BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

vs.

ALTA CALIFORNIA REGIONAL CENTER, Service Agency

Agency Case No. CS0009801

OAH No. 2023100265

DECISION

Hearing Officer Coren D. Wong, an Administrative Law Judge with the Office of Administrative Hearings, State of California, heard this matter by videoconference on November 6, 2023, from Sacramento, California.

Claimant was represented by his mother.

Robin Black, Legal Services Manager, represented Alta California Regional Center (ACRC), the service agency.

Evidence was received, the record closed, and the matter submitted for decision on November 6, 2023.

ISSUE

Is claimant eligible for regional center services under autism spectrum disorder (ASD)?

FACTUAL FINDINGS

Background

1. Claimant is a 15-year-old boy. He lives in the family home with his mother and older sister. He was temporarily placed in foster care for approximately one year in 2012 due to allegations of physical abuse by his father and his mother's alcoholism. Claimant's father has been absent from his life for the last 10 years. He attends a public high school, where he is a sophomore.

2. Claimant was born full-term. He weighed seven pounds and was 22 inches long. His mother received appropriate prenatal care. Claimant was not exposed to any illicit or toxic substances in utero. There is no history of infections or difficulties during pregnancy.

3. Claimant began crawling at four months, and he began walking at eight months. He first began speaking when he was two years old, and he did not begin forming complete sentences until he was three or four years old. He was toilet trained by approximately four years of age.

History of Mental Health Treatment

4. Claimant has a significant history of self-harm, suicidal ideations, and homicidal ideations. He was admitted to Fremont Hospital on December 14, 2021,

because he was a danger to himself and others. He was involuntarily held for seven days. His diagnoses upon discharge were: (1) major depressive disorder, recurrent, severe; (2) rule out ASD; and (3) rule out post-traumatic stress disorder (PTSD).

5. Claimant was referred to Stanford Sierra Youth & Families (Stanford) for ongoing mental health treatment upon his release from Fremont Hospital. Modesta Barajas was a social worker at Stanford who performed a child mental status exam of claimant on December 30, 2021. She holds a master's degree in social work.

6. Ms. Barajas assessed claimant's speech and language to be clear and effective. His motor activity/muscle tone and strength, mood and affect, thought process and formation, and self-regulation were within normal limits for his age. He displayed appropriate judgment. His insight was fair.

7. Two weeks later, Richard Mancina, M.D., a child and adolescent psychiatrist, performed an initial psychiatric assessment of claimant. During the assessment, claimant was cooperative, had adequate energy, and displayed appropriate psychomotor behavior. His motor activity was calm, and he showed no aggressive or compulsive behaviors. His eye contact was evasive. His speech and language were age-appropriate in terms of quality of articulation, quantity, and expressive language. His affect was age-appropriate and mood within normal range. He appeared anxious. His thought process and form were logical, linear, and age appropriate. He showed fair judgment and insight.

8. Dr. Mancina's primary diagnoses were: (1) major depressive disorder, recurrent, moderate; (2) ASD, mild, provisional; (3) history of PTSD; and (4) history of physical and emotional abuse. He did not perform any diagnostic testing.

9. Claimant was admitted to Santa Rosa Behavioral Healthcare Hospital on January 1, 2023, for five days. His discharge diagnosis was major depressive disorder. Three weeks later he sought treatment from Points Community Programs' Mental Health Urgent Care for increased depression with suicidal ideations. He was given diagnoses of PTSD and ASD. Claimant was admitted to UC Davis Medical Center five months later. His primary diagnosis upon discharge was major depressive disorder, recurrent, unspecified. His secondary diagnoses were ADHD, combined type, and ASD.

10. Claimant's most recent psychiatric hospitalization was July 15-25, 2023. He was involuntarily admitted to Sutter Center for Psychiatry due to increased depression and suicidal ideations. His diagnoses upon discharge were: (1) ADHD, combined type; (2) trauma and stressor-related disorder; (3) unspecified mood (affective) disorder; and (4) developmental expressive language disorder. Claimant continues to receive treatment at Stanford.

