BEFORE THE

OFFICE OF ADMINISTRATIVE HEARINGS

STATE OF CALIFORNIA

In the Matter of CLAIMANT against:

San Gabriel/Pomona Regional Center

Service Agency

OAH No. 2019060132

DECISION

Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on July 19, 2019, in Pomona, CA.

Claimant, who was not present, was represented by his father.[1]

The San Gabriel/Pomona Regional Center (SGPRC) was represented by Daniel Ibarra, Fair Hearing Manager.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on July 19, 2019.

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[1] The names of claimant and claimant's family have been omitted to protect their privacy.

ISSUE

Is Claimant eligible for Regional Center services as a consumer diagnosed with Autism?

SUMMARY

Claimant contends that he is eligible for regional center services based upon his diagnosis of Autism Spectrum Disorder (ASD) which constitutes a substantially disabling condition for him. SGPRC maintains that Claimant does not qualify for SGPRC services based upon ASD. Claimant has met his burden of proof that he is eligible as an individual with ASD and his appeal of SGPRC's decision to deny eligibility is granted.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant is a 13-year-old boy who claims that he is eligible for SGPRC services pursuant to a diagnosis of ASD. On May 16, 2019, SGPRC issued a Notice of Proposed Action denying eligibility for regional center services. Claimant timely appealed the denial and this hearing ensued.

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Background

2. Claimant's parents divorced when he was a one-year-old. They engaged in a protracted custody battle and there was disagreement about Claimant's development. Although Claimant's parents had joint legal custody, Claimant had lived primarily with mother and her family until the fourth grade when his mother died from Cancer. At that time, he went to live with his father and his paternal grandparents in a different community and changed schools.

3. At his mother's request and upon his pediatrician's referral, Claimant was evaluated by the Harbor Regional Center (HRC) for eligibility as a two-year-old in 2008. He was not found eligible. However, HRC made its finding without completing formal testing for Autism because Claimant's mother did not have sole authority to give consent for testing. At that time, the assessor noted that Claimant had some traits of Autism, but did not appear to be autistic. Based upon the information available, HRC determined that Claimant had a speech and language impairment and was referred to the school district for further assessment and services.

4. While in preschool, Claimant's teacher observed him to be socially isolated, delayed in reading, printing and counting and generally disruptive in the classroom. In the primary grades, Claimant was awkward, delayed in reading, spelling and arithmetic, and suffered bullying. In the fourth grade, he was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and placed on medication. Around that time, Claimant was also made eligible for special education and placed on an individualized Education Program (IEP) with a primary eligibility of Other Health Impairment (OHI) and a secondary eligibility of speech and language impairment (SLI). Claimant was placed in a regular education classroom, but struggled academically. Pursuant to his IEP, he received speech and language therapy and counseling. His

parents provided him with extra-curricular activities in the community. He played soccer, football and baseball in a non-school league. He also played piano.

5. Claimant was reassessed in 2015, at the age of 10, when he moved to his father's home and to a new school district after his mother's death. Claimant has remained in special education since 2009. He continues to struggle academically and over time has experienced behavior issues including obsessive and disruptive behavior. His IEP has been amended to provide him with additional supports including a behavioral support plan and a one to one aide.

6. Claimant was referred to SGPRC in 2018 by Rhonda Hampton, a licensed clinical psychologist with 19 years of experience. Dr. Hampton began treating Claimant in 2019 as a referral from the county probation office after an incident of inappropriate sexual conduct at school. The incident involved allegations that Claimant was obsessed with a female classmate, followed her, spoke to her and inappropriately touched her. Claimant was placed on informal probation as a result of the incident. The school district later determined that Claimant's conduct was a result of his disability at a Manifest Determination hearing. Accordingly, Claimant was not expelled from school for the incident. An IEP team met and determined that a non-public school (NPS) would be a more appropriate placement or Claimant. His father agreed with the placement offer and at the time of this fair hearing, the IEP team is still searching for an appropriate NPS placement.

7. Dr. Hampton specializes in treating chronic mental illness and has nearly 20 years of experience working with young people in crisis and of varying capabilities. After the 10 sessions mandated by the county probation department, Dr. Hampton continued to treat Claimant and currently sees him once per week. As the treating psychologist, Dr. Hampton gave candid and knowledgeable testimony at the

administrative hearing based upon her extensive experience with Claimant. Her testimony is given great weight. Dr. Hampton gave specific and detailed examples of her concerns and observations Dr. Hampton referred Claimant to Dr. Meyer and SGPRC for Autism evaluations. She has an understanding of autism traits and diagnosis from her training and clinical experience.

8. Dr. Hampton spoke with members of Claimant's family including his father and his paternal grandmother and attended his two most recent IEP meetings. Dr. Hampton ascertained that Claimant had a history of behaviors that were consistent with Autism. She learned that Claimant was very resistant to being held as a child and would head-butt caregivers in order to free himself from their grasps. His paternal grandmother also explained to Dr. Hampton, that Claimant would not let her touch him. He also has peculiar eating habits in that he will only eat certain colors and textures of food and eats them from a bowl without using utensils. She also noticed that Claimant does not like many textures and will wear the same jeans and shirt every day even if they have not been washed because he prefers to wear the same thing each day.

9. Dr. Hampton observed that Claimant at first glance appears to be a little odd, but as you spend more time with him, additional autistic traits become apparent. He is very literal in his use of language and obsesses over words. As an example, Dr. Hampton offered that in her discussions with him about his conduct at school, he perseverated over the word "harassment" for weeks. She used a strategy of giving him only a certain amount of time each session to perseverate over the word and then required him to move on to a different subject. She also noticed tics and odd movements such as his habit of touching his chest and fluttering his hand repeatedly and leaning back with his hands behind his head, flicking his head. When Dr. Hampton

instructed Claimant to stop the behaviors, he did so. According to Dr. Hampton, unless observers look closely, they will not realize Claimant is engaging in repetitive behaviors; instead they will think Claimant is in a relaxed posture. She also testified about a physical rigidity and an odd gait she had observed. According to Dr. Hampton, Claimant walks with his shoulders hunched up and back and his butt sticking out in an odd fashion. He does not change the posture or gait even when she brings his attention to it. Dr. Hampton also testified about Claimant's monotone voice and inappropriate expressions of emotion. As an example, she noted he laughs and vocalizes while telling a sad story. His laughter begins as a low guttural sound and ends at really high pitch. He vocalizes by first expressing he is sad and then laughing. He alternates between a flat affect and laughter.

