

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2017020851

DECISION

On April 3, 2017, Debra D. Nye-Perkins, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California.

Leigh-Ann Pierce, Consumer Services Representative, Fair Hearings and Legal Affairs, represented the Inland Regional Center (IRC).

Claimant's father, his legal guardian, represented claimant who was present.

Oral and documentary evidence was introduced, and the matter was submitted on April 3, 2017.

ISSUE

Is claimant eligible for regional center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) on the basis of a diagnosis of autism?

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. Claimant is a 24-year-old man. His father sought regional center services for claimant based on the condition of Autism Spectrum Disorder (ASD).

2. Sometime prior to January 2017, claimant requested that IRC provide services to claimant. As part of that request, claimant provided various documents to IRC, including a psychological assessment report from California Psychcare, a report from a third party vendor of the Department of Rehabilitation, a psychological-educational evaluation from a psychologist, a psychological report from another psychologist, and documents from claimant's school district to support claimant's request for services.

3. On January 19, 2017, IRC notified claimant that he was not eligible for regional center services based on a review of his records because he does not have a disability that qualifies him to receive IRC services.

4. On January 1, 2017, claimant's father filed a fair hearing request appealing IRC's decision.¹

DIAGNOSTIC CRITERIA FOR AUTISM SPECTRUM DISORDER

5. The American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5) identifies criteria for the diagnosis of Autism

¹ The Fair Hearing Request is dated January 1, 2017, but the receipt stamp for the document is February 16, 2017. It is unclear if the January 1, 2017, date is an error given that the letter informing claimant that he is ineligible for services is dated January 19, 2017.

Spectrum Disorder. The diagnostic criteria includes persistent deficits in social communication and social interaction across multiple contexts; restricted repetitive and stereotyped patterns of behavior, interests, or activities; symptoms that are present in the early developmental period; symptoms that cause clinically significant impairment in social, occupational, or other important areas of function; and disturbances that are not better explained by intellectual disability or global developmental delay. An individual must have a DSM-5 diagnosis of autism spectrum disorder to qualify for regional center services under autism.

EDUCATIONAL AND PSYCHOLOGICAL RECORDS REVIEWED BY IRC

6. Since at least 2003, claimant has had a history of behavioral problems and low academic achievement. Claimant was first given a psychoeducational evaluation in April 2003 at the age of 10 by his school district to determine his eligibility to enter special education classes. The report of that assessment concluded that claimant did not have a learning disability, but a follow up was necessary due to the level of anxiety he displayed. Claimant was again evaluated by his school district in Palm Springs in December 2004. The results of that evaluation concluded that claimant qualified for special education services under the criteria of emotional disturbance due to his inability to build or maintain satisfactory interpersonal relationships, and inappropriate types of behavior and feelings.

7. On October 17, 2006, and January 12, 2007, claimant was evaluated by a multi-disciplinary team of the Desert Sands Unified School District and a report was generated after the evaluation. The team consisted of a school psychologist, a resource specialist, school counselor, program specialist, two teachers and claimant's father. The report states that Mark Kalkoske, Ph.D., school psychologist, examined claimant utilizing various tests, including parent interview, Wechsler Intelligence Scale for Children-IV (WISC-4), Test of Auditory Processing Skills-Revised (TAPS-3), Test of Auditory

Processing Skills – Upper Level – Revised (TAPS-R), Wechsler Individual Achievement Test-2 (WIAT-2), Behavioral Assessment System for Children -2 –parent rating scale/teacher rating scale/adolescent self-report, and Children’s Depression Inventory. The report concluded that claimant qualified for special education services based on criteria of Specific Learning Disability, Emotional Disturbance for inappropriate types of behaviors and feelings under normal circumstances, exhibited in several situations. There was no diagnosis or mention of ASD for claimant in the multi-disciplinary team report. The report also concluded that claimant had high average verbal reasoning abilities and a verbal comprehension index in the high average range for his age. Claimant’s perceptually based reasoning skills were in the bottom end of average, and his working memory skills were in the borderline range with a processing speed in the lower extreme for his age.

