BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: CLAIMANT, vs. EASTERN LOS ANGELESREGIONAL CENTER, Service Agency.	OAH No. 2018080990

DECISION

Ji-Lan Zang, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on October 2, 2018, in Alhambra, California.

Jacob Romero, Fair Hearing Coordinator, represented Service Agency, Eastern Los Angeles Regional Center (Service Agency or ELARC). Claimant's mother represented claimant,[1] who was not present. Pilar St. George, certified court interpreter, provided interpretative service in Spanish.

Oral and documentary evidence was received, and argument was heard. The record was closed and the matter was submitted for decision on October 2, 2018.

ISSUE

Whether claimant is eligible to receive services and supports from Service Agency under the Lanterman Developmental Disabilities Services Act (Lanterman Act).

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[1]Claimant and his mother are identified by titles to protect their privacy.

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EVIDENCE RELIED UPON

Documents: Service Agency's exhibits 1-14; claimant's exhibit A.

Testimony: Claimant's mother.

FACTUAL FINDINGS

PARTIES AND JURISDICTION

1. Claimant is a13-year-old male. Claimant's mother asked Service Agency to determine whether claimant is eligible for regional center services based on a claim of autism.

2. By a Notice of Proposed Action and letter dated July 27, 2018, Service Agency notified claimant that he is not eligible for regional center services. Service Agency's interdisciplinary team had determined that claimant does not meet the eligibility criteria set forth in the Lanterman Act.

3. On August 20, 2018, claimant filed a fair hearing request to appeal Service Agency's determination regarding his eligibility. This hearing ensued.

CLAIMANT'S BACKGROUND

4. Claimant lives at home with his mother and three older siblings. Although claimant's parents are separated, his father visits him on a daily basis.

5. Claimant is currently in seventh grade, and he attends a special education program at his school. He walks on his own and does not have any issues with motor skills. Claimant is able to perform most self-care tasks, including feeding, dressing, and showering on his own. He does simple chores around the home. Claimant is aware of basic safety issues at home, but he has some difficulty crossing the streets on his own because

he is easily distracted. Claimant is able to communicate his needs in complete sentences, and his speech is readily understood by others. He is able to read and write, but he experiences difficulty concentrating on his work and finishing his homework. On a daily basis, claimant throws temper tantrums both at home and in school. For the past two years, claimant has seen a psychiatrist at Star View Community Center for his emotional and behavioral issues.

6. Claimant is in good general health, but he suffered seizures from infancy until April 2016. A neurologist monitors him twice a year for his seizure disorder. Although claimant's last seizure occurred over two years ago, he continues to take anticonvulsant medication.

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7. It is undisputed that claimant does not have cerebral palsy, intellectual disability, or a condition closely related to intellectual disability, or a condition that requires treatment similar to that required for individuals with intellectual disability. Claimant's mother speculated that her son might have epilepsy due to claimant's prior history of seizures. However, she agreed that the issue for this hearing is whether claimant is eligible for regional center services under the category of autism.

PRIOR PSYCHOLOGICAL EVALUATIONS BY SERVICE AGENCY (2007-2016)

The 2007 Psychological Evaluation

8. Claimant participated in Service Agency's Early Start Program[2] and received

[2] "Early Start Program" is a common name for the California Early Intervention Services Act (Gov. Code, § 95000 et seq.). This early intervention program is separate from, and does not have the same requirements as, the Lanterman Act. The eligibility criteria for an infant or toddler to receive early intervention services under the Early Start Program do

early intervention services based on concerns associated with early development delays. On September 12, 2007, upon claimant's termination from the Early Start Program due to his age, Victor C. Sanchez, Ph.D., performed a psychological evaluation at Service Agency's request. At the time of this evaluation, claimant was two years and nine months (33 months) old.

9. During his interaction with claimant, Dr. Sanchez made the following clinical observations:

> [Claimant] established and maintained good levels of contact and quite friendly and cooperative. He seemed interested in the assessment materials and appeared to be giving a good effort. [Claimant] exhibited no over activity, excessive distractibility, or problematic impulsivity. He seemed to enjoy the assessment interactions and appeared to be giving a good effort.
>
> (Ex. 4, p. 3.)

