouble with adapting to change easily, which is discussed under *Judgment*.

The child has some awareness about family, friends, age, etc. As above, the child directs certain wants to specific family members. The May 2023 Orientation and Mobility Report states child is very curious and readily explores things around his immediate environment with his hands and asking questions about things he happens to be touching. 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 of that sounded interesting. At one point he sensed the assessing specialist's presence on the family's couch and came over to investigate who it was.

The April 2023 Interdisciplinary Assessment Report also states the child explores for better awareness. The child 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. The May 2023 Orientation and Mobility Report states the child can identify activities by sound such as closing of a door or washing dishes, as well as by smell. Outside, the child will follow voices when walking with his cane and is good with using voice directionality and freely walks on different surfaces including pavement and grass.

The April 2023 Interdisciplinary Assessment Report states that at home, the child can navigate himself independently around the house since he has become familiar with the setting and placement of furniture. The parents report he is learning to use his cane outside to navigate. The May 2023 Orientation and Mobility Report also states the child uses a cane and knows how to sweep with it. He uses it explore his classroom, inside his home, and the front of his house, tapping the cane against different surfaces to hear how they sound, and to trail along to wall, tapping it against the garage door when walking along that area. As was found above, the child does not wander off due to confusion.

The October 2023 Pediatrician Assessment of Need for Protective Supervision forms (SOC 821) states the child has severe disorientation. However, the doctor's opinion on disorientation states the child's environment poses safety threats without consistent

supervision because there are unexpected dangers of things getting moved. This is discussed under *Judgment*.

### Judgment

Judgment is the recipient making decisions so as not to put self or property in danger and whether recipient has capacity to respond to changes in the environment (e.g., fire, cold house), understands alternatives and risks involved, and accepts consequences of decisions. Based on the preponderance of the evidence, it is determined that the child's judgment meets a rank 5 (severely impaired judgment) when he engages in Autism behaviors. Severely impaired judgment means the recipient's behaviors would result in risk of injury, hazard, or accident and/or the recipient makes decisions without regard to safety or well-being.

It is noted that the child will follow simple one-step directions and per the May 2024 Individualized Education Plan (IEP) can transition from one activity to another with the help of his one-to-one vision support staff and priming. However, beyond these routine compliance instructions, the child generally will not follow a whole classroom or small group instruction without it being repeated by an instructional paraprofessional. However, based on the preponderance of the documentary evidence and testimony, the child has severely impaired judgment which puts him at risk when it comes to certain behaviors rooted in his mental impairments, Autism and Developmental Delay.

The child makes decisions without regard to safety or well-being. The April 2023 Interdisciplinary Assessment Report states the child has significant adaptive functional skill limitations and per the December 2023 Psychological Assessment scored Extremely Low in all adaptive functioning and adaptive skills.

In the letter of support, the Orientation and Mobility specialist states the child may be familiar with the layout of his home but lacks the judgment or maturity to avoid hazardous situations or deal with unexpected changes in his environment. This lack of judgment means he cannot correctly determine if something puts him in danger of harm. It states this can create hazardous situation in the home if he explores or touches things which could cause harm, such as a hot stove or pushing heavy computer monitor that he could accidentally knock onto himself. The November 2023 Regional Center Social Assessment states that parents recalled when the child ran towards the hot stove and has tried to climb into the bathtub with his clothes on. The letters from the Orientation and Mobility specialist and pediatrician note that these are common every-day household items that cannot be prevented from typical daily use for the family's needs.

The December 2023 Psychological Assessment states the child will push away cups and refuse to have them in his area during mealtimes. The November 2023 Regional Center Social Assessment states that if the child does not like something, he will toss it over, and that he has spilt hot tea over onto the table.

The May 2024 Individualized Education Plan (IEP) states the child independently explores his classroom and school environment without hesitation to touch things around him and on the ground.

The documentary evidence states the child will often try to put items into his mouth. The December 2023 Psychological Assessment states the child engages in frequent object mouthing with nearly everything in his environment. The July 2024 Individualized Education Plan (IEP) states that the education team is in agreement that without continuous adult supervision, it is possible that the child could be a danger to himself, due to mouthing behavior. The Special Education Teacher indicated that the child will mouth objects two to three times in a 10–15-minute period. The parents also shared that they have observed the child grab and/or mouth potentially harmful objects at home, such as scissors. The November 28, 2023 Caregiver/ Teacher Questionnaire states the child has intense interest in some objects (pepperoni from board game), often holding and putting objects in his mouth.

The May 2024 Individualized Education Plan (IEP) states the child seeks and explores his environment by putting non-food items in his mouth. It specifically states the child requires 1:1 adult support to prevent him from putting items in his mouth and to ensure safety of student in the area of mouthing (for example, putting sharp, non-food items, or adult hand in his mouth). Adults have used verbal redirection, provided safer alternative items and limited access to unsafe materials to help support. Although these measures are taken, the child still needs to and will explore his environment. It goes on to state the child could potentially hurt himself by mouthing objects if he is not provided with continuous adult supervision.