Application for Regional Center Services

APPLICATION

11. Claimant's mother completed an intake application at ACRC to determine claimant's eligibility for regional center services under ASD on January 18, 2022. Claimant's mother noted that her son had a "hard time communicating, [was] always looking down [and] stuttering," and had a "hard time sitting still."

INTAKE AND SOCIAL ASSESSMENT

12. Rebekka Moreno has been an intake specialist with ACRC for approximately one and a half years. She conducted an intake interview with claimant and his mother. She subsequently performed a social assessment by videoconference

on January 10, 2023. Ms. Moreno's assessment was based on her observing and interacting with claimant, interviewing him and his mother, and reviewing records his mother submitted.

13. Claimant and his mother joined the videoconference from their home but on separate computers in different rooms. Claimant responded to Ms. Moreno's greeting by exchanging common pleasantries. A few moments later, he went out of view of his camera without warning but quickly returned.

14. Throughout the interview, claimant "appeared stoic, with no facial expressions, and his tone was flat." He answered Ms. Moreno's questions but did not volunteer additional information. He was asked about his upcoming birthday, and he explained he wanted a new amplifier for his guitar because the "one I have right now sucks."

15. Claimant was constantly moving and looking around during the interview. He eventually apologized for doing so and explained he was packing his belongings to get ready for school. He did not ask Ms. Moreno any questions. The interview ended with claimant's mother asking him to rejoin the meeting, him appearing on camera from the same computer as his mother, and him responding to Ms. Moreno saying "goodbye" by waiving and giving a head nod.

16. Claimant's mother described claimant's family, development, and mental treatment histories as described above. She described him as "super articulate and very smart." She also said he becomes overwhelmed and "hyper-fixated" when doing something in which he has a strong interest. For instance, he used to be passionate about video games and would talk excessively about them. Now, he enjoys playing the guitar and discussed that topic at length with Ms. Moreno. Claimant did not transition

very well from one activity to another. He sometimes had a "mental breakdown" and was unable to "function" when switching from a more enjoyable activity to a less enjoyable one. He was disorganized and required constant reminders.

17. Claimant's mother described claimant as having difficulty with interpersonal skills, such as reading other people's emotions and feelings. He had friends, but often pushed them away. He often responded inappropriately to common pleasantries, such as by explaining he was "absolutely horrible" when asked how he was doing. He often interprets statements literally, which caused him to avoid initiating interactions and socializing with others.

18. Claimant performed all activities of daily living independently, although he required reminders to bathe and brush his teeth. He dressed and undressed without assistance. However, he did not enjoy picking out his clothes and often slept in the same clothes he wore during the day. His mother often had difficulty convincing him to change his clothes the following morning.

19. Claimant understood simple conversations, but sometimes misunderstood the speaker's intended meaning because he interpreted things literally. Other times, he required things to be repeated using different words. Claimant could follow two-step instructions, but additional steps could be overwhelming and led to him "flipping out." Though he answered questions, he generally did not engage in reciprocal conversations. He was more likely to engage in reciprocal conversations about topics he found interesting.

20. Claimant was often inflexible with change and had meltdowns with problem-solving because he did not know what to do. He liked meeting new friends, but he also tended to push them away. When he was younger, he often was unaware

when children were being mean to him. Now, he was better able to defend himself. His "emotional flare-ups" sometimes lead to teasing.

21. Based on her social assessment, Ms. Moreno concluded a formal psychological assessment was appropriate. She referred claimant to Morgen Aita, Ph.D., a clinical psychologist with whom ACRC contracts for psychological assessments. Ms. Moreno provided Dr. Aita with all the documents claimant's mother provided during intake, as well as a copy of her social assessment.