10. From treating Claimant and attending two of his IEP meetings, Dr. Hampton has concluded that "at a snapshot he looks like he is engaged, " by turning his head in someone's direction; however, on closer inspection this eyes are elsewhere. Dr. Hampton opined Claimant's head-turning is a learned, not a natural, reaction from years of social skills training where he was taught to turn his head toward someone who is speaking. Similarly, Claimant learned from social skills training to go and stand next to students that he does not know and pretend to be part of their group. However, he does not understand social cues from the other students who give him looks or flip him off and cannot identify any friends. He is very concrete in his thinking and perseverates over words he does not understand. As an example, Dr. Hampton cited an instance where Claimant became obsessed with the word lesbian and used it inappropriately throughout the school day. Claimant also has very fixed interests about wolves and Bigfoot. Each day he researches and reads the same information about wolves and Bigfoot over and over. At night, he reported to Dr. Hampton that he has a routine of hugging his stuffed animal with his hands clasped over his chest

looking at the ceiling until someone calls him to wake up. Based upon her training and experience, Dr. Hampton felt strongly that Claimant displayed features of Autism and referred him for further evaluation to SGPRC and to Dr. Stephen Meyer, a licensed clinical psychologist with 42 years of experience assessing and treating adolescents and children.

11. The SGPRC psychologist Dr. Jennie Mathess assessed Claimant on March 22, 2019, by administering the Autism Diagnostic Interview-Revised (ADI-R) and the Autism Diagnostic Observation Schedule-2 (ADOS-2). She determined that Claimant did not meet criteria for the diagnosis of Autism. On the other hand, Dr. Stephen Meyer, using the Gilliam Autism Rating Scale-Third Edition (GARS-3), Wechsler Intelligence Test for Children-V (WISC-V), review of records, interviews and observations, but not the ADOS-2, assessed Claimant and opined that Claimant did meet criteria for Autism. Subsequently, neuropsychologist Paul Mancillas, who administered an extensive battery of tests including the ADOS, reached a similar conclusion to Dr. Meyer. To put the assessments in context, it is necessary to review Claimant's history of assessment by regional centers and school districts.

History of Assessments and Interventions

2008 REGIONAL CENTER ASSESSMENT

12. Claimant was referred to Harbor Regional Center (HRC) by his pediatrician for evaluation at age two. On January 16, 2008, when Claimant was two years old, clinical psychologist Alejandra Munoz, attempted to perform a psychological assessment, but was not able to complete all of the planned instruments because of Claimant's tantrums, elopements, inattention and general refusal to participate in the assessment. Dr. Munoz attempted, but was unable to complete the Bayley Scales of

Infant Development, Third Edition (BSID-3). She completed the GARS-Second Edition (GARS-2), and Vineland Adaptive Behavior Scales, Second Edition (VABS-II) with Claimant's mother, reviewed available records and conducted a clinical interview.

13. Based upon the above, Dr. Munoz opined that Claimant was of average intelligence (reportedly consistent with a prior administration of the BSID-3 in 2007). Dr. Munoz administered the VABS-II to measure Claimant's adaptive abilities. As measured by the VABS-II, Claimant scored in the mildly deficient range in communication skills (with no significant difference between expressive and receptive language), in the average range for daily living skills, in the low-average range for socialization skills, and in the high average range for motor skills (with no significant difference between gross and fine motor skills). Based upon Claimant's mother's responses to the GARS-2, Claimant received a score within the very likely probability of Autism.

14. Dr. Munoz made behavioral observations as follows:

> Behavioral observations are significant for flighty eye contact, adequate affect when not angry (which was most of the time), restlessness and hyperactivity, not being able to engage this boy into test-taking behaviors, darting away from the office, trying to pull the examiner off her chair, screaming at the top of his lungs, and throwing a temper tantrum whenever not given his way, and also in slapping everything off of the testing table and being very willful.

(Ex. 3.)

15. Dr. Munoz also made the following observations from her clinical interview:

> The Clinical Interview is significant for being a picky eater, crying or laughing too easily, being very impulsive and stubborn, having a hard time paying attention, and being more active and restless than others of his same age, in addition to having temper tantrums whenever not given his way, crying, screaming, hitting himself, and pulling his mother's or father's hair. Furthermore, licking toys, glasses, sippy cups, and still using a pacifier, whirling much within the last two weeks, and jumping in place were reported.

(Ex. 3.)

16. Dr. Munoz opined that "[t]he limited data appear consistent with a language disorder, and as per observation of the examiner, an Attention Deficit Hyperactivity Disorder (ADHD), Combined Type, is highly suggested. In addition, the possibility of an Oppositional Defiant Disorder needs to considered. An Autism Disorder could not be formally ruled out, yet this boy does not appear to be Autistic." (Ex. 3.)

17. Dr. Munoz recommended that Claimant be further evaluated to confirm her preliminary diagnosis of ADHD, combined type and to rule out ODD. She also recommended that Claimant receive speech and language therapy.

SCHOOL DISTRICT ASSESSMENT 2008/2009

18. Claimant was referred to his local school district for evaluation of special education eligibility at three years of age. At the time, he was attending a private preschool. He was assessed over four days: October 28, November 17, December 11 and December 12, 2008. A report dated January 7, 2009 was generated by the assessment team. (Ex. 5.) Due to his young age, the assessment team used what they referred to as an "ecological assessment" consisting of records review, parent interviews, questionnaires, observations and a play based developmental assessment using the Battelle Developmental Inventory-Second Edition. The assessment was conducted at the school district and at the preschool. The assessment team also administered the first edition of ADOS, GARS-2; the Behavior Assessment System for Children, Second Edition (BASC-2) and Adaptive Behavior Assessment System-Second Edition (ABAS-II).

