

**BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA**

**In the Matter of:**

**CLAIMANT,**

**vs.**

**SAN GABRIEL/POMONA REGIONAL CENTER,**

**Service Agency.**

**OAH No. 2019051327**

**DECISION**

Carmen D. Snuggs, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on March 19, 2021.

Daniel Ibarra, Fair Hearings Specialist, represented the San Gabriel/Pomona Regional Center (SGPRC or Regional Center). Claimant was represented by his mother (Mother),<sup>1</sup> who is also his authorized representative. Zara K. Akopyan provided Russian

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<sup>1</sup> To protect their privacy, Claimant and Claimant's family members are not identified by name.

to English and English to Russian interpretation services during the hearing pursuant to Mother's request.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision at the conclusion of the hearing day.

## **ISSUE**

Is Claimant eligible for services pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act)?

## **EVIDENCE RELIED ON**

Documentary: Service Agency's exhibits 1-27; claimant's exhibits A-E.

Testimonial: Service Agency: Debra Langenbacher, Ph.D.; Claimant: Diana Chavez Ketterman, Ph.D. and Mother.

## **Background**

1. Claimant is 20 years old and lives with his Mother.

On May 29, 2003, when Claimant was 27 months old, Mother sought services for Claimant from the Regional Center of Orange County. She suspected that Claimant suffered from a developmental delay because of his lack of expressive speech and difficulty expressing his needs.

2. A. Claimant was referred for an Initial Multidisciplinary Team Developmental Evaluation on June 3, 2003. The following tests were administered

during the evaluation: (a) portions of the Hawaii Early Learning Profile, which assesses informal cognitive, fine motor, self-help and gross motor skills; (b) the Rossetti Infant-Toddler scale, to assess language skills; and (c) the Peabody Developmental Motor Scales (PDMS), to assess gross and fine motor skills. In addition, Claimant's father (Father) was interviewed, and both informal and formal observations were conducted. Claimant was found to perform at the nine to 12-month age level in language expression, the 18 to 21-month age level in language comprehension, the 13 month age level in grasping, the 10 month age level in visual-motor integration, the 15 month age level in social emotional, and the 12 month age level in the area of self-regulation. The evaluator noted that Claimant displayed poor eye contact, was in constant motion, climbed on and off furniture, ran around the room constantly, and had trouble attending to tasks.

B. Based upon Claimant's test results, Father's interview and clinical observation, it was recommended that Claimant undergo formal hearing and visual evaluations to determine his hearing and visual acuity and receive speech therapy one hour per week to address language delays.

3. A. The Orange County Unified School District assessed Claimant on February 3, 2004, when Claimant was two years and 11 months old, to determine if he was eligible for Special Education services. During the assessment, Claimant's parents (Parents) reported concerns about Claimant's speech and language skills, understanding of language, and maladaptive behavior of hitting other children, including his younger sister.

B. An informal assessment was performed to determine Claimant's cognitive ability using observation, play skills, and the Developmental Profile-II IQ equivalence. Father provided all information for the tests administered. Claimant's IQ

was found to be 69, which is in the delayed range. Claimant tested at the 17 to 19-month age level on the Westby Symbolic Play Scale, which evaluates the development of play skills. Claimant's scores on the Self-Help and Social Age Scales were characteristic of children 24-months of age, the borderline range, while he scored in the delayed range on the Academic and Communication Age Scales. The results of the Pervasive Developmental Disorder Screening Test-II indicated a "significant number of autistic behaviors." (Ex. 5, p. 39.) The Gilliam Autism Rating Scale (GARS) indicated an average probability of autism. Claimant scored within the significantly reduced range in the areas of fine motor and pre-academic skills, and in the below average range in gross motor skills.

C. Claimant was deemed qualified for Special Education services based upon the existence of autistic-like characteristics.

4. On July 21, 2005, Claimant sought services from SGPRC. Deborah Langenbacher, Ph.D., an SGPRC staff psychologist, determined that a re-evaluation was needed to confirm Claimant's autism diagnosis and ascertain his developmental level and service needs.

5. On September 9, 2005, Dana Ramos, SGPRC Intake Service Coordinator, conducted a social re-assessment of Claimant with Father present. Father reported that Claimant participated in a special day class pre-school program for children with autistic-like behaviors. He also received language and speech services and occupational therapy. Claimant needed assistance getting dressed, had bladder accidents every night, preferred to play with older children, did not know how to share, and frequently displayed aggressive behavior, including striking children and adults. Claimant had a short attention span, lacked safety awareness and spoke in single

words only. Moreover, Claimant's speech was difficult to understand, but he was able to follow simple commands.

6. A. On October 7, 2005, Frank J. Trankina, Ph.D., FICPP, DABFE, DABFM, FSMI, a clinical psychologist, conducted a psychological evaluation of Claimant. Claimant was four years and seven months old at that time. Claimant's parents were concerned about Claimant's language delays, which they described as "significant," and his maladaptive behavior at school.

B. Dr. Trankina was unable to fully administer the Wechsler Preschool and Primary Scale of Intelligence, which helps measure overall cognitive ability for children ages two to six, because Claimant was unable to respond. Claimant tested at the three-year-old level on the Peabody Picture Vocabulary Tests, however, the results were considered invalid because Claimant was unable to maintain attention during the administration of the test. The Mecham Verbal Language Development Scale tests a child's express language skills and is based upon observation and family reports. Claimant tested at the two year and two month age level because although he had the ability to comprehend, and at times, follow simple instructions, both his verbal and vocabulary expression were limited, he did not use personal pronouns correctly, and at times he was only able to combine a few words. The Beery Developmental Test of Visual Integration revealed that Claimant did not have any limitations with gross motor functioning, and he placed at the three-years and six months age-level. On the Stanford-Binet Intelligence Scale, Claimant's nonverbal IQ was 66, his verbal IQ was 61, and his full-scale IQ was 52. However, the results were considered invalid because Claimant did not respond consistently and his "ability to respond trailed off toward the end." (Ex. 7, p. 46.)

C. Dr. Trankina determined that Claimant could work for long periods of time with appropriate support and reinforcement, and he had some ability to respond socially, but not at his age level. Claimant's adaptive skills, the ability to perform activities of daily living for personal and social sufficiency, were significantly delayed per the results of the Vineland Adaptive Behavior Scales-II (VABS-II), for which Father provided information. Claimant used his hands to eat and was not aware of the danger of hot items or danger generally. Claimant displayed significant delays in daily living skills as he was unable to dress or bathe himself and needed assistance brushing his teeth and completing hygiene activities. In addition, Claimant displayed significant delays in communication and socialization based upon his minimal ability to participate in activities with others in a meaningful manner and seemed to be in his "own world." (Ex. 7, p. 47.)