10. A. Dr. Sanchez administered the Leiter-Revised (Leiter-R) test and the Peabody Picture Vocabulary Test to assess claimant's cognitive abilities. Claimant's overall performance on the Leiter-R yielded an Intelligence Quotient (IQ) of 93. On the Peabody Picture Vocabulary Test, claimant's score was 92. Based on these scores, Dr. Sanchez

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not require a developmental disability. To be eligible for the Early Start Program, an infant or toddler must have at least a 33 percent delay in one of the five following areas: cognitive development; physical and motor development, including vision and hearing; communication development; social or emotional development; or adaptive development. Eligibility for Early Start Program services ends at age three. (See Gov. Code, § 95014.)

concluded that claimant's cognitive skills were in the average range.

B. Claimant's adaptive skills were assessed using the Development Profile-II. In the domain of communication, claimant performed at the age equivalent of 24 months. In social skills, claimant performed at the age equivalent of 28 to 30 months. In physical skills, claimant performed at the age equivalent of 34 months. In academic skills, claimant performed at the age equivalent of 28 months. In self-help skills, claimant performed at the age equivalent of 30 to 32 months. According to Dr. Sanchez, these scores indicated that claimant's adaptive skills were in the low average to average range. He noted, however, that claimant's communication skills were an area of particular weakness.

C. Claimant's visual motor integration skills, as measured by the Beery Visual Motor Integration Test (Beery VMI), were age-appropriate and approximated that of an average two-year, nine-month-old child.

D. Dr. Sanchez also administered to claimant the Gilliam Autism Rating Scale, which yielded an autism quotient of 70. Dr. Sanchez did not discuss the significance of this score in his report. However, he did not diagnose claimant with autism. Dr. Sanchez noted that parental reports of behavioral problems "suggest the possible presence of either developing disruptive behavior disorder or parent/child problem associated with inconsistent discipline methods." (Ex. 4, p. 4.)

11. Using the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV),[3] Dr. Sanchez diagnosed claimant with Expressive Language Disorder. He also provisionally diagnosed claimant with parent/child problem, with a note to rule out

[3]The DSM has undergone several revisions. At the time of the claimant's evaluation in 2007, the text version of the DSM-IV, known as DSM-IV-TR, was in use. The DSM-IV-TRdid not change the diagnostic categories under DSM-IV but provided additional, updated information on each diagnosis.

disruptive behavior disorder not otherwise specified.

12. Based on Dr. Sanchez's evaluation, claimant was found to be ineligible for regional center services in 2007.

The 2010 Psychological Evaluation

13. In 2010, claimant's therapist referred him to Service Agency for another evaluation. On October 13, 2010, Bernard F. Natelson, Psy.D., performed a psychological evaluation of claimant, who was five years and 10 months old at the time.

14. Dr. Natelson indicated that claimant presented himself in an agreeable manner and appeared motivated to do his best on the tests that were administered to him. At times, claimant's speech would break down into gibberish, but most of his speech was sufficiently clear to be understood. Notably, claimant's behavior changed radically when his parents were brought into the testing room for a clinical interview. Claimant became extremely aggressive, took objects that did not belong to him, and frequently swore. While claimant's mother was being interviewed, his father was not able to control claimant's behavior.

15. A. In standardized tests, Dr. Natelson assessed claimant's cognitive abilities with the Wechsler Intelligence Scale for Children-Fourth Edition (WISC-IV). This test measures a child's full scale IQ and various other types of cognitive ability. On the WISC-IV, claimant earned a full scale IQ of 91, classifying his overall intellectual ability in the average range. In particular, claimant's verbal comprehension index[4] of 81 placed him in the below average range of verbal intellectual ability in comparison to same-age peers. Dr. Natelson noted that claimant showed personal weakness on this subtest. However, on all other

[4] The verbal comprehension index measures reasoning, comprehension, and conceptualization, with items that ask the child to define words, describe similarities between concepts, and answer common sense questions.

subtests of the WISC-IV, claimant's scores were within the average range.