19. The assessment report references a November 6, 2007 Developmental Evaluation and a December 13, 2007 Communication Evaluation performed by HRC in which Claimant's mother referenced concerns about Claimant not talking and possible Autism. The summary of the evaluations notes cognition in the borderline range, below average receptive and expressive language with limited speech articulation skills, low average fine motor skills and high average gross motor skills. Attention issues are also noted. In HRC's report of its Communication Evaluation it diagnoses a severe expressive language impairment, a moderate to severe receptive language impairment and recommends monitoring attention skills and oral-motor speech articulation skills. Munoz's report summarized above, was also referenced in the summary.

20. The school district assessment recommended that the IEP team consider Claimant eligible for special education services for "unique education needs in the following areas: expressive language, receptive language, speech articulation/phonology, mild motor needs, attention and memory, perceptions and concepts." (Ex. 5.) The assessment report further provides:

> At this time, it is recommended that [Claimant] qualify for special education services under the primary eligibility of speech and language impairment with possible autistic-like characteristics. His speech and language difficulties are the main issues impacting his education at this time, and until he is provided with a consistent routine, and a globally accepted service model, the true answer to Is it autism? Or is it nothing at all? Will never be answered. Additional goals should be considered to encourage further motor skill development and participation.

(Ex. 5.)

21. The assessment team recommended speech and language services, discontinuation of his pacifier, toilet training and parent participation in the Autism support group. The assessment team made several references to there being a need for the parents to agree on interventions and structure for Claimant. The assessment team noted the parents differed greatly in their impressions of Claimant's development.

2009 PSYCHOLOGICAL ASSESSMENT

22. Claimant was briefly re-evaluated by Dr. M. Giselle Crow, Psy.D, an HRC affiliated psychologist, on February 24, 2009 when he was three years old. Claimant's mother brought him to the assessment. She informed the assessor that Claimant's father, with whom she was engaged in a custody dispute, did not believe that Claimant had any deficits. Dr. Crow conducted a brief psychosocial interview of Claimant's mother, reviewed records including testing results and an IEP from his local school district and conducted an informal observation of Claimant. Dr. Crow noted that previous Autism testing had been discontinued because Claimant's father was not in agreement with the testing and custody arrangements required his agreement for testing to continue.

23. According to Dr. Crow's records review, "[s]chool records indicate that [Claimant] has been observed to demonstrate poor imitation skills, however, he was observed to demonstrate both parallel and cooperative play with other children, with appropriate eye contact and without perseverative play." (Ex. 4.) She also noted:

> [t]he school psychologist also observed [Claimant] using the Autism Diagnostic Observation Schedule (ADOS). [Claimant] met the cut-off for Autism in Communication domain, and he met the cut-off of Autistic Spectrum Disorder in the Reciprocal Social Interaction domain. However, [Claimant] demonstrated appropriate play skills and did not demonstrate any stereotyped behaviors or restricted interests. The assessment team, comprised

> primarily of the School Psychologist and Speech Pathologist, determined in December 2008 that [Claimant} did demonstrate some Autistic-like behaviors but did not do so consistently and, in addition, he showed some appropriate play and social behaviors inconsistent with a diagnosis of Autism.

(Ex. 4.)

24. Dr. Crow noted that Claimant displayed some motor control issues with his tongue and frequently pressed his tongue to his teeth and forward on the roof of his mouth which forced him to keep his mouth open. She noted that he had "a high level of psycho motor agitation/hyperactivity" and did not display any repetitive or stereotyped movements. She also noted that he played appropriately with toys but was unable to sustain attention to any task for more than a few minutes. Dr. Crowe observed Claimant display joint attention with his mother and also attempt reciprocal communication. There was no display of echolalia or repetitive vocalizations. However, Claimant's vocalizations were unintelligible and it was not clear that the vocalizations were intended to be communicative.

25. Dr. Crowe recommended that Claimant receive the speech and language therapy offered in the school district's IEP prior to additional testing by HRC to rule out "Autistic Disorder vs. Attention Deficit/Hyperactivity Disorder (ADHD) or perhaps another difficulty." (Ex. 4.) The next sequential records in evidence are approximately five years later, after Claimant's mother's death in 2014, around the time that Claimant transitioned to a new school district in January of 2015.

IEP JANUARY 21, 2015

26. Claimant's January 21, 2015 IEP also provided for eligibility under the primary category of OHI and secondary of SLI. The IEP described Claimant's disability as affecting his involvement and progress in the general curriculum and participation in appropriate activities. In relevant part, it stated:

> [Claimant] exhibits a severe speech/language deficit which affects progress towards grade level expectations, attracts adverse attention, and interferes with his ability to communicate within the classroom setting. Fine motor skill deficits [e]ffect his written work in the academic setting. [Claimant] also has a medical diagnosis of ADHD. [Claimant] demonstrates attentional deficits and hyperactive behavior which is also interfering with his academic progress and having a negative impact on his learning. He has difficulty with time management, organizational skills, following directions, and task completion.

(Ex. 10.)

27. With reference to Communication Development, the IEP recorded Claimant's baseline as:

> [Claimant] is able to retell a story with visual support and moderate to maximum verbal prompting to improve recall with 60% accuracy. [Claimant] continues to have difficulty demonstrating the ability to make logical responses when

asked to predict what might happen next for a paragraph of information that might have several outcomes. He needs maximum verbal prompting. He is able to:
predict what might happen next with 55% accuracy with moderate to maximum verbal prompting, with moderate verbal cueing and visual support, Claimant can infer meaning from a short paragraph with 60% accuracy.

(Ex. 10.)