The November 2023 Regional Center Social Assessment states the child has vestibular (movement) issues and engaged in many body movements enjoying the feeling of swinging and spinning around in a circle, such as spinning around in a circle, jumping up and down, placing toys into his mouth/against his face, and fidgeting. The December 2023 Psychological Assessment states the child sometimes does not sit still in highchair, booster seat, or chair, without climbing or sliding off.

The November 2023 Regional Center Social Assessment states the child tends to be overactive while in the home and appears to have a lot of energy and the child has been observed to repetitively jump and spin for sustained periods. Parents mentioned that the child will show the daily repetitive behaviors of twirling, jumping, always having a toy in his hands, and placing objects into his mouth.

Per the December 2023 Psychological Assessment, the child displays a significant lack of safety and environmental awareness and definite signs of inappropriate type and/or degree of emotional response. It states the child requires constant supervision as he engages in climbing onto furniture. Furthermore, the child is unresponsive to his parents' warnings and verbal instructions to "stop" or "don't touch" items in his environment. It states the child appears to not retain previously learned information and will typically forget such information after approximately one to two days.

The April 2023 Interdisciplinary Assessment Report states that if the child cannot convey in some way what he wants, he can get frustrated. He can say "no" when not wanting something. When his requests weren't met, he got louder and louder. He does not say "yes". Parents reported that this is typical behavior, and they have to interpret his actions in order to meet his needs. The December 2023 Psychological Assessment states the child will engage in tantrum behaviors if people other than his mother take him to school. The child will get "stuck" on a specific item and will engage in tantrum behaviors until he gains access to that item. The child is highly sensitive to sounds and will cover his ears. He will engage in tantrum behaviors when exposed to such stimuli. The December 2023 Psychological Assessment states the child will refuse or engage in tantrum behaviors if his hands meet an unfavorable texture.

The child cannot evaluate and respond appropriately to environmental cues. The October 2023 Pediatrician Assessment of Need for Protective Supervision forms (SOC 821) states the child self-soothes with self-hitting which has caused minor injuries from bumping his head. The November 2023 Regional Center Social Assessment states the child will engage in self-injurious behaviors (such as hitting himself and headbanging) when he is upset. Parents mentioned that the child tends to take a while for him to "setting himself" in new environments.

The November 2023 Regional Center Social Assessment states the child reportedly will engage in "meltdowns," showing challenges with expressing himself. For example, parents shared that if the child loses a toy and cannot find it, he will become frustrated and begin to hit himself and headbang. Parents shared that this is a daily behavior that occurs when the child is upset at home. The child displays significant sound sensitivities and will cover his ears or engage in tantrum behaviors when overstimulated. The child is sensitive to the texture of his clothing and will refuse to wear specific articles based on how they feel. He is sensitive to textures other than hard and will engage in tantrum behaviors if he touches slimy textures. He also is a highly selective eater in that he has an extremely limited variety of accepted foods.

Per the December 2023 Psychological Assessment, child the displays definite preoccupations that intrude into family life (e.g., opening and closing doors) and he displays significant distress if his routines are not followed or completed (e.g., being fed by his mother while she plays with his feet and holds him a specific way. The child is highly particular about how his food is presented to him. It states the child also gets preoccupied with using an object or toy in some strange way; he focused on insignificant part of a toy. The child played with cause-and-effect toys in a repetitive manner. He also repetitively taps items in a nonfunctional manner.

Per the documentary evidence, the child displays definite and frequent stereotyped body movements (e.g., repetitive jumping/spinning). The child's play is also linked to highly stereotypic use of objects ( e.g., tapping/flicking). The child shows constant sensory interest in objects (e.g., mouthing). In the video compilation, the child is seen mouthing toys that are the approximate size of the child's hand. The child is seen reaching onto the counter for what appears to be a plastic Tupperware container,

putting the bottom of the container in his mouth, and it is later seen on the floor. The cabinets have child-proofing devices on them. The child is seen in several clips bouncing on two feet in a circle within a confined space. The child is seen in the kitchen with a toy in his mouth next to the counter and then bouncing on two feet after putting his hand on the counter. When the child was bouncing in a circle, he was seen falling towards the floor and bracing himself with his arms and hands. The child has a bump on his temple. The child is seen jumping on the couch while propelling himself holding onto the back of the sofa chair.

The child is not amenable to social overtures. The May 2023 Individualized Education Plan (IEP) states the child is not seeking others out for fun/enjoyment, taking conversational or social turns, responding to his name or bids for his attention consistently, or showing or sharing things he finds interesting. Overall, his engagement with others is reduced for what would be expected at his age.

The child is not amenable to advice once he is fixated on something. December 2023 Psychological Assessment states that the child displays significant behavioral rigidities and when he becomes stuck on specific things (e.g., toys), he cannot be redirected. The April 2023 Interdisciplinary Assessment Report states that while playing, he wasn't reliably responsive to others and did not respond when dad asked him to move on to other toys.