B. On the Bender Gestalt Visual Motor Test-II, claimant obtained a score of 125, which placed him in the average range for children of his age. On the Copy part of the task, he performed in the high average range for children his age with a score in the 95th percentile. On the Recall part of the task, claimant earned a standard score of 102 placing him in the average category for children his age with a score in the 55th percentile. On the Motor Supplemental Test and the Perception Supplemental Test, claimant made no errors, which indicated that he performed at his expected age level on these two supplemental tests. Given this data, Dr. Natelson concluded that claimant did not suffer any impairment in either the visual or the motor areas of the brain.

C. Claimant's academic skills were assessed using the Wide Range Achievement Test (WRAT-4). Claimant received a score of 109 on word reading, 111 on spelling, and 112 on math computation. All these scores indicated that claimant was functioning at the appropriate grade level for his age.

D. Dr. Natelson did not administer any test to assess claimant for the presence of autism.

16. Dr. Natelson diagnosed claimant with Oppositional Defiant Disorder based on "his disrespect for his parents and recurrent fighting with his siblings." (Ex. 5, p. 8.) Dr. Natelson also provided a diagnosis of Pervasive Developmental Disorder Not Otherwise Specified due to claimant's "odd use of language" and difficulty in constructive play with other children, according to his parents." (*Id.*)

17. Given Dr. Natelson's diagnoses, claimant was found to be ineligible for regional center services in 2010.

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The 2011 Psychological Evaluation

18. In 2011, claimant's neurologist referred him to Service Agency for an

evaluation based on suspicions of autism. On January 11, 2013, Pean Lai, Ph.D., performed a psychological evaluation of claimant, who was six years and one month old at the time.

19. Dr. Lai observed that claimant displayed a great level of cooperation and attention. He appeared to have a good sense of humor and laughed when something struck him as funny. When asked to complete the items as quickly as possible, claimant did so with diligence. During play time, claimant was engaging and played in an imaginative manner.

20. A. Dr. Lai administered the Wechsler Preschool Primary Scale of Intelligence-Third Edition (WPPSI-III) to assess claimant's cognitive abilities. Dr. Lai's formal results from the WPPSI-III revealed low average to average cognitive functioning with a verbal IQ of 86, Performance IQ of 105, Processing Speed Index Score of 102, General Language Score of 86 and Full Scale IQ of 95. However, Dr. Lai cautioned that claimant's Full Scale IQ was not reflective of claimant's full abilities because of the significant difference between his verbal and nonverbal functioning.

B. Dr. Lai measured claimant's adaptive functioning by using the Vineland Adaptive Behavior Scales, Second Edition (Vineland II). Claimant's overall adaptive functioning was within the low average range with a composite score of 88. Specifically, claimant obtained scores of 95 in the Communication Domain, 89 in the Daily Living Skills Domain, 88 in the Socialization Domain, and 91 in the Motor Skills Domain.

C. Dr. Lai noted that there were no characteristics, deficits, or behaviors observed or reported in claimant that were consistent with autism. Her clinical observations were confirmed by a screening measure, the Childhood Autism Rating Scale (CARS), on which claimant obtained a score of 15 out of 60. Dr. Lai wrote:

> Overall, [claimant's] total score of 15 on the CARS fell in the Non-Autistic rating, thus, it is inconsistent with the diagnosis of autistic disorder. [Claimant] relates well with others, often

seeking for the company of others. He displays no delays in emotional response or imitation skills. Although his verbal abilities are somewhat delayed, they are often compensated by nonverbal means. He has no reported sensory issues, such as unusual response to taste, smell and touch. Claimant has no history of stereotypical behavior. His current presentation and history prior to the age of three are contrary [to] the diagnosis of Autistic Disorder.

(Ex. 6, p. 3.)

21. Dr. Lai did not diagnose claimant with any specific condition. Based on this evaluation, claimant was again determined to be ineligible for regional center services in 2011.

The 2016 Psychological Evaluation

22. In 2016, claimant was referred to Service Agency for a fourth evaluation to determine his current levels of cognitive and adaptive functioning. On September 1, 2016, Larry E. Gaines, Ph.D., performed a psychological evaluation of claimant, who was eleven years and nine months old at the time.