D. Dr. Trankina made a detailed inquiry regarding autistic behavior and formed the impression that Claimant had autistic disorder. His conclusion was based upon Claimant's difficulty understanding social situations, history of eloping and significant maladaptive behavior at school, failure to appreciate or understand danger, and delays in speech and language. In addition, Claimant spent significant blocks of time "in concentrated leggo activity," he lined up his toy cars, and was preoccupied with water. (Ex. 7, p. 48.)

E. Dr. Trankina's complete diagnostic impression was that Claimant's intellectual functioning could not be definitively determined, but test results showed Claimant functioned in the "mild range." (Ex. 7, p. 48.) In addition, Claimant suffered from significant adaptive functioning delays and autistic disorder. Dr. Trankina recommended special education program services, speech, language and communication intervention, family supportive services, and behavior assistance.

7. On October 28, 2005, SGPRC's interdisciplinary team held an eligibility team conference and determined that Claimant was eligible for regional center services based upon diagnoses of mild intellectual disability and autism, and that Claimant suffered substantially disabling deficits in the areas of communication skills, learning and self-care.

8. A. On January 30, 2007, Rowland Unified School District performed a three-year, special education evaluation psychological reassessment of Claimant for purposes of determining his level of functioning, eligibility, placement and services. With respect to Academic Achievement, Claimant was unable to read words or blend sounds, he needed one-on-one support to complete written math work because he could not transfer his knowledge to worksheets on his own and while he could give an oral report, he could not do the same in writing.

B. Claimant's Beery VMI scores for visual perception and fine and gross-motor skills were age appropriate. He behaved and worked appropriately during the classroom observation and played with two other children at recess during the playground observation.

C. In the area of social adjustment and peer relationships, the evaluator noted that a Behavior Emergency Report was filed earlier in the school year as a result of Claimant's aggressive behavior, and as a result, a Behavior Support Plan was developed. Claimant's teacher completed a chart reflecting Claimant's behavior throughout the day as a reinforcement and reminder to Claimant to engage in appropriate behavior. Claimant's behavior significantly improved such that his behavior was described as respectful and cooperative and positive interactions with classmates and adults were noted.

D. On January 29, 2007, Mother provided information for the Adaptive Behavior Assessment System (ABAS), which revealed that all of Claimant's adaptive skills in the area of communication, community use, functional academics, home living, health and safety, leisure, self-care, self-direction and social, were significantly low for his age. Claimant was unable to make a purchase or find a public restroom on his own, name the days of the week or follow his class schedule, make his bed or set the table. However, he was able to use the restroom on his own, use a fork, wash his hands and brush his teeth.

E. Claimant was again found eligible for special education services under an autism diagnosis.

9. A. Claimant's Puente Hills Special Education Local Plan Area (SELPA) Individual Educational Program (IEP) dated January 29, 2008, indicates in the area of "Communication Development," that Claimant expressed his needs in complete sentences and he was able to interact socially with his peers in a way that they could understand. In the area of "Social/Emotional Behavior," Claimant's IEP indicates that he was sociable, very friendly with his peers, playful during recess and could easily make friends. However, there were instances where Claimant became aggressive when playing with his peers. Claimant was unable to dress and undress himself and independently use the restroom. Claimant required visual aids and the use of a picture exchange communication system.

B. Claimant participated in general education classroom and non-academic activities 30 percent of the school day. Claimant's parents requested that Claimant's mainstreaming activities be increased and that he be enrolled in a general education program because his sibling attend the school and they wanted Claimant to attend school with his neighborhood peers. It was agreed that Claimant's



mainstreaming activities would be increased and a case review IEP meeting would be conducted at the end of the school year to assess his mainstreaming experiences, social functioning and Claimant's parent's request that Claimant be placed in a general education class the following school year.

10. A. On May 30, 2008, Michelle R. Saldivar, M.A., an Inclusion Specialist with the Rowland Unified School District, conducted a Curriculum Based Assessment to determine whether Claimant could be placed in a general education classroom at his home school. Claimant was frequently off-task and needed to be redirected and he was "'squirmy' in his chair." (Ex. 12, p. 85). Claimant lacked focus and displayed autistic behavior, went off on tangents in an area that he was interested in and was distracted by noises and other external stimuli. Ms. Saldivar administered the KTEA II and the Kindergarten Check List. The tests revealed that:

[Claimant] is a first grader with many of the concrete skills that are developed in kindergarten. His problem solving and high-level thinking skills are just developing. [Claimant] is not able to use sounds to make words and does not yet see that the two are connected. He is strong in math calculations and able to follow a simple pattern. While he uses language well in answering questions and ask them, he ends to answer to teacher questions with off topic remarks.

(Ex. 12, p. 87-88.)

B. Ms. Saldivar recommended that the IEP team determine the appropriate placement and program for Claimant.

11. A. On June 18, 2009, Dr. Langenbacher conducted a psychological evaluation of Claimant to clarify his diagnosis and determine eligibility for regional center services. Claimant's parents were concerned about his speech delays. Dr. Lagenbacher interviewed Father, observed Claimant while he was at play, reviewed Claimant's records, and administered the Wechsler Intelligence Scale for Children-IV (WISC-IV), VABS-II, Autism Diagnostic Observation Schedule, Module 3 (ADOS), and the Childhood Autism Rating Scale (CARS).

B. Dr. Langenbacher noted that Claimant received behavior services through SGPRC in 2006, and that his behavior concerns at that time included tantrums and aggression. However, Claimant did not display maladaptive behavior at the time of Dr. Langenbacher's evaluation. Dr. Langenbacher observed that Claimant's articulation was poor, he fidgeted and had to be reminded to pay attention during testing. In addition, Claimant easily initiated conversation with her and spoke about his emotions, but had difficulty answering questions about friendship.

C. On the WISC-IV, which tests cognition, Claimant scored in the average range in the areas of perceptual reasoning, and in the low average to borderline range in verbal reasoning, processing speed, and working memory. Accordingly, Claimant tested in the low average range.

D. On the VABS-II, Claimant's tests results were in the average range in all areas except for social skills, which were lower. He was able to follow three-part instructions, provide simple instructions to others, and write notes of three sentences or more. Claimant could dress himself, attend to all areas of personal hygiene, and complete chores such as loading the dishwasher. He could also cross the street safely. Claimant's interpersonal skills were in the six years and six-month age-level. He got along well with other children and initiated conversations and offered compliments to

others. On the other hand, he had difficulty accepting suggestions and controlling his anger and disappointment when things did not go his way.