PSYCHOLOGICAL EVALUATION

22. Dr. Aita assessed claimant for eligibility for regional center services under autism spectrum disorder (ASD) and intellectual development disorder (formally known as intellectual disability (ID)). The assessment consisted of a review of records, clinical interview, and clinical observations. The following diagnostic tests were performed: (1) Adaptive Behavior Assessment System, Third Edition (ABAS-3), Parent Form; (2) Autism Diagnostic Observation Schedule, Second Edition (ADOS-2), Module 3; (3) Childhood Autism Rating Scale, (CARS 2-HF) High Function Version; and (4) Wechsler Intelligence Scale for Children-Fifth Edition (WISC-V).

23. Claimant and his mother provided historical information similar to that discussed above. They added that he was a freshman in high school at the time of evaluation. He was receiving special education services pursuant to an Individualized Education Program (IEP) under the classification of emotional disturbance (ED). He received speech therapy from 2012 through 2018 under the classification of speech and language impairment (SLI). Services were terminated once he accomplished all his identified goals.

24. As a young child, claimant did not spontaneously share things of interest with others. As he got older, however, he enjoyed sharing his music and art. He also expressed pride in his accomplishments. He was "in his own little world" when a young child and frequently talked to himself. He stopped such behaviors once he reached puberty.

25. Claimant engaged in social interaction more as a young child. He did not necessarily seek out other children at the park, but he played with them when they approached him. He remembered "significant imaginative play" with others and described "playing pirates and other imaginative play scripts."

26. Claimant continues to want to interact with peers. He has no difficulty starting conversations with people with whom he is familiar, but he is uncomfortable talking to strangers. However, he expressed a willingness to do so to satisfy a personal need or desire.

27. Claimant described a sensitivity to sounds, especially at school. However, he explained his sensitivity "is better explained by his fear of not being in control and overwhelming feelings of nervousness."

28. Dr. Aita described claimant as having "a restricted affect overall" but "engaging throughout the evaluation." Claimant showed inconsistent eye contact. He explained that eye contact made him uncomfortable. However, Dr. Aita noticed claimant maintained appropriate eye contact on several occasions. Claimant was able to hold regular conversations, "and he demonstrated a strong level of insight."

29. Claimant sat patiently while his mother provided historical information, although there were certain topics about which he became quite upset and verbally lashed out. He was quickly able to self-soothe and "return to a relaxed state." Claimant

was open and honest when providing historical information, which was consistent with his mother's.

30. Claimant transitioned from the interview to diagnostic testing without any difficulty. He "appeared interested and put forth his best effort and his performance [was] considered an accurate representation of his abilities."

31. Dr. Aita documented his psychological assessment in a written report. He provided the following criteria for diagnosing ASD as specified in the *Diagnostic and Statistical Manual of Mental Disorders: DSM-5-TR*/American Psychiatric Association (*DSM-5-TR*):

> A. Persistent deficits in social communication and social interaction across multiple contexts, as manifested by all of 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 contact; to difficulties in sharing imaginative play or in making friends; to absence of interest in peers.

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

1. Stereotyped or repetitive motor movements, use of objects, or speech (e.g., simple motor stereotypies, lining up toys or flipping objects, echolalia, idiosyncratic phrases).

2. Insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior (e.g., extreme distress at small changes, difficulties with transitions, rigid thinking patterns, greeting rituals, need to take same route or eat same food every day).

3. Highly restricted, fixated interests that are abnormal in intensity or focus (e.g., strong attachment to or preoccupation with unusual objects, excessively circumscribed or perseverative interest).

4. Hyper-or hyporeactivity 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 for movement).

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

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

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

(*Id.*, at pp. 56–57.)

32. Dr. Aita concluded claimant did not demonstrate deficits in social-emotional reciprocity. Dr. Aita explained claimant "was able to build upon [Dr. Aita's] topics while sharing his own perspective, adding to the substance of the conversation without dominating it." Additionally, claimant "readily shared his emotions and was able to direct affect appropriately to [Dr. Aita]."