8. On February 25, 2007, claimant underwent a Psychological-Educational Evaluation from Brent M. Cooper, Licensed Educational Psychologist, and the results were contained in a report. Dr. Cooper stated in his report that he conducted the evaluation of claimant because claimant’s psychiatrist and his father “have concerns regarding his social skills” and the goal of the evaluation was to “better understand the factors contributing to his presentation and to aid in educational planning.” Dr. Cooper wrote in his report that he utilized the following methods of testing on claimant: records review, observations, student and parent interviews, the Beery-Buktenica Developmental Test of Visual-Motor Integration (VMI), TAPS-R, Test of Perceptual Processing Skills (TVPS-R), Woodcock-Johnson III Tests of Cognitive Abilities and Achievement (WJ-III), Wide Range Assessment of Memory and Learning (WRAML-2), Attention Deficit Disorder Evaluation Scale – Home Version (ADDES-3), Behavior Assessment for Children-Second Edition (BASC), Wide Range Achievement Test-4 (WRAT-4), and Autism Diagnostic Observation Schedule (ADOS) for “data gathering purposes only.” Dr. Cooper

concluded based on the WISC-IV data obtained that claimant had “average non-verbal reasoning skills.” Dr. Cooper concluded based on the WJ-III data that claimant’s cognitive abilities are in the average range in comprehension-knowledge, visual-spatial thinking, and phonetic awareness; claimant’s auditory processing was in the low average to average range; claimant’s short-term memory was in the low average to average range; claimant’s working memory was in the low to low average range; and claimant’s processing speed was in the very low range. Dr. Cooper noted that academically claimant gets poor grades in school.

Dr. Cooper also wrote in his report that “[claimant’s] father indicated that [claimant] avoids eye contact and is inattentive to social and environmental stimuli . . . has difficulty interacting with other children and seems unaware of social conventions and codes of conduct.” Dr. Cooper provided claimant’s father with a test called the Gilliam Autism Rating Scale (GARS), which is a standardized test for screening and assessment for autism disorder based exclusively upon the information provided by claimant’s father in response to survey questions. Dr. Cooper stated in his report, based exclusively on claimant’s father’s responses, that the probability that claimant had ASD was “borderline.” Dr. Cooper also utilized the BASC- Parent Rating scales to obtain information from claimant’s father regarding claimant’s behavior. The results of the BASC-Parent Rating scales show that claimant had scores that were clinically significant for conduct problems, anxiety, depression, atypicality, withdrawal, adaptability, social skills, activities of daily living, functional skills, externalizing problems, internalizing problems, behavior and adaptive skills. It also indicated that claimant was “at-risk” for aggression, somatization, and attention problems. Based exclusively on the information provided by claimant’s father in response to the survey questions for the GARS, Dr. Cooper provided a diagnosis for claimant of “Autistic Disorder.”

9. On May 20, 2010, claimant underwent psycho-educational evaluation for the Desert Sands Unified School District to determine claimant's continuing need for special education services. A school psychologist, Brent Farrand conducted the evaluation and prepared his results in a report. Dr. Farrand utilized a number of tests to evaluate claimant, including the Asperger Syndrome Diagnostic Scale (ASDS), the Behavior Assessment System for Children Second Edition (BASC-2), and the Gilliam Autism Rating Scale Second Edition (GARS-2). Dr. Farrand obtained all the information for the ASDS and GARS-2 tests from claimant's father. Dr. Farrand obtained all the information for the BASC-2 test from claimant, claimant's father and one of claimant's teachers. Dr. Farrand noted that claimant's father's BASC-2 test results showed that claimant displayed significant elevations on all of the clinical scales with significantly delayed scores on all of the social/adaptive scales. Claimant's teacher's results for the BASC-2 showed that claimant had one significant elevation on the subscale reflecting depression and significant delays on most of the social/adaptive skills. Claimant's results for the BASC-2 showed significant elevation on one subscale of control (indicating that he perceives others as being in control of his actions and situation) and a delay was noted on the adaptive subscale reflecting peer relationships, but the remaining social/adaptive scales were in the average range. Dr. Farrand also wrote that claimant's father's answers for the ASDS and GARS-2 tests indicated significant delays in many domains with overall scores in the "very likely" range for both the ASDS and GARS-2. Dr. Farrand concluded in his report that claimant's suspected area of disability was autism and wrote as follows:

[Claimant's] parent's responses on rating scales suggested that [claimant] would meet eligibility requirements under the category of autistic-like characteristics. Difficulties in oral language skills as well as deficits in social judgment and

social interaction were noted by both his parent and his SDC teacher. These findings were also consistent with previous testing conducted in 2007.