EDUCATION SPECIALIST REPORT 2017

28. Virginia Serrato-Jimenez, an education specialist for the school district, summarized Claimant's performance on standard tests and district assessments and drafted a report dated January 9, 2017 with a summary and recommendation based upon the test results. According to the report, Claimant scored in the intermediate range on the California English Language Development Test (CELDT). Claimant failed to meet the standard proficiency level in both English Language Arts and Math on the state Smarter Balanced Assessment administered in Spring of 2016 when he was 10 years old. Ms. Serrato-Jimenez administered the Woodcock Johnson IV Tests of Achievement to Claimant in English. According to Ms. Serrato-Jimenez's analysis, Claimant's math skills were average to advanced. Claimant has limited decoding skills. He is able to read high frequency words, some multisyllabic words with irregular spellings and struggled as the reading increased in difficulty. Claimant was able to read sentences at a fluency rate typical for same age peers. In writing, Claimant was noted "to print legibly, but to not always use punctuation at the end of sentences." In oral language, it was noted that Claimant "can follow simple one-step directions with one added detail, but encounters difficulty understanding directions that contain more

than one step in a correct sequence." She also noted his picture vocabulary skills are considered to be at a limited level and he appeared to have limited to average comprehension skills. Claimant was not able to repeat sentences he listened to, which she considered to be an indication of limited skills in this area. (Ex. 6.)

IEP JANUARY 11, 2017

29. Claimant's IEP dated January 11, 2017, provides that Claimant is eligible for special education services under the primary category of OHI based upon his diagnosis of ADHD and a secondary eligibility of SLI. The IEP noted his abilities affected his progress as follows:

> He demonstrates attention deficits and hyperactive behaviors which interfere with his academic progress and have a negative impact on his learning. He has difficulty with time management, organizational skills, following directions, and task completion. [Claimant] also exhibits speech/language deficits which negatively impact his access to the general education curriculum due to difficulties to: follow directions, understand oral information, speak and write grammatically correct sentences and participate in oral classroom discussions.

(Ex. 7.)

30. Claimant was placed in a general education sixth grade classroom with resource specialist support and speech and language therapy. With regard to "communication development," the IEP notes states:

> [Claimant] is able to conduct a conversation with developmentally and culturally appropriate pragmatic skills (i.e. eye contact, turn taking and topic relevant contributions) when speaking with an adult conversation partner. He demonstrates difficulties in pragmatic skills when working in a small group setting with peers. He struggles to introduce appropriate topics, use humor at the appropriate time, and giving and answering information appropriately. [Claimant] demonstrates difficulty with negotiating and responding appropriately to social situations. He is able to understand and utilize nonverbal supports appropriately, such as facial expression. Gestures, and voice intonation. Pragmatics (social language skills) is an area of suspected disability at this time.

(Ex. 7.)

31. On October 23, 2018, Deborah Lagenbacher, PH.D., SGPRC's staff clinical psychologist reviewed Claimant's case and determined that he was not eligible for SGPRC services. In her interdisciplinary note she writes:

> "the Psych ED eval (2014) indicated dx of ADHD, Academic skills were low average as was nonverbal cognition (CTONI-85). Results of testing in 2009 indicates some traits of autism, the IEP (2014) indicates eligibility for Special Ed due to OHI & S/L. 83% of the time he was in regular Ed. IEP (2011, 2010) indicates eligibility due to S/L.

> Psych Eval (2008) indicated language d/o and ADHD. School report (2011) indicates elevated score on CARS but he was eligible due to OHI. IEP (2014, 2015, 2017) indicates eligibility for Special Ed due to OHI and S/L.
>
> Based on this review, he has been assessed many times w/o dx of ASD or ID, cognition is low average. He would not be eligible for RC services."

(Ex. 13.)

32. According to Dr. Lagenbacher's testimony at the fair hearing, the various observations of autistic traits over time were not sufficient to constitute a diagnosis of Autism or to provide eligibility for SGPRC services under the category of Autism.

2019 SCHOOL DISTRICT EVALUATION

33. Claimant was evaluated on February 8, 2018 and April 11, 2018, when he was 12 years-old, by school psychologist Michelle Amoah because of concerns about his behavior with peers. At the time of this evaluation, Claimant had been a special education student with eligibility as OHI and SLI for nine years, since 2009. The IEP team determined that it was necessary to assess whether Claimant might also be eligible as a student with Autism or emotional disturbance. As part of the assessment, the school psychologist reviewed educational records, interviewed Claimant, his teacher, and his father. She also observed Claimant and administered the BASC-3, the Autism Spectrum Rating Scale (ASRS), the ABAS-III, and the Scales for Assessing Emotional Disturbance-Second Edition (SAED-2).

34. On the BASC-3, Claimant's scores indicated that he was "at-risk" in the areas of locus of control, social stress, anxiety, depression, relations with parents, self-esteem and self-reliance and "clinically significant" in the area of interpersonal relationships.

35. The ASRS is a rating scale used to determine the likelihood that a youth has symptoms associated with ASD. The teacher rating scale showed that Claimant has many behavioral characteristics similar to youth diagnosed with ASD. The ASRS showed very elevated scores in the areas of social/communication, which demonstrated his difficulty using verbal and non-verbal communication appropriately to initiate, engage in, and maintain social contact, and emotional reciprocity, which indicated his limited ability to provide an appropriate emotional response to another person in a social situation. The rating scales also showed Claimant has behavioral characteristics similar to youth diagnosed with ASD. He received "very elevated" scores in the areas of peer socialization (limited willingness and capacity to successfully engage in activities that develop and maintain relationships with other children), adult socialization (limited willingness and capacity to successfully engage in activities that develop and maintain relationships with adults), atypical language, repetitive spoken communication, unstructured, or unconventional, and stereotyped behaviors (engages in apparently purposeless and repetitive behaviors).

36. The SAED-2 is a rating scale used to aid in identifying students with emotional disturbance. On the SAED-2, Claimant's overall General Adaptive Composite, which measures performance across all adaptive skill areas, was below average. Claimant's father did not complete the SAED-2. His teacher filled out the SAED-2 rating scale and did not report any behaviors associated with emotional disturbance. The assessor opined that Claimant did not meet the criteria for emotional

disturbance. In her summary she highlighted the following features of ASD that Claimant had displayed:

> (1) Speech may have abnormal pitch, tone, rate, intonation, rhythm or stress (monotonous, inappropriate to context, question-like inflection at the end of a statement/echolalia).
>
> (2) There may be difficulties with comprehension and delays in pragmatics (difficulty integrating words with gestures and understanding humor).
>
> (3) Although a student may be interested in social interaction he/she may lack understanding of social conventions/lack of joint attention, using others as a tool, an unawareness of others, or abnormalities of mood or affect (absence or exaggeration of emotional reaction).
>
> (4) Immature play behaviors as compared to chronological age.
>
> (5) Resistance to or distress over trivial changes.
>
> (6) History of temper tantrums when child does not get his/her way.
>
> (7) Student may present as hyperactive/impulsive.