33. Nor did claimant show deficits in developing, maintaining, and understanding relationships. Though both he and his mother reported he has difficulties maintaining friendships, he "demonstrated adequate social skills" during Dr. Aita's assessment. Furthermore, claimant behaved appropriately and successfully adapted "to the various social situations presented . . . throughout testing."

34. Although claimant demonstrated deficits in nonverbal communicative behaviors, he showed no restricted, repetitive patterns of behavior, interests, or activities in any of the four categories identified in the *DSM-5-TR*. Neither claimant nor his mother reported, and Dr. Aita did not observe, any insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior, or any highly restricted, fixated interests that were abnormal in intensity or focus.

35. Dr. Aita determined claimant's strong interest in music and guitars "to be more of a hobby rather than a restricted or repetitive interest as [he was] able to engage with other activities and topics without perseverating on his own preferences." Claimant's mother's reports of sensory sensitivities appeared situational because his level of discomfort was "generally mediated by his perceived level of control of the stimulus." Dr. Aita concluded claimant's "feelings of overstimulation and being overwhelmed [stemmed] from his perceived lack of control," rather than a sensory sensitivity.

36. Dr. Aita concluded claimant did not meet the diagnostic criteria for ASD or ID. He reasoned:

> [Claimant's CARS 2-HF] profile indicates Minimal-to-no Evidence of symptoms related [to] ASD with no significant deficits in social affective functioning or stereotyped and

repetitive behaviors. Furthermore, [his] performance on the ADOS-2 (Total Score = 4, Comparison Score = 2) was below diagnostic threshold for a diagnosis of ASD. [He] demonstrated adequate conversational skills, strong social communication skills, and did not engage in any restrictive or repetitive behaviors during the contact period. As such, an ASD diagnosis is not considered appropriate.

Regarding a diagnosis of Intellectual Developmental Disorder, [claimant] performed in the Average range on the WISC-V (FSIQ = 92; GAI = 98) which is well above the delayed range. [Claimant's mother] reported that [claimant's] adaptive skills are in the Extremely Low range (GAC = 65) which is within the Delayed range. Based on [his] history and current presentation, it is in this examiner's opinion that he does not meet criteria for a diagnosis of Intellectual Developmental Disorder (Formerly referred to as Intellectual Disability in DSM-5).

ELIGIBILITY TEAM

37. Dr. Aita provided his written report to Ms. Moreno. Upon receipt of the report, Ms. Moreno convened an eligibility team to review her social assessment, Dr. Aita's psychological evaluation, and all records claimant's mother provided during the intake process. In addition to Ms. Moreno, the team included staff psychologist Catarina Juan Fishman, Psy.D., staff physician Kate Milroy, M.D., and psychological associate Sparkle Crenshaw, Psy.D.

38. The eligibility team reviewed all the records to determine whether claimant was eligible for regional services under any of the five qualifying developmental disabilities: ASD, ID, a disabling condition closely related to ID or requiring treatment similar to that required by one with ID (Fifth Category), cerebral palsy (CP), or epilepsy. The team concluded he was not.

NOTICE OF ACTION AND APPEAL

39. On August 23, 2023, Ms. Moreno drafted a Notice of Action (NOA) notifying claimant's mother of ACRC's determination that claimant was not eligible for regional center services, which was mailed two days later. Claimant's mother timely appealed the NOA. She argued:

> [Claimant] has an IEP at his school based on an autism diagnosis as well as teachers and faculty that all say autism. Alta denied he is in the spectrum based on their psych evaluation. Their evaluation was given while my son is currently medicated and treated for autism.

Additional Evidence

SCHOOL RECORDS

40. While ACRC was evaluating claimant's eligibility, the school district in which he is enrolled evaluated his eligibility for special education services. He previously qualified for special education services in another school district under SLI and received language and speech services. On May 16, 2018, he was determined no longer eligible for services because he had met, and in fact exceeded, all treatment goals.