E. Dr. Lagenbacher ruled out a diagnosis of autism using the ADOS, CARS, observation and information received from Father. Claimant was engaged with Dr. Lagenbacher and asked several questions. He played with toys and told a story about one of the toys he played with. In addition, he told a story from a book and described the emotions of the characters involved. Claimant talked about his favorite movie and asked Dr. Lagenbacher about movies she had seen. He also talked about his friends at school. Claimant did not use atypical language patterns and “freely offered information about himself and asked questions of the examiner.” (Ex. 13, p. 95.) While Claimant displayed difficulty with conversational skills by committing grammatical errors and frequently referring to aliens, his conversational skills had improved since his last evaluation. Dr. Lagenbacher noted Claimant made appropriate eye contact and social gestures and maintained good communication with her during the administration of the ADOS. He did not demonstrate any unusual sensory interests, stereotyped body movements, or repetitive or ritualistic behaviors. Although he used to align his toys he no longer did so. Claimant scored well below the cut-off for Autism or autism spectrum disorder (ASD).

F. Dr. Lagenbacher concluded that Claimant suffered from mixed receptive expressive language disorder based upon her observation that Claimant was difficult to understand at times and he had difficulty expressing himself. Because she determined Claimant did not suffer from autism and his cognitive abilities were in the average range, Dr. Lagenbacher recommended Claimant’s case with SGPRC be closed. Dr. Lagenbacher also recommended continued speech therapy and

educational services through the school district and continued participation in structured group activities with peers to develop his social skills.

G. On August 7, 2009, SPRG issued a Notice of Proposed Action to Claimant's parents and notified them that its interdisciplinary team determined that Claimant was ineligible for regional center services. SPRG also notified Claimant's parents of Dr. Langenbacher's recommendations.

12. Claimant thereafter received special education services in the areas of speech and written expression, for a total of eight percent special educational services and 92 percent general educational placement. Counseling services for social skills training and social emotional developmental support were added to Claimant's educational program at a rate of 30 minutes per week.

13. Claimant entered the fifth grade in August 2012 and attended school until October 19, 2012. He did not complete the school year due to difficulty adjusting and was placed on home/hospital instruction.

14. Pursuant to Claimant's triennial special education assessment in 2013, he was eligible for special education services as a result of emotional disturbance due to his inability to maintain appropriate relationships with students and teachers, depression, physical symptoms of fears associates with personal or school problems, autistic like characteristics that impeded his success, and speech and language disorders.

15. Claimant was arrested on November 15, 2015 for assaulting Mother. He was placed in Los Padrinos Juvenile Hall in and released in 2015. Thereafter, Claimant was placed at Cinnamon Hills Youth Crisis Center (Cinnamon Hills) pursuant to a court order.

16. A. A February 8, 2016 Multidisciplinary Psychoeducational Report described the results of Claimant's social emotional assessment and assessment for educationally related mental health services (ERMHS). The purpose of the assessments was to determine Claimant's continued eligibility for special education services, monitor his psychoeducational progress, analyze his current educational needs, and aid the development of an appropriate educational plan.

B. The report notes that Claimant's emotional status had deteriorated since August 2012 and he had two residential placements in California and another at Cinnamon Hills in Utah in 2015, due to his "inability to function academically, emotionally, and socially in a school setting." (Ex. 17, p. 109.) Prior to the residential placements, Claimant was subject to a home hospital placement, but his educational needs were not being met. The report also notes that:

[Claimant's] last three-year evaluation found him to be a good candidate for ERMHS in order to support the implementation of his special educational [IEP] and it was necessary for his educational benefit. He had developed mental health issues for more than the last six months that interfered significantly with his educational progress.

[Claimant's] social and emotional issues and mental health problems continue to make it difficult for him to succeed in school and show a need for him to obtain educationally related mental health services.

(Ex. 17., p. 109.)

C. The 2016 assessment consisted of the following tests and observations: ABAS, Third Edition (ABAS-3); Behavior Assessment System for Children, Second Edition (BASC-2); Devereaux Scales of Mental Disorders (DSMD); Devereaux Behavior Rating Scale-School Form (DBRS); GARS-3; Woodcock Johnson IV Tests of Cognitive Abilities; Woodcock Johnson IV Tests of Oral Language; Woodcock Johnson IV Tests of Achievement Form A and Extended; record review/classroom observation; health and developmental review/nurse's screening; review of Cinnamon Hills master treatment plan; and review of Cinnamon Hills observation report of classroom behavior at Cinnamon Hills.

D. The ABAS-3 is designed to assess adaptive skills necessary to communicate with others and manage tasks, the social skills to establish relationships, act with responsibility toward society, and use leisure time and the practical skills to independently care for oneself. Claimant's results on this test, with information provided by Claimant's teacher and Mother, were in the extremely low and low range across all areas, which includes communication, functional academics, self-direction, leisure, social, community use, and self-care.

E. The GARS-3 measures the quality and/or extent of an individual's restricted/repetitive behaviors, social intervention, social communication, emotional response, cognitive style, or maladaptive behaviors. Based upon information and observations of Mother and Claimant's teacher and therapist, Claimant results indicated the probability that Claimant had ASD and required substantial support.

F. With respect to Claimant's social emotional status, in providing information for the BASC-2, Mother reported that Claimant displayed very significant maladaptive behavior in the areas of anger management, bullying, developmental social disorders, emotional self-control, executive functioning and resiliency. In

addition, she reported that Claimant demonstrated negative emotionality. Claimant's teacher also reported that Claimant displayed very significant concerns in those same areas with exception of anger control, bullying, and resiliency. In those areas, Claimant's teacher reported that Claimant had significant concerns.

G. On the DSMD, Mother rated Claimant as displaying very elated behaviors in the area of acute problems, and his teacher rated him as very elevated in the areas of anxiety, depression, autism, and internalizing. Mother rated Claimant as displaying elevated behaviors in areas of conduct problems, depression, externalizing, and his teacher rated Claimant's acute problems as elevated. Mother rated Claimant's behaviors in the area of delinquency and internalizing as borderline, whereas his teacher noted borderline concerns in the area of conduct problems. On the DBRS, Mother and Claimant's teacher rated the areas of inappropriate behaviors/feelings, depression, and physical symptoms/fears as very significant concerns for Claimant.

H. Surveys showed that Claimant continued to experience difficulty due to a serious emotional condition that interfered with his learning and emotional success characterized by his inability to maintain appropriate relationships with students and teachers, inappropriate behavior or feelings under normal circumstances, general pervasive mood of unhappiness or depression, and the tendency to develop

physical symptoms of fears associates with personal or school problems. Claimant had been prescribed Latuda,<sup>2</sup> Zyprexa,<sup>3</sup> Tenex,<sup>4</sup> and Lexapro.<sup>5</sup>

I. Claimant was diagnosed as suffering from other specified schizophrenia spectrum and other psychotic disorder-predominantly delusions with concomitant diagnosis of ASD; ASD level 1; obsessive-compulsive disorder, with poor insight; other specified disruptive, impulse-control and conduct disorder; and language disorder.<sup>6</sup>

J. Claimant was found to be eligible because of dual diagnoses of emotional disturbance and autism. He was also found to be eligible because of his

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<sup>2</sup> The ALJ takes official notice that Latuda is prescribed to treat bi-polar depression.