10. Three documents from the Riverside County Special Education Local Plan Area (SELPA), where claimant attended high school, were submitted and reviewed. First, claimant provided an Individualized Education Program (IEP) amendment dated May 13, 2010, to his original IEP dated September 15, 2009. This document provided that claimant qualified for special education services under the disability of emotional disturbance and not under a disability of autism.

Second, claimant provided a Manifestation Determination Review document for a meeting dated May 13, 2010, (notably the same date as the IEP amendment) wherein the school met because claimant was subject to discipline for being caught on school grounds during school hours in possession of marijuana. The discussion was for the purpose of determining the relationship between claimant's disability and the behavior subjecting him to discipline. The report showed that the determination was made that the behavior was related to claimant's disability of emotional disturbance, and further noted that this was claimant's second drug related suspension. The report also noted that claimant's father "is concerned about [claimant's] ability to function independently and is concerned that autism is not being addressed."

Third, claimant provided a report dated June 4, 2010, regarding a reassessment meeting for claimant's IEP. The report concluded that claimant was no longer eligible for special education services because he had completed all required academic courses and would be receiving a high school diploma. The report summarized claimant's social emotional/behavioral progress as follows:

Has been diagnosed with emotional disturbance, specifically, depression and anxiety. Does have friends in the school setting. Has received cessation counseling. Has also received counseling for attendance and tardies, motivation/staying on task, and positive coping behavior . . .

The report further summarized claimant's adaptive/daily living skills as follows:

Is capable of taking care of his own personal needs.

[Claimant] is well groomed and can navigate his community.

He is capable of reading a bus route and taking a bus to desired locations.

11. On April 8, 2015, April 10, 2015, and April 20, 2015, claimant was evaluated by Dr. Nicholas C. Aliotti, Licensed Psychologist, and Dr. Aliotti summarized his findings in a Psychological Report. Dr. Aliotti wrote in the report that the reason for his assessment of claimant was because claimant's father referred him to "(1) learn what is holding him back in achieving his goals," and "(2) learn of any evidence that would bolster [claimant's] case for acceptance for services at Regional Inland Center in San Bernardino." Dr. Aliotti wrote that he utilized the following assessment procedures:

Clinical interviews with client, collateral clinical interviews with father, General Information Office Form, Childhood Information Form, review of Triennial Multidisciplinary Assessment Report and External Situational Assessment report requested by the Department of Rehabilitation.

Dr. Aliotti wrote in his report that he administered the following "psychological test battery":

Mental status Exam, Wechsler Adult Scale for Adults Revised, Shipley Institute of Living Scale, Cognitive Linguistic Quick Test: Personal Facts, Draw A Clock, Generative Naming, storytelling, Brief Symptom Inventory (BSI), Blank, Fear Survey Screening, Beck Anxiety Trail Making Parts A and B Goodenough-Harris Drawing Test, Sentence Completion Inventory, Beck Depression Inventory, Brief Symptom Inventory.

Under "Diagnostic Impression" Dr. Aliotti wrote:

My impression of this young man is that he is diagnosed most accurately as meeting the criteria for Autism Spectrum Disorder. Beginning in his early childhood [claimant] demonstrated a number of traits and characteristics consistent with this diagnosis. These include prolonged periods of silence and non-responding, intense obsessions with certain words which were repeated constantly, maintaining sameness in his environment, dress and eating habits, frustration with any change in family life, great difficulty in being comfortable in new situations, and stereotyped thinking processes. He has not been able to establish, maintain and sustain normal interrelationships with his parents, or siblings. He continues to lack empathy and is unable to recognize and respond to social cues in an appropriate manner. The social disability is **a major**

impairment which is pervasive and impacts all areas of living.