41. Thomas Sisterson, M.S., is a school psychologist with claimant's school district. He holds a pupil personnel services credential with a specialization in school psychology from the California Commission on Teacher Credentialing. He does not hold any licenses issued by the California Board of Psychology or the Board of Behavioral Sciences. He earned a master of science degree.

42. Mr. Sisterson performed a psychoeducational evaluation of claimant on March 20, 2023. Claimant was referred for evaluation based on concerns about self-harm, poor academic progress, and habitual truancy. The evaluation consisted of Mr. Sisterson's review of relevant school records, interview of claimant and his mother, and observations of claimant.

43. Claimant was administered the following tests: (1) Cognitive Assessment System, Second Edition (CAS-2); (2) Bender Visual-Motor Gestalt Test, Second Edition (Bender II); (3) Behavior Assessment System for Children, Second Edition (BASC-3); (4) Vineland Adaptive Behavior Scales, Third Edition (Vineland™-3); (5) Autism Spectrum Rating Scales (6–18 Years) Parent Ratings (ASRS); and (6) The Woodcock-Johnson Tests of Achievement (WJIV).

44. Claimant's and his mother's interviews did not reveal any information not previously discussed. Mr. Sisterson was unable to observe claimant in the classroom setting due to claimant's erratic attendance at school. He observed claimant during testing and noted that claimant "presented with flat affect and his conversational proficiency seemed atypical for [his] age/grade level as speech was monotone and minimal."

45. Claimant's performance on the WJIV showed he was on grade-level and had no deficits in achievement, and his results on Bender II revealed no signs of a lack

of maturity in visual-motor perception. His results on the CAS-2 revealed an auditory processing deficit. His performance on the BASC-3 supported a finding of eligibility under ED and educational autism, and his results on Vineland™-3 and ASRS were consistent with others found eligible under educational autism.

46. Mr. Sisterson concluded claimant was eligible for special education services under ED. He explained:

> [Claimant] has a number of diagnosis (from outside agencies) that include: Autism, Major Depressive Disorder, and PTSD. Testing determined that each was evident both at school and home. Assessment findings determined these issues had the greatest impact on [his] educational benefit. [Claimant's] performance on assessments was similar to students who are considered to have auditory processing deficits. Overall, there are many ways that he could qualify for Special Education Services. However, eligibility for Special Education is based on Special Education Code which has a number of qualifiers and exclusions that must be considered. For instance, a Specific Learning Disorder must be ruled out if an Emotional Disturbance exists as the main reason a student's educational benefit is impacted.
>
> Initially data supported that [claimant] could be eligible for special education under three areas: Emotional Disturbance, Autism, and Other Health Impairment. He did not qualify for a Specific Learning Disability (despite a likely auditory

processing deficit) as his achievement scores were age appropriate.

After much consideration, it appears that [claimant's] emotional problems have the greatest impact to his educational benefit as they appear to be, mostly, responsible for his poor attendance and self-harm. Additionally, any services and supports [he] may need can be provided under his eligibility for an Emotional Disturbance. Therefore, the IEP team may consider that [claimant] meets eligibility for Special Education under the category of Emotional Disturbance; at this time, no secondary area of eligibility would be beneficial and/or necessary.

47. Mr. Sisterson provided the following rationale for not finding claimant eligible under educational autism:

While data supports that [claimant] has persistent impairments in social communication and social interaction (as per Title 5 of California Education Code (CCR Title 5, Div 1, Ch 3, Art 3.1. sect 3030(b)(1)), it appears that his emotional dysregulation has greater impact on his educational benefit than does his autism. Therefore, the IEP team may consider that eligibility under and Emotional Disturbance remains a better approach to supporting him then does eligibility under educational Autism as [his] primary issues appear to be related to ED. While students

> with pervasive developmental disorders are included under the disability category of autism, eligibility for Educational Autism does not apply if the child's educational performance is adversely affected primarily because they have a primary eligibility of an Emotional Disturbance.