<sup>3</sup> The ALJ takes official notice that Zyprexa is an antipsychotic medication prescribed to treat schizophrenia and manic episodes of bipolar disorder.

<sup>4</sup> The ALJ takes official notice that Tenex is a medication prescribed to treat attention deficit hyperactivity disorder (ADHD).

<sup>5</sup> The ALJ takes official notice that Lexapro is antidepressant medication prescribed to treat anxiety in adults and major depressive disorder in adults and adolescents.

<sup>6</sup> The diagnosis was taken from Cinnamon Hills's December 29, 2015 master treatment plan.



speech and language impairment. Claimant qualified for mental health services because of significant emotional and behavioral issues.

17. A. Claimant's February 1, 2018 IEP indicates that Claimant was 16 years old and in the eleventh grade. He was enrolled at New Haven Youth and Family Services, a non-public school residential facility, to address his mental health needs but he intended to transition to his home school. Claimant continued to take Lexapro, Zyprexa, and Tenex.

B. In the area of social/emotional behavior, it was reported that Claimant could identify when he was experiencing obsessive compulsive disorder (OCD) anxiety and practiced replacing negative thoughts with positive self-statements. The need for Claimant to improve in transitioning between subjects in class was noted, as was his maladaptive behavior of arguing and refusal to cooperate with peers and staff at least once per day when he was frustrated or anxious. Claimant was able to use assertive communication skills to express himself without arguing, yelling, or shutting down 50 percent of the time. His argumentative behaviors impacted his ability to complete and access his work. Claimant experienced distorted thinking twice per day, which resulted in anxiety and perseverating thoughts. Claimant continued to suffer speech and language deficits. He expressed a desire to work in a video game store upon graduating from high school and attending college. Mother reported that Claimant was doing well when he came home on the weekends but expressed concern that Claimant was behind in his schooling.

C. Claimant continued to be eligible for special education services a primary diagnosis of emotional disturbance and a secondary diagnosis of speech and language impairment. In addition, he was found eligible for special education services under a diagnosis of ASD.

18. A. On September 6, 2018, Claimant's IEP was amended to include the following accommodations in his general education classes: calculation devices, books on tape, notes, outlines, and instructions, a change in his schedule or order of activities, multiple or frequent breaks, extended time, and a reduction in distractions.

B. The IEP team developed a Behavior Intervention Plan (BIP) to address Claimant's withdrawal and cessation of work when he felt anxiety. This behavior typically occurred when Claimant worked on assignments or with people he did not like. Claimant took frequent "time-outs" and eloped from the classroom, which impeded his ability to earn school credits. The BIP included providing Claimant with work at his skill level, praise for remaining on-task, class participation, and scheduled time-outs.

C. The IEP team discussed that Claimant became anxious riding the bus to school on several occasions when students listened to rap music. Claimant's use of headphones to listen to music and block out music of others was not a solution because Claimant was sensitive to noise. Claimant's speech and language pathologist reported that Claimant was working to improve on engaging in reciprocal communication, as he did not take turns speaking and listening in non-structured settings. Mother reported that Claimant's video games were causing Claimant to become anxious and he asked her to put them all away, when he previously really enjoyed playing them. Mother reported Claimant wanted to experience a comprehensive high school. Claimant's teacher did not believe that comprehensive high school was an option for Claimant because he needed a rigid, structured routine and a small class environment, which are incompatible with a typical high school campus. Claimant's counselor noted that Claimant perseverates on inconsequential behaviors of others and expressed concern that he would elope from a high school

campus. She recommended private therapy, and the IEP team agreed to add one hour per week of Educationally Related Intensive Counseling Services to Claimant's IEP.

### **Current Request for Regional Center Services**

19. On December 12, 2018, SGPRC received Claimant's request, through Mother, to determine Claimant's eligibility for regional center services under a diagnosis of ASD and/or intellectual disability. Dr. Langenbacher determined that Claimant had to be re-evaluated to clarify his diagnosis and eligibility for services including evaluating Claimant's current level of functioning, his adaptive skills, and the presence of ASD.

20. A. In support of her request, Mother submitted the draft report of Claimant's psychoeducational evaluation, which served as a triennial re-evaluation for eligibility for special education serves. The report is dated January 31, 2019, when Claimant was in the 12th grade at Canyon View School.

B. The background information section of the report describes Claimant's multiple admissions to programs, hospitals and residential programs between 2013 and 2018. Claimant was hospitalized on April 4, 2013, due to having tactile hallucinations (feeling like he was been touched), and hearing voices. He had also assaulted staff and eloped from campus. In addition, he engaged in compulsive rituals that interrupted his educational progress. In 2014, Claimant displayed obsessive compulsive disorders, the ERMHS therapist expressed concern for Mother and others, and Claimant expressed a desire to kill including Mother and his caregiver. The school district shared concerns about Claimant's violent thoughts and concern for the safety of Claimant's family members. The report notes an additional admission to a program on September 22, 2014, after Claimant continued to be verbal and physically

aggressive to students and staff, insulting them and leveling threats. He also destroyed property daily. Mother removed him from the program on April 22, 2015. Claimant was admitted to psychiatric hospitals twice during the summer of 2015. He engaged in 14 episodes of aggression and/or elopement in 2018 while at Cinnamon Hill.

C. The evaluation consisted of the following: The Woodcock-Johnson IV Tests of Achievements; Comprehensive Assessment of Spoken Language-2 (CASL-2); Pragmatics Skills Checklist; Cognitive Assessment System 2; BASC-3; ABAS-3; Scales for Assessing Emotional Disturbance-2; Childhood and Adolescent Needs and Strengths Assessment (CANS); observation; GARS-3; nurse's health assessment, and review of records.

D. In the area of social-emotional functioning, it was noted that Claimant continued to be triggered by inconsequential behaviors of students and staff at Canyon View School, struggled to control his anxiety, and perseverated on behaviors of others that upset him. He became argumentative, raised his voice and threatened students and staff once per day and eloped one to two times per week. He had been involved in a physical altercation since enrolling at Canyon View School. Claimant struggled to stay on-topic, taking turns in conversation with his counselor. He experienced cognitive distortions, expressed a desire to manage his anxiety and build relationships.

E. The CANS identifies an individual's interests, abilities, and needs. The assessment focused on Claimant's past 30 days and the results, in part, were as follows in the following areas:

- refusal to follow directions: Claimant had difficulty following directions, needed prompting to comply, and refused to follow directions;

- turn taking: Claimant's difficulty in taking turns resulted in behavior, achievement and/or relationship problems;
- self-regulation: Claimant had severe problems managing his emotions and behaviors;
- social relationships: Claimant experienced severe disruptions in his social relationships in that he had difficulty responding to adults, interacting with peers, being aware of others, and he opted out of group activities and argued excessively with peers and adults;
- building relationships – Claimant lacked the basic skills to build and maintain relationships at school;
- empathy: Claimant had difficulty demonstrating empathy for others;
- social perceptions: Claimant was unable to interpret social cues and demonstrated significant cognitive distortions;
- decision making skills:
  - Claimant did not make decisions that were age appropriate, and had difficulty managing himself in school;
  - ability to pay attention: Claimant had difficulty maintaining attention and remain on-task for an age-appropriate time period; and
  - psychosis: Claimant presented with a disturbed thought process, delusional thoughts, and tangential and illogical speech.