(Ex. 11.)

SGPRC 2019 EVALUATION

37. On March 12, 2019, SGPRC psychologist Jennie M. Mathess, Psy. D., conducted an assessment of Claimant. Dr. Mathess' assessment was limited to the question of whether Claimant was eligible for SGPRC's services as a person with Autism or intellectual disability. Dr. Mathess interviewed Claimant's father, administered the Autism Diagnostic Interview-Revised (ADIR) and the ADOS-2-Module 3 and the Vineland Adaptive Behavior Scales, Third Edition (Vineland-3).

38. Dr. Mathess noted Claimant's father stated Claimant was stubborn and argumentative when upset, watches movies/videos relatedly and when younger he lined up toys. She also noted Claimant is socially awkward and annoys peers. Dr. Mathess noted Claimant recently completed informal probation related to an incident in which he was obsessed with a girl at school and she claimed he touched her inappropriately. Dr. Mathess also noted from her review of Claimant's IEPs and Claimant's special education eligibility as OHI and SLI; severe emotional distress was ruled out as an eligibility category. She also noted prior assessors' findings of Claimant's elevated scores on the ACRS and his autistic traits.

39. Claimant's father completed the ADI-R interview. Mathess used a scored diagnostic algorithm and based upon this algorithm determined Claimant's father's responses scored at or above the necessary cutoff scores for Autism in the areas of communication and abnormality of development prior to 36 months. Mathess also determined the scores were below the necessary cutoff making a diagnosis of Autism unlikely in all other areas including reciprocal social interaction and restricted, repetitive and stereotyped patterns of behavior.

40. Dr. Mathess administered the ADOS-2 to Claimant to further assess him for ASD. His overall total score on the ADOS-2 was in the non-spectrum range, below the cutoff scores for an Autism spectrum or Autism classification. Mathess noted the following:

> His eye contact was appropriate and he directed a range of appropriate facial expressions toward the examine. His social overtures were often related to his own demands and interests, but some attempt to involve the examiner in these interests. In addition, [Claimant] was able to tell the examiner about a non-routine event and was able to give a reasonable account without specific probes. He also spontaneously used several descriptive gestures. He showed responsiveness to most social contexts and situations, but at times this was a bit limited. His speech included some spontaneous elaboration of his own responses for the examiner's benefit and provided leads for the examiner to follow. He engaged in some reciprocal social communication. The overall interaction between [Claimant] and the examiner was comfortable and appropriate to the context of the assessment. In addition, he showed pleasure in one interaction with the examiner. No restricted and repetitive behaviors were observed during the ADOS-2 administration.

(Ex. 15.)

41. The VABS-3 was administered with Claimant's father as the responder.

A. Claimant scored in the low range for communication/language functioning. It was noted that he does not use pronouns correctly, uses simple adjectives to describe things, writes simple sentences, reads and understands at a fourth grade level, although his is a sixth grader, and at times can interpret visual instructions. It was also noted that he does not edit or correct his own written work before handing it in, cannot tell about everyday experiences in detail, cannot say his complete home address correctly and does not follow two set directions.

B. In the independence/self-care domain, Claimant scored in the moderately low range in the daily living skills domain. It was noted that he understands what to do in dangerous situations and is careful using sharp objects. He stays close to his father in public places and is aware that physical exercise is good for people. Claimant brushes his own teeth and understands and follows community rules and laws. He does not carry or store money safely, and does not check to make sure he is given correct change after buying something. Claimant cannot take his own temperature, prepare a simple snack or meal or use household products.

C. In the socialization domain, Clamant scored in the low range. He plays interactively with one or more children for at least 30 minutes, tries to make friends with others his age, shares his toys or possessions when told to do so, controls angry or hurt feelings when he does not get his way, transitions easily form one activity to the next, stays on topic in conversation, and at times recognizes that the likes and dislikes of others may differ from his own. He does not maintain an acceptable distance between himself and others in social situations and in social situations, does not change his behavior depending on how well he knows the other person, does not think through the consequences of his actions before doing something, cannot

maintain friendships over time, and will not join in with a group when nonverbal cues indicate he is welcome.

42. Dr. Mathess concluded that "[t]he diagnoses of Autism Spectrum Disorder requires persistent deficits in social communication and social interaction, as well as the presence of restricted, repetitive patterns of behavior, interests and activities. Based upon his father's report, test data, and the examiner's observations, [Claimant] does not meet criteria for Autism Spectrum Disorder. While that is the case, history is significant for a Language Disorder and Attention-Deficit/Hyperactivity Disorder." (Ex. 15.)

43. Dr. Mathess recommended continue special education services, speech and language therapy, mental health services, continued work on development of self-help and daily living skills, and that Claimant be provided with opportunities to develop his strengths and interests.

SGRPC Eligibility Determination

44. On October 23, 2018, Deborah Lagenbacher, PH.D., SGPRC staff clinical psychologist reviewed Claimant's case and determined he was not eligible for SGPRC services. In her interdisciplinary note she wrote:

> the Psych ED eval (2014) indicated dx of ADHD, Academic skills were low average as was nonverbal cognition (CTONI-85), Results of testing in 2009 indicates some traits of autism, the IEP (2014) indicates eligibility for Special Ed due to OHI & S/L. 83% of the time he was in regular Ed. IEP (2011, 2010) indicates eligibility due to S/L.

> Psych Eval (2008) indicated language d/o and ADHD. School report (2011) indicates elevated score on CARS but he was eligible due to OHI. IEP (2014, 2015, 2017) indicates eligibility for Special Ed due to OHI and S/L.
>
> Based on this review, he has been assessed many times w/o dx of ASD or ID, cognition is low average. He would not be eligible for RC services.

(Ex. 13.)