23. Dr. Gaines observed that claimant was able to make eye contact and said a greeting. During the testing session, claimant answered questions appropriately, but he did not sustain a conversation. Claimant at times had difficulties finding a word that he wanted to say, which Dr. Gaines believed might reflect a language processing problem. Claimant also did not show much emotion and had a flat affect.

24. A. Claimant was administered the Wechsler Intelligence Scale for Children-Fifth Edition (WISC-V) to assess his cognitive ability. Claimant obtained a full scale IQ of 92, with scores of 95 on the verbal comprehension subtest and 91 on the fluid

fluid reasoning subtest. Dr. Gaines found that claimant was functioning within the average range of intellectual ability, with no discrepancy between verbal and non-verbal problem solving skills.

B. Claimant's visual and perceptual skills, as measured by the Beery VMI, tested at a seven-year, six-month level of development, which indicated that his performance was in the low average range.

C. On the Vineland II, claimant earned a score of 70 in language skills, which fell in the borderline range of performance. He earned a score of 68 in adaptive behavior skills, which were within the mild range of deficiency. In social skills, claimant earned a score of 69, which fell within the mild range of deficiency.

D. Dr. Gaines administered the Autism Diagnostic Observation Scale, Second Edition (ADOS-II), to address concerns regarding the presence of autism spectrum disorder (ASD).[5] On the ADOS-II, claimant had a score of 5 in social affect, but a score of 0 in restricted and repetitive behavior. Claimant's total score of 5 classified him in the Non-Autistic range. Dr. Gaines noted that claimant was able to "perfectly mimic emotion and gesture," although he had difficulties describing his emotional experiences. (Ex. 8, p. 4.) Claimant also did not show restricted or repetitive behavior. According to Dr. Gaines, some of claimant's behavior, such as running around in circles, being bothered by loud sounds, hitting himself, and smelling his food before eating it, are also problems experienced by individuals with attention deficit disorder.

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25. Dr. Gaines diagnosed claimant with Social Communication Disorder due to claimant's problems with social and emotional functioning. Based on this fourth evaluation,

[5] In 2013 a change was made in the psychiatric community from referring to a diagnosis of autism or autistic disorder, to a diagnosis of ASD.

claimant was determined to be ineligible for regional center services in 2016.

CLAIMANT'S SCHOOL RECORDS

Claimant's Special Education History

26. Claimant initially qualified for special education services at his school district under the criteria *for* Developmental Delay on November 15, 2007, when he was three years old. On June 3, 2010, at the age of five, claimant became ineligible for special education services. The 2010 re-evaluation Individualized Education Program (IEP) noted that he did not meet the eligibility criteria for Specific Learning Disability or Autism. When claimant was seven years old, a re-evaluation on February 28, 2012, found him eligible for special education services under Other Health Impairment (OHI) due to the diagnosis of Attention Deficit and Hyperactivity Disorder (ADHD). A three-year re-evaluation held on February 6, 2015, when claimant was 10 years old, continued to find him eligible for special education services under OHI because his diagnosis of ADHD remained unchanged.

The 2018 Psycho-Educational Assessment

27. On March 18, 2018, claimant's school district conducted a triennial evaluation of claimant's eligibility for special education services. At the time, claimant was 13 years old and attended seventh grade.

28. During the administration of standardized tests, the school psychologist observed that claimant was quiet yet compliant and shared his thoughts and feelings when prompted. In the classroom setting, the school psychologist noted that claimant was often distracted and fidgeted with markers. She described claimant as having trouble "regulating himself to get on task." (Ex. 10, p.4.) During unstructured time, claimant observed his peers but did not initiate interactions.

29. Based on teacher interviews, claimant was described as kind and funny. His teachers indicated that claimant used his time wisely and was independent and

cooperative. However, claimant struggled to make friends, and he was described as appearing lonely at times and exhibiting low energy as well as a preference to keep to himself.

30. Based on the parent interview, claimant was described as creative, caring, and kind to family members. However, he reportedly struggles with making friends. Claimant's mother also reported a drop in grades and indicated that he lacked patience and would not follow rules. According to claimant's mother, her son also "excessively repeats things when he is anxious." (Ex. 10, p. 19.)