F. During lunch, Claimant was observed to sit on the basketball court alone when he was supposed to report to the lunchroom. He was cooperative during his vision and hearing tests, but was observed to look down, put his hands near his mouth, lower the volume of his voice and mumble four times during his interview the nurse. In addition, Claimant exhibited irrational thought processes and delusions. During a classroom observation on a different date, Claimant did not look at or interact with others. While students were taking turns reading out loud, Claimant performed crunches and push-ups. The teacher interrupted class to count the number of exercises Claimant performed. When Claimant returned to his seat, Claimant sat down and put his head on his desk. When the teacher asked Claimant to read out loud a few minutes later, Claimant did so.

G. On the GARS-3, Claimant's teacher gave him an overall score of 106, Mother gave him score of 61, and the speech pathologist scored Claimant as 84. Scores between 55 and 70 indicate that the autism is likely and minimal support is required, scores between 71 and 100 indicated the presence of autism is very likely and the student will require substantial support, and scores of 101 and above indicate that very substantial support will be required.

H. On the BASC-3, Mother rated Claimant's behavior's as in the mild to moderate range, while his teacher and counselor rated his behaviors in the significant range. Specifically, Claimant's scores placed him in the below average range in the functional academics scale, the low range on the leisure scale, and the extremely low range on the communication, community use, school living, health and safety, self-care, self-direction and social scales. Claimant's counselor noted that Claimant did not nod or smile or encourage when they are talking, look both ways before crossing the

school parking lot or driveway, call for help if someone is hurt at school, invite others to join him in playing games, or transition easily from one school activity to the next.

I. Scaled scores on the SAED-2 of 13 or lower are not indicative of emotional disturbance, scaled scores of 14-15 are indicative of emotional disturbance, and scaled scores of 17 or higher are highly indicative of emotional disturbance. Mother's scaled score for Claimant was 14, and his teacher and counselor's scaled scores were both 15, indicating emotional disturbance. All three indicated that Claimant experienced relationship problems indicative of emotional disturbance, and it appeared that Claimant exhibited significant worries and fears.

J. On the Woodcock Johnson IV Tests of Academic Achievement (WJIV), Claimant's score for reading, broad reading, basic reading skills, reading comprehension, and reading fluency, were respectively placed him in the mildly impaired, impaired, within normal limits, mildly impaired, and moderately impaired ranges. For mathematics, board mathematics, and math calculations, Claimant's scores were in the mildly impaired and within normal limits ranges. With respect to writing, Claimant's scores for written language, broad written language, and written expression were in the mildly impaired and within normal limits ranges. The evaluator also observed Claimant in the classroom and concluded that there is a significant gap between Claimant's expectant age/grade level skills and his daily performance caused by recurrent episodes of extreme anxiety and frustration. However, if Claimant was given ongoing academic support and socio-emotional intervention, Claimant could obtain a high school diploma and succeed in post-graduate education.

K. Claimant's CASL-2 and Pragmatics Skills Checklist scores indicated that he was deficient in the following areas: semantics, pragmatics (social interpersonal

or conversational skills), and intelligibility. It was determined that Claimant continued to be eligible for placement in the Language and Speech program.

L. Claimant was found eligible for special education services under handicapping conditions of autism, emotional disturbance, and speech and language impairment.

21. A. On January 14, 2019, SGPRC conducted a social assessment of Claimant with Mother present. Claimant was taking Zyprexa, and medications to increase energy and elevate mood and decrease impulsivity, increase focus and stabilize mood. Mother reported that Claimant could make simple foods and use the stove or microwave, complete all his toileting tasks, and could dress himself. However, he did not comb his hair, and was sensitive to certain food odors and clothing textures, and certain sounds. In the area of social domain, Claimant was reported to initiate and respond to social contacts with peers, he named two friends and visited one of the friends at home. However, Claimant was reported to have social skills problems.

B. In the area of emotional domain, Mother reported Claimant did not have outbursts, he has learned to use coping skills, and was no longer verbally or physically abusive. Claimant became anxious if people did not understand or disagreed with him, and he would then insist upon his point of view and speak loudly. He would then calm himself utilizing breathing techniques, removing himself from the situation, and meditating.

C. In the area of communication, Claimant communicated in complete sentences, conversed with Mother, and was understandable to the evaluator.



However, he demonstrated a tendency to mumble and use incorrect sentence structure.

22. A. On February 19, 2019, Edward G. Frey, Ph.D. conducted a psychological evaluation of Claimant for purposes of determining his eligibility for regional center services and prepared a report of his findings. Dr. Frey reviewed Claimant's records, conducted a diagnostic interview, and administered the VABS-3, ADOS-2, and ADI-R.

B. Claimant was under the care of a psychiatrist and continued his antipsychotic and antidepressant medications. Dr. Frey observed that Claimant was initially anxious and provided minimal interaction. After speaking with Mother outside the interview room, Claimant was more interactive and began to maintain good eye contact and engage in reciprocal conversation. Claimant continued to be depressed and rate his depression as an eight or nine on a scale of one to 10. He also reported experiencing auditory hallucinations.

C. Dr. Frey noted that Claimant's previous intellectual testing was in the borderline or low average range, but he had never been diagnosed as having an intellectual disability. Mother did not believe Claimant should be tested for intellectual disability at that time.

D. Claimant's VABS-3 scores were in the borderline range. Claimant's reading skills were at the fourth-grade level or higher, his personal care skills were a strength, he takes medication independently, and maintained a bank account with help with management. Claimant could pay attention to a 15-minute informational task and could pay attention to a 30-minute talk at times.

E. Claimant's scores on the ADOS-2 were below the clinical cut-off level. Dr. Frey observed some autistic characteristics were observed but believed that they could be associated with his psychiatric diagnoses of anxiety and obsessive-compulsive disorders. Claimant interacted verbally, but the conversation tended to be one-sided. He did not comment on others' emotions and the quality of his social overtures was minimal. Dr. Frey's assessment was difficult because of Claimant's initially anxiety. As Claimant become more relaxed, fewer autistic features were observed.

F. With respect to the ADI-R, Claimant's score in the area of qualitative abnormalities in reciprocal social interaction was 5 (the autism cut-off is 10), his score in qualitative abnormalities in communication was 5 (the autism cut-off is 8), and his score in restricted, repetitive, and stereotyped patterns of behavior was 5 (the autism cut-off was 3). Mother reported that Claimant displayed social smiling and a range of facial expressions. Inappropriate facial expressions were attributed to anxiety. Claimant tried to make friends but had difficulty doing so. She also reported that Claimant engaged in conversation but would interrupt and talk over others and occasionally make inappropriate comments. Claimant had a great interest in video games, but it was not obsessive.