[Claimant] is also meeting criteria for ADHD, Specific Learning disorders and processing difficulties evidence during his early neurodevelopment

12. On September 16, 2016, claimant was evaluated by Nazanin Niki Mostadim, M.A., and the results were summarized in a Psychological Evaluation Report. The report noted that claimant was referred for the evaluation by his insurer to rule out Autism Spectrum Disorder because Dr. Aliotti assessed [claimant] in April 2015 and concluded a diagnosis of Autism Spectrum Disorder (Primary) and secondary Major Depressive Disorder. Ms. Mostadim's evaluation was reviewed and signed by Ali Sadeghi, Psy.D. Ms. Mostadim wrote that she utilized clinical interviews; direct observations of claimant; reviewed records including Dr. Aliotti's report, IRC Intake dated August 7, 2015, IRC Social Assessment dated February 5, 2013, and Triennial Multidisciplinary Assessment Report dated May 20, 2010; and direct assessment utilizing ADOS-2, Adaptive Behavior Assessment System, 3rd Edition (ABAS-3), Social Responsiveness Scale, Second Edition -Self Report, and Social Responsiveness Scale, Second Edition – Relative/Other Report.

Ms. Mostadim wrote in her report that claimant and his father were present for the duration of the evaluation appointment. She further wrote:

Although [claimant] was present during the interview portion of the assessment, [claimant's father] served as the primary informant for information contained within this report, including concerning behaviors, background information and parent questionnaires and checklists. In addition, portions of

the report were obtained from record review, observations and direct assessment.

Ms. Mostadim wrote that she administered the ADOS-2, Module 4 to claimant. She wrote that Module 4 was selected because claimant is 24 years old and able to speak fluently. She further wrote "[a]ccording to the structured observation and ADOS-2 algorithm for fluent speech, [claimant's] score (12), was above the autism cutoff, indicating that his classification is autism. Ms. Mostadim noted:

During the ADOS-2, [claimant] was initially hesitant and was not open to discuss a wide range of interest. . . . He generally used sentences in a correct fashion, however little variation in pitch and tone was observed. . . . He initially avoided eye contact but as the session proceeded, he occasionally initiated eye contact and built on the assessor's conversation. . . . [Claimant] displayed some good insight into his own emotions and was able to discuss his feelings of sadness and liveness[sic]. His insight into social relationships appeared to be less developed. . . .

Ms. Mostadim wrote that claimant's adaptive skills were assessed using the ABAS-3 form, which was completed exclusively by claimant's father. Based on claimant's father's answers, Ms. Mostadim wrote that claimant's General Adaptive Composite score was in the Extremely Low range, his Conceptual Adaptive Domain Score was in the Extremely Low range, his Social Adaptive Domain Score was in the Extremely Low range, and his Practical Adaptive Domain Score was in the Extremely Low range.

Ms. Mostadim also wrote that she administered the SRS-2 Relative/Other Report, which is meant to measure symptoms associated with autism. She wrote that claimant's

father provided all information for the SRS-2 form. There is no indication in Ms. Mostadim's report that any information for any SRS-2 form came directly from claimant. Based on claimant's father's responses to the questions in the SRS-2 Report, claimant's score on the Social Communication and Interaction scale was in the "Severe range," and his score on the Restricted Interests and Repetitive Behaviors scale "was in the Severe range."

Ms. Mostadim concluded that claimant met the diagnostic criteria for Autism Spectrum Disorder (ASD).

13. Claimant also submitted a report from EXCEED, a division of Valley Resource Center and third party vendor to the Department of Rehabilitation Services. The first was the "External Situational Assessment Report" dated October 2012, for services given from September 13, 2012, to October 4, 2012, by EXCEED. The report noted that the EXCEED employee responsible for the report was Frank Pefley. The report noted that claimant had been referred to EXCEED by the Department of Rehabilitation (DOR) for evaluation of his work related capabilities and stamina, habits, skills, ability to follow directions and other functional areas to determine his strengths and limitations regarding work skills, work tolerances, vocational interests and readiness for work. The report evaluated claimant's performance of work at the Dollar Tree to assess stocking and organizational skills, and at the Whitewater Rest Stop to assess his janitorial skills. The report concluded that claimant "is recommended for a Group Placement in Supported Employment . . . [t]his will require acceptance to Inland Regional Center." The report further concluded that claimant "is recommended to seek Mental Health treatment and medication to address depression and anxiety which apparently impacts his work and social skills."