31. Claimant's school counselor revealed that claimant consistently and actively participated during sessions. However, he continued to struggle with appropriate decision making skills as he often does not consider consequences of his actions. He was also described as occasionally struggling with impulsivity, exhibited difficulties sustaining his attention, and refused to participate in non-preferred activities in the class.

32. In standardized testing, claimant performed in the average range on tests of cognitive abilities; low average range in test of auditory processing skills; average range in visual perceptual skills; low average range in visual-motor skills; low average range in oral language skills; and average range in overall academic achievement.

33. The school psychologist also administered the Autism Spectrum Rating Scales (ASRS) to assess for the presence of autism. ASRS uses parent and teacher reports to quantify the observations of a child that is associated with autism. Based on claimant's mother's report, very elevated scores, indicating that claimant had many behavioral characteristics similar to those with autism, were obtained. However, notably, claimant's mother reported low scores (indicating no problem) in Stereotypy. Based on claimant's history teacher's report, very elevated scores were obtained. Based on claimant's inclusion teacher, elevated scores were obtained. However, claimant's history teacher reported average scores (indicting no problem) in Unusual Behavior, Stereotypy, Behavioral Rigidity,

and Sensory Sensitivity. Claimant's inclusion teacher reported slightly elevated scores in Unusual Behavior and Behavioral Rigidity, but average scores (indicating no problem) in Stereotypy and Atypical Language.

34. The school psychologist concluded that claimant qualified for special education services based on the category of autism.[6] Following the school psychologist's evaluation, claimant's school district developed an IEP, dated March 12, 2018. The IEP identified "autism" as claimant's disability. (Ex. 11, p. 12.)

THE 2018 PSYCHOLOGICAL EVALUATION BY SERVICE AGENCY

35. On February 2, 2018, claimant's psychiatrist, Gia Crecelius, M.D., referred claimant to Service Agency for a fifth evaluation. Dr. Crecelius's referral letter to Service Agency suggested that claimant was exhibiting symptoms of ASD.

36. On April 26 and May 3, 2018, Roberto De Candia, Ph.D., conducted a psychological evaluation of claimant to determine his eligibility for regional center services. Dr. De Candia reviewed claimant's prior evaluations, interviewed claimant's parents, and administered standardized tests to complete his evaluation. He set forth his findings in a psychological evaluation report.

37. In his record review, Dr. De Candia reviewed the four prior psychological evaluations conducted by Service Agency and claimant's school records, including the

[6] Pursuant to California Code of Regulations, title 5, section 3030, subdivision (b)(1), autism is defined as "a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident at age three, and adversely affecting a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences."

2018 Psycho-Educational Assessment.

38. During his interaction with claimant, Dr. De Candia made the following clinical observations:

> As we met his demeanor was serious, but he did make eye contact with me and he did enter the room without complaining. He answered questions during the session but did not engage in any social chitchat. He was cooperative and participated well but his affect seemed rather flat during and throughout the session. It was apparent he did not wish to be here during the session, but he complied with all my requests and during the testing he appeared to work to the best of his abilities. Mother opined I was able to seem [sic] as he typically behaves.
>
> (Ex. 10, p. 4.)

A. In standardized tests, Dr. De Candia administered the WISC-V to assess claimant's cognitive abilities. On this test, claimant achieved a Verbal Comprehension IQ score of 92, a Fluid Reasoning IQ score of 94, and a General Ability IQ of 94. These results suggested he is currently functioning intellectually within the average range of intelligence.

B. With claimant's mother serving as the informant, Dr. De Candia administered the Vineland Adaptive Behavior Scales-Third Edition (Vineland III) to evaluate claimant's adaptive functioning. In the domain of communication, claimant's score of 69 fell within the two percentile range as compared to his peers. In daily living skills, claimant's score of 59 fell within the less than one percentile range as compared to his peers. In socialization, claimant's score of 64fell within the one percentile range as compared to his peers. Claimant's overall adaptive behavior composite of 64 corresponded to the one percentile

and fell within the low range of ability as compared to his peers. Thus, the results of the Vineland III indicated that claimant suffers significant deficits in the domains of communication, daily living skills, and socialization.