G. Dr. Frey concluded that it was unlikely Claimant had a primary diagnosis of ASD based upon the ADI-R results.

H. Based upon Claimant's test results and Mothers reporting, Dr. Frey noted:

Assessing [Claimant] for possible Autism is rather difficult because of his long psychiatric history and diagnoses. Many

of the behaviors associated with Anxiety and Obsessive-Compulsive Disorder may appear to overlap Autism. Based on the current assessment, review of records, and parental interview, examiner is very reluctant to assign a diagnosis of Autism Spectrum Disorder. It appears symptoms of Autism were only minimally present prior the age of 11. [Claimant] was assessed at Regional Center at the age of 8 years old and was not found to be present with Intellectual Disability or Autism.

Assessment with the ADI-R also argues a history consistent with Autism Spectrum Disorder. It is noted adaptive levels in all areas are also in the borderline range. In summary, [Claimant] appears to present as a young [man] with a persistent and long-term psychiatric disorder that appears to have [manifested] itself around age 11. Prior to that, the presence Autism appears highly unlikely.

(Ex. 24, p. 231.)

I. Dr. Frey concluded that there was insufficient evidence to diagnose Claimant with an intellectual disability or ASD. However, Claimant presented as having significant psychiatric/emotional problems as he had been diagnosed as suffering from severe anxiety, obsessive compulsive disorder, and possible psychotic features. Dr. Frey recommended that Claimant: (1) continue to receive psychiatric treatment; (2) receive an appropriate educational setting placement; (3) seek services through the Department of Rehabilitation after leaving school; and (4) participate in social and recreational activities.

23. On May 1, 2019, SGPRC's eligibility team met and determined that Claimant was ineligible for regional center services, and that his case with SGPRC should be closed. On that same date, SGPRC sent Mother a letter and Notice of Proposed Action notifying her that SGPRC decided to close Claimant's case because he was not found to have a developmental disability based upon SGPRC's eligibility team review of Dr. Frey's report and previous assessments.

24. On May 28, 2019, Claimant, through Mother, signed a Fair Hearing Request, authorizing Mother to present him and alleging eligibility for services under a diagnosis of autism.

25. A. On December 10, 2020, Dr. Langenbacher attempted to administer the ADI-R with Claimant or Mother. Dr. Langenbacher offered to administer the ADI-R virtually or in person. Claimant refused to participate. Therefore, Dr. Langenbacher was unable to conduct behavior observations.

B. Dr. Langenbacher interviewed Mother telephonically on December 10, 2020, focusing on Claimant's behavior and development prior to the age of five. Due to the passage of time, Mother could not recall some of the information. She did recall, however, that she became concerned about Claimant's delayed speech when he was 18 months old and that he stopped talking after he was one year old. Claimant began speaking in phrases between three and four-years-old. When he was a toddler, he cried when he wanted something and would hit and push others. Between four and five years old, Claimant did not engage in pretend play, and while he shared his interests, he did not offer comfort those in distress. Mother reported that at that same age, he laughed at sad things and interrupted others with odd statements. Claimant also preferred to play on his own.

C. Mother reported to Dr. Langenbacher that Claimant repeated himself and had limited use for small talk. He had difficulty with social conversation and asked inappropriate questions and made inappropriate statements. Claimant was overly focused on video games, had a history of touching his body in various areas and smelling his fingers, was sensitive to certain sounds, and overreacted when the family moved to a new home. Mother noted that Claimant did not display any stereotyped movements, and he had a history of aggression toward Mother and other people.

D. Dr. Langenbacher concluded that Mother's report of Claimant's behaviors and developmental history were consistent with ASD. She also acknowledged that his symptoms overlap with symptoms related to his psychiatric diagnoses. Dr. Langenbacher concluded that she could provide a diagnosis without evaluating Claimant.

### **Dr. Langenbacher's Testimony**

26. Dr. Langenbacher has been a SGPRC staff psychologist for 23 years. She serves on the eligibility team, where her duties consist of reviewing incoming cases to determine appropriateness of referrals to the regional center and completing psychological and clinical evaluations. She is familiar with Claimant's case and testified consistent with her previous reports, evaluations, and decisions concerning Claimant.

27. Dr. Langenbacher is unclear why there is such a discrepancy between what Mother reported to her and what Mother reported to Dr. Frey. However, Dr. Langenbacher noted discrepancies regarding Claimant's behavior and functioning in prior reports as well. She acknowledged that Claimant's previous IEPs note that Claimant's prior diagnosis was ASD or autism. Dr. Langenbacher's refusal to provide a

diagnosis for Claimant was explained by her practice to not do so when she has not met an individual in person. As of the date of the hearing, she was unable to offer an opinion as to whether or not Claimant meets the eligibility requirements for regional center services.

28. Dr. Langenbacher offered the opinion that it is clear that Claimant is suffering tremendously. He has had many different diagnoses over the years and has been alternately described as having autism or emotional disorders by his schools. Dr. Lanbenbacher noted Claimant's numerous psychiatric hospitalizations and residential placements and history of psychotic or disordered behavior. She also noted Claimant's significant history of anxiety and OCD, which has severely interfered with Claimant's life beginning in his adolescence. Because Claimant has had so many diagnoses over his lifetime, it is hard for Dr. Langenbacher to determine a primary diagnosis, and SGPRC is not capable for providing services for Claimant for a psychiatric diagnosis or psychotic symptomology. She hopes the best for Claimant, and based upon the information available to her, Dr. Langenbacher does not feel that SGPRC is appropriate agency for providing relief that Claimant needs due to his psychiatric diagnoses.

29. Dr. Langenbacher acknowledged that SGPRC consumers can have dual psychiatric and developmental disability diagnoses, but the developmental disability is usually the primary diagnosis.

### **Claimant's Evidence**

30. Dr. Ketterman has been licensed in California as an educational psychologist for 38 years. She obtained a master's degree in special education and assessment and a Ph.D. in educational psychology. Dr. Ketterman served as a school psychologist and worked for the Walnut Unified School District for 34 years, beginning

with the preschedule special education program, where she worked with students with developmental delays. Dr. Ketterman also served in the transitional program for developmentally delayed students aged 18 to 22. She has been retired for two years.

31. Dr. Ketterman became familiar with Claimant when he was eight years old and referred to her for a psychoeducational assessment. She assessed him when he was 11 and 14 years old. Dr. Ketterman reviewed all of the reports discussed in this decision and is familiar with all of the testing instruments as she has administered them herself.