TESTIMONY OF PAUL GREENWALD, PH.D.

14. Dr. Paul Greenwald received his Ph.D. in Clinical Psychology from California School of Professional Psychology in 1987. Dr. Greenwald has worked as a staff psychologist at IRC since October 2008. His duties in the position of staff psychologist include reviewing records and conducting evaluations to assist the multidisciplinary team to determine if potential clients are eligible for services. During his employment at IRC, Dr. Greenwald has reviewed the records of over 1,500 clients or potential clients to determine their eligibility for services with IRC.

15. Dr. Greenwald reviewed claimant's records in this matter, including his assessment report from his own assessment of claimant completed on August 7, 2015. As part of his review of claimant's records, Dr. Greenwald reviewed Dr. Aliotti's evaluation, Dr. Cooper's evaluation, Ms. Mostadim's report, Dr. Kalkoske's evaluation, Dr. Farrand's evaluation, the EXCEED report, and all the school records provided by claimant. Dr. Greenwald opined that these materials do not establish that claimant is eligible for services from IRC on the basis of autism. Specifically, Dr. Greenwald testified that autism is a developmental disability with typical symptoms including repetitive behaviors, sensory issues, and communication problems, and is diagnosed through use of criteria outlined in the DSM-5.

16. Dr. Greenwald stated that there is no indication that claimant has symptoms of autism and his previous testing of claimant for autism in 2015 demonstrates that claimant does not have ASD. Dr. Greenwald assessed claimant on August 7, 2015, to determine eligibility for services under the criterion of ASD. Dr. Greenwald noted that claimant has a history of psychiatric diagnoses, including depression and anxiety disorder, since at least 2008. Dr. Greenwald's assessment included a review of claimant's extensive documentation of previous testing and clinical records. Additionally, Dr. Greenwald utilized three new tests to evaluate claimant for

ASD. Specifically, Dr. Greenwald used the ADOS-2-Module 4, Childhood Autism Rating Scale-2nd Edition (CARS2-ST), and the Vineland-II Adaptive Behavior Scale. According to Dr. Greenwald, the ADOS-2 is currently the best test available for diagnosis of ASD. He stated that while other tests can be subjective and depend on third-party reports, the ADOS-2 takes subjectivity out of the equation and is more of a real-time assessment based on a person's reactions to a set of presses or challenges. Dr. Greenwald summarized his findings in a report, which was consistent with his testimony.

Dr. Greenwald testified that the results of the ADOS-2 test for claimant showed that all of his scores fell in the non-autistic range and below the cut-off for ASD. Additionally, claimant's scores on the CARS2-ST test fell in the non-autistic range as well. With regard to the Vineland-II Adaptive Behavioral Scale test, Dr. Greenwald stated that this is a survey of activities of daily living that was a rating scale completed by complainant's father. According to Dr. Greenwald, the answers provided by claimant's father for this test indicated that claimant's communication, daily living skills, and socialization, as well as the total composite score were in the "profound deficit" range, which is a level usually reserved for people who are profoundly intellectually deficient (an I.Q. score of between 35 and 45), and claimant is not. Dr. Greenwald stated that claimant's father's reports regarding his adaptive skills were "improbably low" given claimant's scores on intellectual testing, his own observations of claimant, as well as records he reviewed. Dr. Greenwald noted that the 2010 exit IEP from Riverside Unified School District stated that claimant had no problem taking care of his own personal needs, is well groomed, can navigate his community, and is capable of reading a bus route and taking a bus to desired locations. These abilities are all very inconsistent with the rating answers provided by claimant's father.