C. Due to continuing concerns regarding the presence of ASD, Dr. De Candia also administered the ADOS-II. On the ADOS-II, claimant received a score of 12 in social affect and 0 in Restricted/Repetitive Behavior. Although the ASD cutoff score on the ADOS-II is 7, and claimant's total score of 12 exceeded the cutoff, Dr. De Candia did not believe that a diagnosis of ASD was warranted. He wrote:

> Results from this administration of the ADOS2 do show elevated scores in social affect, but I did not interpret the results as indicative of autism. Extensive interview with the mother and review of all the previous evaluations did not identify the presence of repetitive behaviors. [Claimant] was not observed to exhibit any restricted or repetitive behaviors during our sessions, nor did he describe the presence of any circumscribed interests or unusual preoccupations. He does not show any history of sensory interests, other than being sensitive to loud noises when he was younger. He does have a well-established history of disruptive behaviors when he was younger, a history of seizure disorder from the age of 2 weeks until 11 years of age, and a long history of witnessing domestic family conflicts. There is history of attention deficit hyperactivity disorder in his siblings and mother reports there may be a possible presence of bipolar disorder in the family as well. I interpret the elevated scores he presents in

social affect to be associated with a possible presence of an affective disorder.

(Ex. 10, p. 6.)

39. Using the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), Dr. De Candia diagnosed claimant with Attention Deficit Hyperactivity Disorder, by history. He also suspected that claimant may suffer from Disruptive Mood Dysregulation Disorder, but claimant needed to be evaluated by a mental health professional in order to rule out this diagnosis.

REVIEW OF RECORDS BY RANDI ELISA BIENSTOCK

40. On July 7, 2018, Randi Elisa Bienstock, Psy. D. Service Agency's contracting psychologist performed a record review to determine claimant's eligibility for regional center services. Dr. Bienstock received her master's degree in psychology from the California School of Professional Psychology in 1994 and her doctor of psychology degree from the same school in 1996. She has been a licensed psychologist for the past 19 years.

41. For her record review, Dr. Bienstock reviewed the four prior psychological evaluations conducted by Service Agency, claimant's school records (including the 2018 Psycho-educational Assessment), and Dr. De Candia's most recent psychological evaluation performed in April 2018. After the review, Dr. Bienstock concluded:

> [Claimant is] not eligible based on review of all information including prior and current educational and mental health records as well as prior and current psychological evaluations. The most recent ELARC Psychological evaluation was conducted by Dr. De Candia[,] and findings were not

consistent with DSM-5 diagnoses of Intellectual Disability or Autism Spectrum Disorder.

(Ex. 12, p. 1.)

CLAIMANT'S EVIDENCE

Letter from Dr. Crecelius

42. In a letter dated September 28, 2018, Dr. Crecelius, claimant's psychiatrist since 2016, set forth in greater detail the symptoms of ASD that she has observed in claimant. Dr. Crecelius wrote that claimant has a very difficult time engaging in back and forth conversation, and he very rarely initiates conversations with his peers or with adults. Dr. Crecelius observed that claimant did not maintain eye contact, displayed a flattened affect, and exhibited a very restricted range of expressions during his appointments. Reporting from claimant's mother also indicated that claimant does not feel comfortable with certain clothing materials and that he repeats certain phrases.

43. Regarding other repetitive or stereotyped behaviors, Dr. Crecelius wrote, "I have seen some repetitive behaviors although they are not prominent. He has exhibited pulling a zipper methodically during one appointment, he does engage in pulling his hair on head or stroking it, I have seen him flap his hands once or twice." (Ex. A.)

44. However, Dr. Crecelius did not diagnose claimant with ASD in her letter.

Claimant's Mother's Testimony

45. Claimant's mother testified at the hearing regarding her observations and concerns of claimant's behavior. She noted that at home, claimant engages in self-injurious behavior and hits himself. He is sensitive to certain types of stimuli, including some clothing material and loud noises. When claimant is upset, he tends to repeat the same words over and over again. Claimant also has a habit of grabbing an object with one hand

and tossing it into the other hand continuously. At school, he holds the computer tablet with both hands and waves it around. Claimant's mother expressed concerns about her son's performance at school because his grades are low. Claimant's mother requested help to address her son's behavioral issues.