32. Dr. Ketterman disagreed with Claimant's developmental history that was reported by SGPRC in 2009. She described it as inaccurate because Claimant was having socioemotional difficulty with his peers and was getting into trouble. According to Dr. Ketterman, SGPRC did not contact her or the school to obtain information about Claimant's adaptive functioning.

33. Dr. Ketterman asserted that Claimant has a consistent history of displaying autistic behavior since he started school. She is confused by SGPRC's determination that Claimant was doing well. Since age three, Claimant was enrolled in a special day class 50 percent of the time, however Claimant's parents had a hard time accepting that Claimant required special education.

34. A. On September 5, 2019, Dr. Ketterman administered the ABAS-3, BASC-3, and GARS-3. Based upon information provided by Mother, Claimant's results on the BASC-3 test were in the extremely low range in the areas of communication, functional academics, and self-direction, and low in practical skills (community use, home living, health and safety, and self-care.) Claimant's depression and scale scores were clinically significant, indicating high levels of internal distress. Also, clinically

significant was Claimant's developmental social disorders score, which suggested inappropriate socialization and difficulty with self-stimulation suggesting pervasive developmental disorders such as ASD or poor socialization. Claimant's scores in the areas of hyperactivity and aggression were elevated and suggested that he displayed significant behavioral difficulties related to attention-deficit/hyperactivity disorder, oppositional defiant disorder and conduct disorder. Claimant also met several criteria listed in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) for: 1) ADHD (difficulty sustaining attention sometimes, does not seem to listen when spoken to sometimes, is often easily distracted, often acts if driven by a motor, often blurts out answers, often has trouble waiting his turn, and often interrupts others' conversations or activities); 2) generalized anxiety disorder (difficult to control, excessive anxiety and worry about a number of events/activities, and almost always feels restless, keyed up, or on edge); 3) major depressive disorder (depressed mood most of the day, almost every day, feelings of worthlessness or excessive/inappropriate guilt almost every day, and difficulty concentrating, or making decisions almost every day); 4) disruptive mood disorder (has verbally or physically aggressive temper outbursts and persistently irritable or angry mood between temper outbursts); 5) ASD (impaired emotional/social reciprocation, difficulty in developing peer relationships appropriate to developmental level and rigidly adheres to routines/rituals; and 6) persistent depressive disorder (depressed mood, poor self-esteem, difficulty making decisions or concentrating and feeling hopeless).

B. Claimant's results on the GARS-3, based upon information from Mother, were in the 86 and 90 with a severity level of 2, indicating that the existence of ASD was very likely and that Claimant required substantial support.



35. A. On March 17, 2021, Dr. Ketterman conducted a psychological assessment of Claimant by observing Claimant virtually and conducting a clinical interview of Claimant by videoconference for the Autism Spectrum Quotient (AQ) with Mother present. Claimant was highly anxious during the interview and hid under a blanket but with a lot of encouragement he was able to participate in the survey.

B. Claimant had difficulty maintaining eye contact with the camera and laughed as if he was nervous. He stated he felt anxious most of the time and did not feel helpful about being able to go to school and maintain a job unless he received the appropriate help. It took Claimant more than one hour to answer the 50 questions on the AQ. He answered 39 of the 50 questions in manner consistent with those individuals diagnosed with ASD, specifically in the areas of attention switching, social skills, communication, attention to detail, and imagination.

C. According to Dr. Ketterman, all available evidence indicates that Claimant continues to display a developmental disability in the area of autism. She found that autism significantly limits his functioning in the following five areas:

- Self-sufficiency/economic self-sufficiency: Claimant is unable to hold down a job and provide for himself economically. At 20 years old, he has not been able to successfully maintain a part-time job nor is there any evidence that can so in near future.
- Capacity for independent living. There is nothing to indicate that Claimant will be able to live on his own. He is highly dependent on Mother for all self-care needs. Claimant does not drive and looks to his Mother for his food and housing needs and has needs that would be appropriate for a much younger child. He has difficulty separating from his mother. Even though he enrolled

at Mt. San Antonio College, he was unsuccessful in attempts to be educated there.

- Learning: Claimant was only successful in a small classroom setting with a teacher student ratio of one to five. Learning is difficult for Claimant, which is evidenced by the necessity for him to complete his schooling in a non-public special education setting. After fifth grade, Claimant was never able to attend regular classes.

36. Dr. Ketterman noted that Mother guides Claimant in his actions as though he were a younger child, which was reflected in Claimant's adaptive behavior scores. Dr. Ketterman believes that if were not for Mother, Claimant would be homeless.

37. Dr. Ketterman determined that along with autism, Claimant has a co-morbidity of psychiatric conditions. She explained that Claimant does not seek SGPRC services to ameliorate Claimant's psychiatric conditions, but to obtain supports and services for independent living and job skills which are impacted by Claimant's autism.

38. Upon cross-examination, Dr. Ketterman explained that the difference between a psychoeducational assessment and a psychological assessment in terms of determining eligibility for services, is that schools typically used state Title V criteria to evaluate eligibility for special educational services. Psychologists and psychiatrists use the DSM-5 to determine eligibility for insurance purpose. However, five years ago, schools started to use the DSM-5. Accordingly, psychoeducational and psychological assessments are the same.

39. Dr. Ketterman did not use the ADOS, the most common test instrument to determine whether autism is present, to evaluate Claimant because she did not

have access to it. She explained that the ADOS it is very expensive. She described the difference between the ADOS and the AQ. The ADOS involves observation and watching for behaviors occurring in the environment to see if behaviors often seen in persons with the diagnosis is present in the person observed. The AQ involves asking a person suspect of having an impairment whether they have certain behaviors. When asked about her level of confidence in her diagnosis since she did not observe Claimant, Dr. Ketterman indicated that any good assessor would concede that an assessment is a snapshot in time in an individual's life and it better when you can observe a person across different settings. However, she has known Claimant in different psycho-social settings such as home and school and observed that Claimant displays a lot of autistic characteristics. Accordingly, she is "fairly confident" in her diagnosis of autism, co-morbid with psychiatric conditions.

40. Mother agreed with Dr. Ketterman's descriptions of Claimant's functioning in school and his childhood. Mother asserted that Claimant had difficulty communicating with other children because he was not able to get along with them and engage in appropriate behavior.

41. According to Mother, Father did not provide accurate information to SGPRC in 2009 because he did not spend much time with Claimant as he traveled a lot for business. Also, according to Mother, he knew "almost nothing" about Claimant and was in denial about Claimant's developmental disabilities.

42. Mother described a typical day of Claimant's life. Due to the COVID-19 pandemic, Claimant is home for most of the time. He eats breakfast cooked by Mother and if she takes Claimant to the park, he may work out for a short period of time on the equipment located there. When they return home, Claimant may play video games. At times, Mother takes Claimant hiking, or she may "force" him to read a book.

Mother explained that books make Claimant nervous and anxious if he does not agree with the author or the behavior of the main character. When that happens, Claimant reads dictionaries or reads vocabulary words.