45. On May 15, 2019, the SGPRC eligibility team met to consider Claimant's eligibility. At Claimant's request, the determination was deferred pending SGPRC's receipt of Dr. Stephen Meyer's April 2019 psychological evaluation. When the SGPRC received Dr. Meyer's report which contained a diagnosis of ASD, the report was forwarded to Dr. Lagenbacher for review. Dr. Lagenbacher discounted Meyer's diagnosis because it was based on observations and the use of the GARS-3 which she considered to be a screening tool and inferior to the ADOS and ADI-R administered by Dr. Mathess which Dr. Lagenbacher considered to be "the gold standard" for autism evaluation. (Testimony of Dr. Lagenbacher and Ex. 18.)

46. Dr. Lagenbacher's May 15, 2019 interdisciplinary note contained her assessment of Dr. Meyer's report and her opinion regarding Claimant's Autism diagnosis. She noted that there was no basis for a diagnosis of Intellectual Disability, but "significant differences between skill areas may point towards LD [learning disability]." She also noted "Screening for ASD was completed, with some discrepancies between parent and teacher, and parent reporting more concerns. DX of ASD provided based on screening measures. When tested by Dr. Mathess (3/19), she

used 'gold standard' measures (ADOS-2, ADI-R) to assess for ASD. DX of ASD was not substantiated." Dr. Lagenbacher testified at the administrative hearing and confirmed that she found Dr. Mathess' testing more convincing than that of Dr. Meyer, because of the testing instruments used by Dr. Mathess.

47. On May 16, 2019, the SGPRC eligibility team found Claimant not eligible for services and recommended that he continue with special education services, speech therapy, mental health services and increase his self-help and daily living skills.

Independent Assessments

APRIL 2019 INDEPENDENT ASSESSMENT BY DR. MEYER

48. Dr. Stephen Meyer is a clinical psychologist with 42 years of experience. He specializes in assessment and treatment of children and adolescents. Dr. Meyer gave thoughtful and insightful testimony at the administrative hearing. He took issue with SGPRC's denial of Claimant's eligibility based upon its reasoning that Dr. Mathess had used the ADOS-2 and ADI-R Which Dr. Lagenbacher had noted were the "gold standard" for Autism evaluation and he had used the GARS-3. According to Dr. Meyer, the emphasis should be on the symptoms and observations rather than the tool used to observe them. Dr. Meyer also opined that it is a generally accepted principle that the assessment and diagnosis of Autism or ASD should not be made based upon a single test and a variety of measures and clinical judgement are required to make such a diagnosis.

49. Dr. Meyer reviewed Claimant's records and ascertained that his milestones were somewhat mixed with some delays in speaking sentences and walking. Dr. Meyers administered the Wechsler Intelligence Scale for Children-V (WISC-V) and the GARS-3. Claimant received a full scale intelligence quotient of 80,

within the low average range. Dr. Meyers noted that the 14-point differential between Claimant's verbal comprehension and visual spatial indices is significant. He noted Claimant is a verbally dominant student with weaknesses in the area of visual spatial organization. The average working memory index indicates that he can repeat verbal and visual sequences in the normal range in contrast to his struggles with reasoned tasks. Dr. Meyers also noted the average score on the coding subtest of the Processing Speed Index indicates that he can learn and work a repetitive task within normal range.

50. On the GARS-3, Claimant's father and a teacher provided the ratings for the presence of various behaviors associated with ASD. The items are grouped into six scales: Restricted-Repetitive Behaviors, Social Interaction, Social Communication, Emotion Responses, Cognitive Style and Maladaptive Speech. Claimant received an Autism index standard score of 79 on the GARS-3. He noted that a score below 54 indicates that Autism is unlikely. Dr. Meyers noted that both raters identified "highly significant problems in the Restricted/Repetitive Behaviors, Social Communication and Cognitive Style." Claimant's father also identified "significant troubles in the area of Social Interaction and Maladaptive Speech" and "highly significant difficulties in the area of Emotional Responses", but the teacher did not see the same level of difficulty in those areas. Dr. Meyers diagnosed Claimant with ADHD (previously and independently established) and ASD, with a severity level of 2 requiring substantial support.

51. Dr. Meyers opined:

> When behavior ratings are compared to diagnostic criteria with the DSM5, [Claimant] meets criteria in all of 'Persistent deficits in social communication and social interactions across multiple contexts.' There are deficits in 'social-emotional

> reciprocity,' 'nonverbal communicative behaviors' and 'in developing, maintaining an understanding relationships.' He also meets criteria regarding 'restricted, repetitive patterns of behavior, interests or activities' in the areas of 'stereotyped repetitive motor movements' and 'insistence on sameness, inflexible adherence to routines.' In addition, the initial deficits were present early in development and have become more prominent with social demands with age and are not attributed to intellectual issues.

(Ex. 17.)

2019 INDEPENDENT NUEROPSYCHOLOGICAL EVALUATION

52. Paul Mancillas, Ph. D, Clinical Neuropsychologist, also assessed Claimant over four sessions on June 4, 11, 18 and 25, 2019, when he was 13 years old. Dr. Mancillas reviewed all of the assessments including Dr. Mathess' assessment report. Dr. Mancillas administered an extensive battery of tests including: a diagnostic Interview, the WISC-V, The Woodcock Johnson Tests of Achievement-IV (WJ-4), Trail-Making Test, A Developmental NEuroPSYcological Assessment (NEPSY-II), Wisconsin Card Sorting Test, Color Word Interference Test, Barkley's Deficits in Executive Function Scale, Tests of Everyday Attention for Children, Connors' Continuous Performance Test–III, Brown Attention Deficit Disorder Scales, Integrated Visual and Auditory-II Continuous Performance Test-II, Wide Range Assessment of Memory and Learning-II (WRAML-2); Rey Complete Figure Test, Achenbach Child Behavior Checklist, Child Neuropsychological History Questionnaire, Personality Assessment Inventory-A, Social Responsive Scale-II, Gilliam Autism Rating Scale-3 (GARS), ADOS-II, ASRS,

Autism Diagnostic Interview-R (ADIR-R). Dr. Mancillas also conducted an hour long interview with Claimant's father.

53. Dr. Mancillas found that Claimant was functioning in the borderline range of intellectual competency. He also found that Claimant struggles in areas of language processing that involve verbal reasoning and defining words. He opined that Claimant shows "inconsistency with visual spatial processing, as he struggles to make sense of social details. For the purpose of organization and integration." (Ex. 21.) Dr. Mancillas also opined that Claimant met the criteria for the diagnosis of ADHD, combined type.