LEGAL CONCLUSIONS

BURDEN AND STANDARD OF PROOF

1. Because claimant is the party asserting a claim, he bears the burden of proving, by a preponderance of the evidence, that he is eligible for government benefits or services.(See Evid. Code, §§ 115 and 500.) He has not met this burden.

2. Claimant did not establish that he suffers from autism entitling him to receive regional center services, as set forth in Factual Findings 1 through 45, and Legal Conclusions 1 through 10.

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APPLICABLE LAW

3. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 et seq.) Eligibility for regional center services is limited to those persons meeting the criteria for one of the five categories of developmental disabilities set forth in Welfare and Institutions Code section 4512, subdivision (a), as follows:

> "Developmental disability" means a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual.... [T]his term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions

found to be closely related to intellectual disability or to require treatment similar to that required for individuals with intellectual disability ["Fifth Category"], but shall not include other handicapping conditions that are solely physical in nature.

4. The qualifying conditions must also cause a substantial disability. (Welf. & Inst. Code, § 4512, subd. (a); Cal. Code Regs., tit. 17, § 54000, subd. (b)(3).) A "substantial disability" is defined by California Code of Regulations, title 17, section 54001, subdivision (a), as:

(1) A condition which results in major impairment of cognitive and/or social functioning, representing sufficient impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential; and

(2) The existence of significant functional limitations, as determined by the regional center, in three or more of the following areas of major life activity, as appropriate to the person's age:

(A) Receptive and expressive language;

(B) Learning;

(C) Self-care;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living;

(G) Economic self-sufficiency.[7]

[7]Welfare and Institutions Code section 4512, subdivision (l), defines "substantial disability" similar to that of California Code of Regulations, title 17, section 54001,

CLAIMANT IS NOT ELIGIBLE UNDER THE CATEGORY OF AUTISM

5. In this case, the parties do not dispute that claimant does not suffer from intellectual disability, cerebral palsy, a condition closely related to intellectual disability, or a condition that requires treatment similar to that required for individuals with intellectual disability. Although claimant's mother speculated that her son may suffer from epilepsy, she agreed to defer this issue until a later date. Thus, the sole question at hand is whether claimant qualifies for regional center services based on autism.

6. According to the DSM-5, a diagnosis of autism is made "only when the characteristic deficits of social communication are accompanied by excessively repetitive behaviors, restricted interests, and insistence on sameness." (DSM-5, § 299.00, pp. 31-32.)[8] The DSM-5, section 299.00, identifies the diagnostic criteria which must be met to provide a specific autism diagnosis, as follows:

A. Persistent deficits in social communication and social interaction across multiple contexts, as manifested by the following, currently or by history (examples are illustrative, not exhaustive; see text):

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

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subdivision (a)(2).

[8] Neither the Lanterman Act nor any of the Act's implementing regulations define autism. However, the established authority for this purpose is the DSM-5, "a standard reference work containing a comprehensive classification and terminology of mental disorders." (Money v. Krall (1982) 128 Cal.App.3d 378, 384, fn. 2.)

2. Deficits in nonverbal communicative behaviors used for social interaction, ranging, for example, from poorly integrated verbal and nonverbal communication; to abnormalities in eye contact and body language or deficits in understanding and use of gestures; to a total lack of facial expressions and nonverbal communication.
3. Deficits in developing, maintaining, and understanding relationships, ranging, for example from difficulties adjusting behavior to suit various social contexts; to difficulties in sharing imaginative play or in making friends; to absence of interest in peers. [¶] . . . [¶]

B. Restricted, repetitive patterns of behavior, interests, or activities, as manifested by at least two of the following, currently or by history (examples are illustrative, not exhaustive; see text):