43. Claimant can dress himself, but Mother supports him by reminding him to put his shirt on the way, to position his pockets in his pants and check in the mirror. Mother taught Claimant to cook basic foods such as fried eggs, sandwiches and milkshakes. However, Claimant does not like to cook because he becomes nervous and irritated.

44. Claimant does not have any friends in the typical sense of the word, but there is one person who has autism and is high functioning that Claimant met at Cinnamon Hills or Canyon View School, who plays video games with Claimant. Mother described that individual as the only person in the world who is able to understand Claimant and tolerate his behavior and confusion.

45. When Claimant was in high school, he participated in a vocational training program and was placed a pet shop where he stocked shelves. After working at the pet shop for a few days, Claimant was asked to leave because of his inappropriate behavior with customers. Neither Claimant nor Mother have sought to receive job training services with the Department of Rehabilitation, but they intend to do so.

46. Claimant is currently taking alprazolam for anxiety and Zyprexa, an antipsychotic medication. He is not currently receiving mental health therapy because Mother lost her job last year and she is unable to afford treatment and therapy.

47. Claimant enrolled at Mt. San Antonio College in 2019 but only attended for a few months before he was expelled. Mother explained that, in one instance,

Claimant raised his voice and began arguing loudly with students. A professor lodged a complaint against Claimant regarding multiple episodes of Claimant engaging in maladaptive behavior. Claimant was expelled for a year and was supposed to attend therapy sessions with psychologists and speech therapists, but he was unable to access the service in-person due to the COVID-19 pandemic. Claimant did not access the services online because was not interested in doing so.

48. Claimant continued to demand that the people around him adapt to him and gets upset when people do not understand him.

## **LEGAL CONCLUSIONS**

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.)<sup>7</sup> provides services and supports to individuals with developmental disabilities.

2. Section 4512, subdivision (a) defines a developmental disability as: “. . . a disability which originates before an individual attains age 18; continues or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual.” It includes “intellectual disability, cerebral palsy, epilepsy, and autism. . . [and] shall also include disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability but shall not include other handicapping conditions that are solely physical in nature.” “Substantial disability means the existence of significant

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<sup>7</sup> Statutory cites are to the Welfare and Institutions Code unless otherwise referenced.

functional limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person: [¶] (A) Self-care. [¶] (B) Receptive and expressive language. [¶] (C) Learning. [¶] (D) Mobility. [¶] (E) Self-direction. [¶] (F) Capacity for independent living. [¶] (G) Economic self-sufficiency." (§ 4512, subd. (j)(1).)

3. California Code of Regulations, title 17 (Regulation), section 54001 defines "substantial disability":

(a) "Substantial disability" means:

(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.

4. Regulation section 54000 provides:

(a) "Developmental Disability" means a disability that is attributable to intellectual disability, 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 psychosocial deprivation and/or psychosis, severe neurosis or personality 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 psychosocial 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.

5. In determining eligibility, "the Lanterman Act and implementing regulations clearly defer to the expertise of the DDS (California Department of Developmental Services) and regional center professionals' determination as to whether an individual is developmentally disabled." (*Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, 1127.)

6. Individuals in disagreement with regional center determinations, such as in the instant case, appeal the determination through a fair hearing process. (Welf. & Inst. Code §§ 4700 - 4716, and Cal. Code Regs., tit. 17, §§ 50900 - 50964).

7. When one seeks government benefits or services, the burden of proof is on him. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) The



standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.)

Preponderance of the evidence means evidence that has more convincing force than that opposed to it. (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 324.)

Because Claimant seeks to establish his eligibility for services, he bears the burden of proving his eligibility for services by a preponderance of the evidence. (See Evid. Code §§ 115, 500.)

## **Analysis**

8. Mother presents as very sympathetic and credible, and Dr. Langenbacher and Dr. Ketterman present as credible as well. Clearly Claimant has significant functional limitations which affect major areas of life activity; however, it is unclear whether these limitations are due to a qualifying developmental disability or Claimant's psychiatric conditions. Claimant's case is complex given the years of assessments and alternating primary diagnoses of autism and emotional disturbance.

9. More recently, Dr. Frey's 2019 assessment and findings using the ADI-R are contradicted by Dr. Lagenbacher's December 2020 ADI-R assessment results, although Mother was the respondent for both administrations of the assessment tool. Complicating the determination is that Mother has underreported Claimant's behaviors as compared to Claimant's teachers and therapists. Accordingly, it is difficult to determine which result is accurate. Moreover, Dr. Ketterman did not use the ADOS, the tool most psychologists use to assess whether autism or ASD is present. In administering the AQ, Dr. Ketterman relied on her virtual interview of Claimant and her previous assessments of Claimant for purposes of determining eligibility for special education services.

10. Dr. Ketterman's diagnosis of autism was not supported by the evidence, notwithstanding her previous assessments of Claimant, because her observation of Claimant was hindered by his anxiety. His conduct during his interview with Dr. Ketterman is similar to his behavior in past assessments, where evaluators noted that Claimant displayed more autistic characteristics during the beginning of the assessment. However, after feeling more comfortable, Claimant would begin to maintain eye contact and engage in more reciprocal communication, which is inconsistent with the presence of autism or ASD. Accordingly, when all evidence is considered, Claimant did not establish that the Service Agency's decision denying him eligibility and closing his case is incorrect. Specifically, Claimant did not establish that he has a qualifying developmental disability which originated before age 18 as required under the Lanterman Act.

11. The testimony of both Dr. Ketterman and Dr. Langenbacher established that clinical observation is important in arriving at an autism diagnosis. Unfortunately, Claimant refused to be observed by Dr. Langenbacher. His participation in the interview is critical for SGPRC to arrive at the appropriate eligibility determination. A person who seeks benefits from a regional center must bear the burden of providing information, submitting to reasonable examinations and assessments, and cooperating in the planning process. (See Civ. Code § 3521 ["He who takes the benefit must bear the burden."].) Of course, Claimant can refuse to do anything that they believe would be detrimental to Claimant. However, if the exercise of that right precludes a regional center from meeting its obligations under the Lanterman Act, then a regional center may have no choice but to close its case, as it did here.

12. In the event that Claimant cooperates with SGPRC and submits to clinical observation by Dr. Lagenbacher or other SGPRC staff, SGPRC shall make its best efforts

to observe him as soon as practicable. Similarly, if Claimant obtains further assessment results indicating that he has a qualifying developmental disability which originated before age 18 as required under the Lanterman Act, he should submit those results to SGPRC as soon as possible. Under these circumstances, SGPRC's decision finding him not qualified for services must be affirmed, consistent with the order below.

## **ORDER**

Claimant's appeal is denied. The Service Agency's determination that Claimant is not eligible for regional center services is upheld.

DATE:

CARMEN D. SNUGGS

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.