17. Also, Dr. Greenwald stated that claimant has a long history of mental health issues, specifically depression, and his review of all of the documents provided

demonstrated that claimant had a diagnosis of emotional disturbance and received special education services only under the diagnosis of emotional disturbance, not ASD. Dr. Greenwald noted that his review of the 2010 IEP from Riverside Unified School District showed that the school was using the phrase “autistic-like” behaviors to describe claimant based solely on information obtained from claimant’s father in a Gilliam Autism Scale survey, which is a screening survey given to parents to answer to determine if a full autism assessment is warranted. Dr. Greenwald noted that the term “autism-like” is frequently used by schools, but does not constitute a DSM-5 diagnosis of Autism. Dr. Greenwald emphasized that eligibility for special education services under a diagnosis of autism has a “different and more-loose standard” than that required by the Lanterman Act. Specifically, school districts use different criteria to determine eligibility for special education services than that utilized by the Lanterman Act. Under the school district criteria, if a child demonstrates some socially awkward behavior it may be enough to qualify for special education services, but such autistic-like behavior is insufficient to qualify for services under the Lanterman Act.

18. Dr. Greenwald further testified that in Dr. Cooper’s 2007 report concluding that claimant had ASD, Dr. Cooper based his findings exclusively on claimant’s father’s answers to survey questions, similar to the Gilliam Autism Rating Scale. According to Dr. Greenwald, Dr. Cooper never utilized an ADOS examination to confirm that claimant should be diagnosed with ASD.

19. With regard to Dr. Aliotti’s report, Dr. Greenwald testified that Dr. Aliotti also based his diagnosis of ASD exclusively on information provided to him from claimant’s father. Dr. Aliotti did not perform any tests for autism assessment and instead relied exclusively, and without question, on claimant’s father’s information.

20. With regard to Ms. Mostadim’s assessment of claimant, Dr. Greenwald stated that although she utilized the ADOS-2 test, her report raised many red flags. Dr.

Greenwald also noted that Ms. Mostadim appeared to be a psychological assistant training under a psychologist as the assessment was conducted by Ms. Mostadim and the report was co-signed by a psychologist. As a result, Ms. Mostadim had much less experience in evaluating and assessing for ASD. Additionally, Dr. Greenwald stated that her report was internally inconsistent. He noted that she provided a score of 2 to claimant to indicate severe deficits in communication skills, but she wrote that "the conversation at times became one-sided" and that claimant "initially avoided eye contact, but as the session proceeded, he occasionally initiated eye contact and built on the assessor's conversation." Dr. Greenwald stated that a score of 2, which is extreme, would not be appropriate when claimant was able to build upon conversation and make eye contact later in the conversation. Dr. Greenwald also noted that this score differed from his own on the same test. Dr. Greenwald pointed out that Ms. Mostadim wrote in her report that claimant "displayed some good insight into his own emotions and was able to discuss his feelings of sadness and loneliness[sic]." According to Dr. Greenwald, such insight into his own emotions and ability to discuss requires a capacity for introspection and a number of abilities typically lacking in someone with ASD. He stated it would be very unusual for a person with ASD to be able to do this. Dr. Greenwald also noted that claimant has suffered from depression, which may affect his ability to make eye contact, and may result in a higher score on the ADOS-2 test.

Dr. Greenwald noted that the information Ms. Mostadim utilized for the ABAS-3 test she administered came exclusively from reports from claimant's father. He noted that again the scores on this portion of her evaluation were extremely low.

21. Dr. Greenwald concluded that based on his previous assessment in 2015, as well as his review of all of the records provided, claimant does not meet the eligibility requirements to receive services based on a diagnosis of ASD. Dr. Greenwald stated that his evaluation showed that claimant's ADOS-2 scores were below the cut-off for a

diagnosis of ASD. Additionally, claimant has the ability for introspection, to engage in conversations, improved eye contact during conversations, ability to experience sadness and loneliness and define those emotions. All such abilities are indicative of a person who does not have ASD.