1. Stereotyped or repetitive motor movements, use of objects, or speech (e.g., simple motor stereotypies, lining up toys or flipping objects, echolalia, idiosyncratic phrases).
2. Insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior (e.g., extreme distress at small changes, difficulties with transitions, rigid thinking patterns, greeting rituals, need to take same route or eat same food every day).
3. Highly restricted, fixated interests that are abnormal in intensity or focus (e.g., strong attachment to or preoccupation with unusual objects, excessively circumscribed or perseverative interests).
4. Hyper- or hypo-reactivity to sensory input or unusual interests in sensory aspects of the environment (e.g., apparent indifference to pain/temperature, adverse response to specific sounds or textures, excessive smelling or touching objects, visual fascination with lights or movement). [¶] . . . [¶]

C. Symptoms must be present in the early developmental period (but may not become fully manifest until social demands exceed limited capacities, or may be masked by learned strategies in later life).

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

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

(DSM-5, pp. 50-51.)

7. A. Since 2007, claimant has undergone five separate psychological evaluations conducted by the Service Agency. All five psychologists who evaluated claimant concluded that he did not suffer from autism. Notably, four of the psychological evaluations, conducted in 2007, 2011, 2016, and 2018, included standardized testing specifically aimed at assessing for autism.

B. In 2007, Dr. Sanchez administered to claimant the Gilliam Autism Rating Scale, yielding an autism quotient of 70. Although he did not discuss the significance of this score in his report, Dr. Sanchez did not diagnose claimant with autism.

C. In 2011, when Dr. Lai administered CARS to claimant, claimant's total score of 15 fell in the Non-Autistic rating. Additionally Dr. Lai noted that claimant did not display any delays in emotional response or imitation skills, did not experience any reported sensory issues, and did not have any history of stereotypical behavior.

D. In 2016, Dr. Gaines found that on the ADOS-II, claimant had a score of 5 in social

affect, but a score of 0 in restricted and repetitive behavior. Claimant's total score of 5 classified him in the Non-Autistic range. Dr. Gaines indicated that claimant also was not observed to show restricted or repetitive behavior. Dr. Gaines opined that some of claimant's behavior, such as running around in circles, being bothered by loud sounds, hitting himself, and smelling his food before eating it, are also problems experienced by individuals with attention deficit disorder.

E. In 2018, Dr. De Candia again administered the ADOS-II. Claimant received a score of 12 in social affect and 0 in Restricted/Repetitive Behavior. Although the results from this administration of the ADOS-II did show elevated scores in social affect, Dr. De Candia did not interpret the results as indicative of autism. He noted that extensive interview with claimant's mother and review of all the previous evaluations did not identify the presence of repetitive behaviors. Claimant was not observed to exhibit any restricted or repetitive behaviors during test sessions with Dr. De Candia, and claimant did not describe the presence of any circumscribed interests or unusual preoccupations. Claimant also did not show any history of sensory interests, other than being sensitive to loud noises when he was younger.

F. Thus, although claimant was found to suffer from deficits in social communication, none of the psychologists found that these deficits are accompanied by excessively repetitive behaviors, restricted interests, and insistence on sameness, as required by the DSM-5 for a diagnosis of autism.

8. In 2018, the school psychologist found claimant to be eligible for special education services based on a diagnosis of "autism." Nevertheless, the fact that claimant qualified for special education at school does not establish that he has a developmental disability within the meaning of the Lanterman Act. The school psychologist's diagnosis of "autism" was not based on the DSM-5 criteria. Moreover, eligibility for special education is more inclusive than eligibility for regional center services.

9. Claimant also presented the September 28, 2018 letter from Dr. Crecelius as evidence in favor of his eligibility for regional center services. However, Dr. Crecelius only provided her observations of claimant during her sessions. She did not conduct any formal evaluations; she did not administer any standardized testing; and she did not provide any diagnosis regarding the presence of autism. Therefore, Dr. Crecelius's letter was given little weight.

10. Under these circumstances, while claimant clearly faces challenges and needs the additional support that he is receiving at school, he is not eligible for regional center services under the category of autism at this time.

ORDER

Claimant's appeal from the Eastern Los Angeles Regional Center's denial of eligibility for services is DENIED. Claimant is not eligible to receive regional center services under the Lanterman Act at this time.

DATE:

JI-LAN ZANG
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 90 days.