54. Dr. Mancillas concluded:

> Overall, the results of the neuropsychological testing do provide strong support for the diagnosis of an Autism Spectrum Disorder. It is recognized from a neuropsychological standpoint that Autism is a developmental disorder of the frontostriatal system, which can involve ADHD, Obsessive Compulsive Symptoms, Social Anxiety, Tics as well as Depression. In its most extreme, Autism is witnessed, and [Claimant] certainly meets the criteria in accordance with the DSM-V criteria, in addition to being recognized from the neuropsychological standpoint. I would also yield the diagnosis of Attention Deficit Hyperacidity Disorder, most likely a Combined Presentation. Further assessing should be done to provide further understanding of the low score in reading comprehension as he in all probability has a Specific Learning Disorder in the area of Reading.

(Ex. 21.)

55. Dr. Mancillas' administration of the GARS and the ASRS provided results which indicated that Claimant was likely to have Autism. Both measures are ratings scales. Among the behaviors that were endorsed were flicking his fingers rapidly in front of his eyes, lunging and darting movements, repeating unintelligible sounds over and over, failure to initiate conversations and difficulty understanding when someone is teasing him. Additionally, it was noted that he misperceives social cues and talks excessively about a subject and shows intense, obsessive interest in specific intellectual subjects. He also overreacts to certain sensory experiences and shows a low tolerance for changes in routine.

56. Dr. Mancillas administered the ADOS-2. In that administration, he noted deficits in the areas of communication, reciprocal social interaction, stereotyped behaviors and restricted interest and the presence of stereotyped behaviors. Dr. Mancillas opined that the observations were sufficient to meet the cutoffs of the ADOS-2 for diagnosis of Autism. However, he did not provide the scoring for this instrument or the ADI-R or GARS. With respect to Claimant, he opines that he "does show the general problems associated with Autism, which include social problems including deficits in social interactions, social communication, as well as exhibiting repetitive behaviors. Obsessions are also very much a part of his psychological make-up, and was manifested with his misinterpretation of social cures regarding the obsession with the girl. This is surely understood as the misinterpreting that can come along with the Autism Disorder, in addition to recognition of impulsivity that is involved with the co-morbid presentation of ADHD." (EX. 21.) Dr. Mancillas made recommendations similar to that of the other psychological assessors that Clamant continue with therapy, medication, special education services and have opportunities

to interact with others in a structured social setting. He also recommended a detailed reading evaluation to determine why he struggles with reading comprehension.

57. Dr. Mancillas commented on the neuropsychological implications of Claimant's disabilities and the limitations of Dr. Mathess' assessment as follows:

> There is no question that the psychological assessment done by Dr. Mathess was very limited in its scope as it is very difficult, if not impossible, to yield a diagnosis in one session that lasted less than one hour, and with no recognition of the neurodevelopmental questions that need to incorporated, such as attention deficiencies, Obsessive-Compulsive symptoms, as well as the interaction that needs to be observed across different dates. Furthermore, relying on a single instrument is very problematic and certainly will raise the question of validity, as the over reliance on the ADOS-II is also consideration that there is over reliance on a subjective opinion that is attempting to use objective criteria. Unfortunately, the limitation is the fact that Autism is a very wide spectrum and is definitely not a homogenous disorder, so that to completely understand the Autistic condition is to recognize its uniqueness of brain function and that there are no two Autistic individuals who are alike. Nevertheless, [Claimant] does show the general problems associated with Autism, which include social problems including deficits in social interaction, social communication, as well as exhibiting repetitive behaviors.

> Obsessions are also very much a part of his psychological make-up, and was manifested with his misinterpretation of social cues regarding the obsession with the girl. This is surely understood as the misinterpretation that can come along with Autism Disorder, in addition to recognition of impulsivity that is involved with the co-morbid presentation of ADHD.

(Ex. 21.)

58. Dr. Mancillas questioned the objectivity of Dr. Mathess' assessment based upon her affiliation with SGPRC. Dr. Mathess and Dr. Mancillas did not testify at the administrative hearing and there was no evidence to support the assertion that Dr. Mathess had exhibited any bias in her assessment of Claimant.

LEGAL CONCLUSIONS

1. An administrative hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Act to appeal a contrary service agency decision. (Welf. & Inst. Code, §§ 4700-4716.) Parent requested a hearing, on Claimant's behalf, to contest Service Agency's proposed denial of claimant's eligibility for services under the Lanterman Act and therefore jurisdiction for this appeal was established.

2. Generally, when an applicant seeks to establish eligibility for government benefits or services, the burden of proof is on him to prove by a preponderance of the evidence that he meets the criteria for eligibility. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161; Evid. Code, §§ 115, 500.) "Preponderance of the evidence means evidence that has more convincing force than that opposed to it.

[Citations] . . . [T]he sole focus of the legal definition of 'preponderance' in the phrase 'preponderance of the evidence' is the quality of the evidence. The quantity of the evidence presented by each side is irrelevant." (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 324-325.)

3. In order to be eligible for regional center services, a claimant must have a qualifying developmental disability. Welfare and Institutions Code section 4512, subdivision (a), defines "developmental disability" as:

> [A] disability that originates before an individual attains 18 years of age; 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 an intellectual disability, but shall not include other handicapping conditions that are solely physical in nature.

4. In this case, the parties have limited this hearing to the issue of whether Claimant qualifies for regional center services as a person with Autism. To establish the diagnosis of Autism, the regional center must look to the criteria set forth in the DSM-5 to evaluate whether claimant met the criteria for a diagnosis of Autism Spectrum Disorder (299.0). The DSM-5 criteria are 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.

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.

Specify current severity:

Severity is based on social communication impairments and restricted repetitive patterns of behavior . . . .

[Italics and bolding in original.]

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 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 interest).

4. Hyper- or hyperactivity 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 of objects, visual fascination with lights or movement).

Specify current severity:

Severity is based on social communication impairments and restricted, repetitive patterns of behavior . . . .
[Italics and bolding in original.]