TESTIMONY OF CLAIMANT'S FATHER

22. Claimant's father is seeking services for his son because he hopes to provide the best opportunities for him to have a normal life. Claimant's father has amassed a large body of testing, reports and school documents to demonstrate claimant's difficulties. Claimant's father believes that there were some conflicts in the results of the autism testing completed on his son, but that four different reports concluded that claimant suffered from ASD. Specifically, Dr. Cooper's report, Ms. Mostadim's report, Dr. Aliotti's report and Dr. Ferrand's report. Claimant's father believes that each of these individuals spent more time with claimant to perform their assessment than did Dr. Greenwald. Claimant's father also believes that Dr. Greenwald focused primarily on his son's facial expressions during his evaluation.

23. Claimant's father stated that "there are huge stakes" involved with the decision of eligibility for his son. He believes that IRC utilizes a very narrow definition of autism that does not take into consideration other factors such as mental health, behavioral issues and educational deficits. Claimant's father believes that all the evidence submitted from the other reports establishes that claimant is qualified for services under a diagnosis of ASD.

THE PARTIES' ARGUMENTS

24. IRC argued that Dr. Greenwald's assessment of claimant in 2015, as well as the records provided for IRC's review failed to establish that claimant has any diagnosis that would qualify him for services from IRC.

25. Claimant's father disagreed with IRC's position and believes that the multiple reports from third parties firmly establish that claimant has a diagnosis of ASD sufficient to qualify him for services from IRC.

LEGAL CONCLUSIONS

THE BURDEN AND STANDARD OF PROOF

1. In a proceeding to determine whether an individual is eligible for regional center services, the burden of proof is on the claimant to establish that he or she has a qualifying diagnosis. The standard of proof required is preponderance of the evidence. (Evid. Code, § 115.)

2. A preponderance of the evidence means that the evidence on one side outweighs or is more than the evidence on the other side, not necessarily in number of witnesses or quantity, but in its persuasive effect on those to whom it is addressed. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

THE LANTERMAN ACT

3. Pursuant to the Lanterman Act (Welf. & Inst. Code, § 4500, et seq.), the State of California accepts responsibility for persons with developmental disabilities. The purpose of the Act is to rectify the problem of inadequate treatment and services for the developmentally disabled and to enable developmentally disabled individuals to lead independent and productive lives in the least restrictive setting possible. (Welf. & Inst. Code, §§ 4501, 4502; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.) The Lanterman Act is a remedial statute; as such it must be interpreted broadly. (*California State Restaurant Association v. Whitlow* (1976) 58 Cal.App.3d 340, 347.)

4. An applicant is eligible for services under the Lanterman Act if he or she can establish that he or she is suffering from a substantial disability that is attributable

to intellectual disability, cerebral palsy, epilepsy, autism, or what is referred to as the fifth category – a disabling condition closely related to intellectual disability or requiring treatment similar to that required for intellectually disabled individuals. (Welf. & Inst. Code, § 4512, subd. (a).) A qualifying condition must also start before the age 18 and be expected to continue indefinitely. (Welf. & Inst. Code, § 4512.)

5. California Code of Regulations, title 17, section 54000, also defines “developmental disability” and the nature of the disability that must be present before an individual is found eligible for regional center services. It states:

(a) Developmental Disability means a disability that is attributable to mental retardation², cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation.

(b) The Developmental Disability shall:

(1) Originate before age eighteen;

(2) Be likely to continue indefinitely;

(3) Constitute a substantial disability for the individual as defined in the article.

(c) Developmental Disability shall not include handicapping conditions that are:

(1) Solely psychiatric disorders where there is impaired intellectual or social functioning which originated as a result of the psychiatric disorder or treatment given for such a disorder. Such psychiatric disorders include psycho-social deprivation and/or psychosis, severe neurosis or personality

² Although the Lanterman Act has been amended to eliminate the term “mental retardation” and replace it with “intellectual disability,” the California Code of Regulations has not been amended to reflect the currently used terms.

disorders even where social and intellectual functioning have become seriously impaired as an integral manifestation of the disorder.

- (2) Solely learning disabilities. A learning disability is a condition which manifests as a significant discrepancy between estimated cognitive potential and actual level of educational performance and which is not a result of generalized mental retardation, educational or psycho-social deprivation, psychiatric disorder, or sensory loss.
- (3) Solely physical in nature. These conditions include congenital anomalies or conditions acquired through disease, accident, or faulty development which are not associated with a neurological impairment that results in a need for treatment similar to that required for mental retardation.