The December 2023 Psychological Assessment states the child shows no interest in other children. The child prefers to play alone. He consistently avoids or ignores the approaches of other children. The child does not seek play involving groups of other children. He does not have peer relationships that involve selectivity and/or sharing. Furthermore, the child does not spontaneously offer to share items with others in any form. He generally ignores the overtures of others and shows no interest in interacting with peers. He does not display empathy or offer comfort to others. Rather, if he hears others crying, he will imitate the sounds that they are making. The child does not display any imaginative play skills.

It is noted that the under self-directing behavior, the November 2023 Regional Center Social Assessment states the child will self-initiate some tasks such as requesting food items (chips and cookies) when he is hungry. The preponderance of the evidence states the child's behaviors are otherwise severely impacted by his co-occurring functional impairments. The above deficits are what an unimpaired child of comparable age would typically rely on to maintain their needs.

In summary, it has been determined the child's mental functioning in orientation is moderately impaired, and memory and judgment are severely impaired. Based on the preponderance of the above evidence, it is determined that the child is nonself-directing. The July 2024 letter of support from child's speech therapist sums up why the child is nonself-directing. It states the child's Autism makes it difficult for him to access his environment as a typical child would. He demonstrates inability to care for himself, orient to activities, and demonstrates the need for full-time supervision. The child seeks

physical experiences that provide a high level of sensory input. These activities may include jumping, spinning, swinging, and physical tensing of muscles. The child does not show regard to his relative closeness to other children, walls, furniture, etc. while engaging in sensory seeking behaviors. Because he is not aware of proximity during these activities, they are often dangerous if not directly supervised.

#### Engagement in Potentially Dangerous Activities

There is no dispute that the child has the physical ability to engage in potentially dangerous behavior. Protective Supervision requires the child to likely engage in potentially dangerous activities, with consideration of his physical ability to put himself at risk of injury, hazard, or accident.

Based on the preponderance of the above evidence, the child does engage in potentially dangerous activities, which are as follows and documented above under *Judgment*:

The child explores his environment without hesitation in an attempt to be more familiar with textures and sounds, which could expose him to potentially dangerous items that are commonly found in the household, like sharp, bulky, heavy, spiky, edgy and protruding, or excessively hot items.

The child seeks and explores his environment by putting non-food items in his mouth (for example, putting sharp, non-food items in his mouth).

The child engage in many body movements enjoying the feeling of swinging and spinning around in a circle, such as spinning around in a circle, jumping up and down, placing toys into his mouth/against his face, and fidgeting without regard to proximity to potentially dangerous areas or objects. The child also excessively climbs and jumps on furniture while unresponsive to his parents' warnings and verbal instructions to "stop" or "don't touch" items in his environment.

The child self-soothes with self-hitting (self-injurious behavior) and has severe emotional dysregulation that causes meltdowns due to over-stimulation and high selectivity and rigidity.

#### 24-Hour Supervision and More Supervision Required

Protective Supervision requires 24-hour supervision. If the behavior in question is considered predictable, and the need for supervision is at certain times of the day, there is no Protective Supervision eligibility because there is not a 24-hour need. Unpredictable episodic behavior must be frequent and long enough that constant supervision is necessary.

Per the documentary evidence, the child's potentially dangerous activities above have been observed at home (per case assessment narrative), during special needs

evaluations (per Psychological Assessments), and at school (per IEPs). The documentary evidence is consistent that child engages in these behaviors every day and frequently. One example such example is that per the July 2024 Individualized Education Plan (IEP), the Special Education Teacher indicated that the child will mouth objects two to three times in a 10–15-minute period. Whether they happen at night is immaterial. Due to the child’s Autism, there is no specific trigger that makes the above-mentioned potentially dangerous activities more or less likely to happen.

Additionally for minors, Protective Supervision requires that the child needs more supervision than a minor of comparable age, who is not mentally impaired or mentally ill. “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.

The accommodations and modifications for the child are in excess of what an unimpaired child of comparable age would need to adapt. Per the May 2024 Individualized Education Plan (IEP), the child requires priming by reviewing expectations, changes or expected behavior prior to the activity before changes in the routine or activity to support appropriate skills, e.g. appropriate coping skills, transitions, or play skills, social skills training, feeding appropriate words, etc. For example, the child requires priming, letting him know that recess will be over soon to help him have a smoother transition that would alleviate or reduce a potentially dangerous activity, or meltdown. Per the May 2024 Individualized Education Plan (IEP) the child can transition from one activity to another with the help of his one-to-one vision support staff.

The October 2023 Pediatrician Assessment of Need for Protective Supervision forms (SOC 821) states the child has multiple needs beyond that of a typical 3-year-old. The December 2023 Psychological Assessment states the child receives specialized vision services, orientation and mobility, and individual and small group instruction. The December 2023 Psychological Assessment states that because the child was consistently aloof or unaware of what adults were doing in the room, only the most persistent attempts to get his attention had any effect.

Based on the preponderance of the evidence, the child does require 24-Hour supervision and significantly more supervision than an unimpaired minor of comparable age.

## **ORDER**

The claim is granted.

Sacramento County (county) shall authorize the child for Protective Supervision effective August 1, 2023; notify the child in writing of its actions; and aid the child as otherwise eligible.