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 developmental 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.)

5. In this case, Claimant has established by a preponderance of the evidence that he has Autism Spectrum disorder. Claimant has met all prongs of the diagnostic criteria.

A. With respect to Prong A, Claimant has demonstrated persistent deficits and social interaction across multiple contexts. The record is replete with examples of Claimants deficits in social-emotional reciprocity, non-verbal communicative behaviors and deficits in developing, maintain and understanding relationships. As early as 2008, assessments revealed autistic-like behaviors. (FF 12-58.) Dr. Hampton described Claimant's challenges in detail giving examples of his interactions with others including standing next to others despite their indications that he was not welcomed, inappropriate contact with a female peer that led to his arrest, and a manifestation determination at the school district. Claimant's January 11, 2017 IEP also notes that Claimant struggles with pragmatic skills with peers, struggles to introduce appropriate topics, use humor at the appropriate time, and giving and answering information appropriately. (FF 29-32.) Dr. Mathess' administration of the VABS-3 also revealed deficits in the socialization domain including that he does not change his behavior depending on how well he knows the other person, does not think through the consequences of his actions before doing something, cannot maintain friendships over time, and will not join in with a group when nonverbal cues indicated he is welcome. Early assessments noted Claimant's poor eye contact. (FF 37-43.) The later assessments of Dr. Meyers and Dr. Hampton's testimony also described Claimant's poor eye contact. Dr. Meyers and Dr. Mancillas also opined that Claimant met this prong of the diagnosis. (FF 2-58.)

B. With respect to Prong B of the diagnostic criteria, Claimant has demonstrated restricted, repetitive patterns of behavior, interests, or activities, as manifested currently and by history. As noted by Dr. Meyer, Claimant's father reported that as a young child, Claimant lined his toys up and had continues to have food aversions. Dr. Hampton testified about Claimant's head flicking and the fluttery flapping motion he makes against his chest. Additionally, Claimant perseverates on words and has a ritual of researching and reading the same materials about wolves, Big Foot and one other animal each day. Dr. Meyer, Dr. Mancillas and early assessment reports also note his hyperactivity and hypersensitivity to textures and certain clothing and his distress about changes. (FF 2-58.)

C. With respect to Prong C, it is well documented that Claimant's deceased mother had concerns about his development from an early age and approached the HRC about her concerns. Assessments dating back to 2007, show symptoms present in the early development period. As Claimant has gotten older, his deficits have become more pronounced and noticeable and exceed both his learned strategies and limited capacities. This is supported by the testimony of Dr. Hampton and Dr. Meyer, the most recent school assessment, the manifest determination and the various assessment reports over time. (FF 2-58.)

D. With respect to Prong D, it is well-documented that Claimant's symptoms have impacted him in school and social settings. Historically, he has been bullied and ridiculed and has experienced little success in an academic setting. Most recently, his symptoms resulted in his arrest and a probation term. (FF 2-58)

E. With respect to Prong E, Claimant has been diagnosed with ADHD, but that diagnosis does not better explain his symptoms and according to Dr. Mancillas and Dr. Meyers and, is co-morbid with Autism. (FF 2-58)

6. To prove the existence of a qualifying developmental disability within the meaning of Welfare and Institutions Code section 4512, a claimant must show that he has a "substantial disability." Pursuant to Welfare and Institutions Code section 4512, subdivision (*l*)(1):

> 'Substantial disability' means the existence of significant 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.

7. Additionally, California Code of Regulations, title 17, section 54001 states, in pertinent part:

> (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.

8. Claimant's disability does constitute a substantial disability for him. His disability limits him in receptive and expressive language, learning and self-direction as demonstrated by his IEPs and as elaborated on in Dr. Hampton's testimony and the assessment reports of Mancillas and Meyer. Additionally, earlier assessments also revealed autistic traits and unresolved concerns about possible Autism.

9. No doubt, Claimant's profile is complex and the nuances of his ASD are not always apparent at first glance because he has benefitted from social skills training and interventions over the years. However, upon closer examination, those that spend

much time with him quickly understand that in addition to his long standing language issues, odd behavior, and obsessiveness, there are stereotypical behaviors and tics such as the flicking of his head with fingers behind his head, the fluttery flapping of a hand against his chest, the preoccupation with Big Foot and wolves and the obsession with particular words is consistent with high-functioning ASD. Additionally, there is his strange behavior with regard to wearing the same clothes, standing next to people, ignoring social cues and most recently, the disturbing sexual harassment and alleged battery of a female classmate that he liked. Claimant has been assessed with various Autism instruments over the years by various assessors. It is only after reviewing a detailed history of his behavior, interventions and assessment results and the informed testimony of people who deal with him on a regular basis that his ASD reveals itself. Dr. Mathess assessed Claimant with appropriate tools and gleaned useful information from her admittedly limited assessment. In most cases, the limited assessment is sufficient. Here, it was not. Additional information provided by Dr. Meyer's assessment was disregarded because the eligibility team was more impressed with the instruments used by Dr. Mathess than the measures used by Dr. Meyers and disregarded his findings and observations. While the ADOS is sometimes referred to by psychologists as the "Gold Standard" for diagnosis of Autism, it is also well known that no single measure should be the basis of diagnosis[2] and these tests are merely instruments to elicit information useful in a diagnosis. Here, the abundance of information dating back to 2007, provides plenty of data to support the ASD diagnosis and the factors supporting it as a substantially disabling condition are clear. Dr. Mathess' assessment while informative, is not dispositive in the face of conflicting and persuasive assessments of Dr. Meyer and Dr. Mancillas, both of whom are highly experienced and

[2] See Education Code section 56320, subdivision €

credentialed and the insightful testimony of Dr. Hampton who has spent the most time observing Claimant. Dr. Mathess did not testify in the proceeding so no additional insights can be gleaned from her assessment.

10. The preponderance of the evidence supports a finding that claimant is eligible to receive regional center services under the category of Autism. (Factual Findings 1-59 and Legal Conclusion 1-10.)

ORDER

Claimant's appeal is granted. Claimant is eligible for regional center services under the category of Autism.

DATE:

GLYNDA B. GOMEZ
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.