6. When an individual is found to have a developmental disability as defined under the Lanterman Act, the State of California, through the regional center, accepts responsibility for providing services and supports to that person to support his or her integration into the mainstream life of the community. (Welf. & Inst. Code, § 4501.)

7. "Services and supports" for a person with a developmental disability can include diagnosis and evaluation. (Welf. & Inst. Code, § 4512, subd. (b).)

8. A regional center is required to perform initial intake and assessment services for "any person believed to have a developmental disability." (Welf. & Inst. Code, § 4642.) "Assessment may include collection and review of available historical diagnostic data, provision or procurement of necessary tests and evaluations, and summarization of developmental levels and service needs . . ." (Welf. & Inst. Code, § 4643, subd. (a).) To determine if an individual has a qualifying developmental disability, "the regional center may consider evaluations and tests . . . that have been performed by, and are available from, other sources." (Welf. & Inst. Code, § 4643, subd. (b).)

9. California Code of Regulations, title 5, section 3030, provides the eligibility criteria for special education services required under the California Education Code. The criteria for special education eligibility are not the same as the eligibility criteria for regional center services found in the Lanterman Act. A school providing services to a student under an autism disability is insufficient to establish eligibility for regional center services. Regional centers are governed by California Code of Regulations, title 17. Title 17 eligibility requirements for services are much more stringent than those of title 5.

EVALUATION

10. Claimant's father asked for a Fair Hearing to challenge IRC's determination that his son is not eligible for services under a diagnosis of ASD. He believes claimant is eligible for regional center services because he exhibits autistic behaviors and because he received a diagnosis of ASD from Dr. Aliotti, Ms. Mostadim, Dr. Cooper and Dr. Ferrand. Claimant's father expressed his genuine desire to have claimant receive services from IRC so that he can have an opportunity to obtain full employment and a better life. His motives are sincere and commendable.

11. The information contained in claimant's records, however, does not support a reasonable belief that claimant has a developmental disability as defined by the Lanterman Act that would trigger IRC's obligation to provide or procure a further assessment of claimant. Claimant's school records show that claimant suffers from mental health disorders that affect his behavior and academic performance, and these disorders do not qualify claimant for regional center services. Although Dr. Cooper, Dr. Aliotti and Dr. Ferrand diagnosed claimant with Autism Spectrum Disorder, they did so without sufficient testing or other information from which a diagnosis of Autism Spectrum Disorder could be made, and based on information provided exclusively from claimant's father, which appears to be skewed based on other information available regarding claimant's abilities. Ms. Mostadim did provide ADOS testing, however her

report was internally inconsistent with regard to the scores she provided, and she also relied heavily on information from claimant's father. Their opinions are, thus, given less weight.

12. In contrast, Dr. Greenwald has had extensive experience testing for ASD and with mental health disorders. His testimony was credible and consistent with his evaluation of claimant in 2015 concluding that claimant does not suffer from ASD and is not qualified for services from IRC based on an ASD diagnosis. Dr. Greenwald utilized the ADOS-2 test, and reviewed all of the records provided. Dr. Greenwald explained that the information provided by claimant's father regarding claimant's developmental abilities gave scores that were "improbably low" in light of claimant's much higher intellectual abilities, and information provided by claimant's school district regarding his abilities.

13. Claimant's father's testimony was heartfelt, and his frustration palpable. He is clearly motivated by his desire to help his child and to obtain the services he believes are necessary to allow his child to function in the world and obtain long-term employment; he undoubtedly has his child's best interest at heart. However, the preponderance of the evidence did not establish that claimant is eligible to receive services under the Lanterman Act based on a diagnosis of autism spectrum disorder. The weight of the evidence established that claimant does not have a condition that makes him eligible for regional center services.

ORDER

Claimant's appeal from IRC's determination that he is not eligible for regional center services and supports is denied.

DATED: April 17, 2017

DEBRA D. NYE-PERKINS
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within ninety days.