DR. MANCINA'S JULY 6, 2023 LETTER

48. On July 6, 2023, Dr. Mancina wrote a letter confirming he has treated claimant continuously since he was first referred to Stanford. He questioned Dr. Aita's opinion that claimant has "'Minimal-to-no Evidence of symptoms related (to) ASD with no significant deficits in social affective functioning or stereotyped and repetitive behaviors.'"

49. Dr. Mancina theorized that the discrepancy between Dr. Aita's clinical observations and claimant's test results were due to the medication he takes to control aggressive emotional outbursts. Dr. Mancina opined that "taking [claimant] off his medication so he could be tested in an unmediated [*sic*] state would . . . produce a very different set of observed behaviors." His observations of claimant while unmedicated revealed poor social reciprocity, management of emotions, and ability to read other's emotional cues. Additionally, claimant "generally reverts to repetitive maladaptive responses." Dr. Mancina was in favor of a second evaluation of claimant for ASD.

BEST PRACTICES FOR SCREENING, DIAGNOSING, AND ASSESSING ASD

50. In 2002, the California Department of Developmental Services (DDS) issued a publication entitled *Best Practice Guidelines for Screening, Diagnosis and Assessment* (*Best Practice Guidelines*). The publication was developed as part of DDS's

ASD initiative "to establish policy and best practice in assessment and intervention, and to establish public and private partnerships to address the needs of persons with ASD."

51. Characterizing ASD as "an extremely heterogeneous syndrome of behaviors that can diverge widely in terms of symptom expression and degree of impairment," the *Best Practice Guidelines* suggest that only "clinicians with sufficient training and experience [working with those with ASD] make diagnoses of ASD." Additionally, "state licensure in a medical or mental health field is required to render a diagnosis of autism."

DR. JUAN FISHMAN'S TESTIMONY

52. Dr. Juan Fishman earned a Bachelor of Science in Business Administration from the University of California, Riverside. She obtained her Master of Science in Counseling Psychology from Mount St. Mary's College, and her Master of Arts in Clinical Psychology from the California School of Professional Psychology at Alliance International University, Los Angeles. Dr. Juan Fishman received her Doctor of Psychology in Clinical Psychology from the same institution.

53. Dr. Juan Fishman completed a pre-doctoral psychology internship with the Child Trauma Research Program at the University of California, San Francisco. She completed a post-doctoral psychology residency at WestCoast Children's Clinic. The California Board of Psychology issued her a psychology license, and she has been a staff psychologist with ACRC since January 2022. She has prior experience as the clinical director at the Children's Receiving Home of Sacramento and as a program manager for GIRLS/Institutions/Camp Glenwood StarVista.

54. Dr. Juan Fishman spends approximately 80 to 90 percent of her time evaluating ACRC's clients for eligibility for regional center services. She estimated she performs 50 to 60 evaluations each month. She is familiar with the eligibility criteria for receiving regional center services. She relies heavily on the *DSM-V-TR* when performing her evaluations. Dr. Juan Fishman is familiar with the diagnostic criteria for ASD.

55. ACRC's eligibility team evaluated claimant's eligibility under all five qualifying developmental disabilities. As the psychologist member of the team, Dr. Juan Fishman was primarily responsible for evaluating eligibility under ASD, ID, or Fifth Category. As the physician member of the team, Dr. Milroy was primarily responsible for evaluating eligibility under CP or epilepsy.

56. The eligibility team received and reviewed Ms. Moreno's social assessment, Dr. Aita's psychological evaluation, and all records claimant's mother provided during the intake process. Those records included Mr. Sisterson's psychoeducational evaluation and claimant's mental health records, including Dr. Mancina's initial psychiatric assessment and July 6, 2023 letter.

57. Dr. Juan Fishman is familiar with Dr. Aita professionally because ACRC has used him in the past to perform psychological evaluations. She opined that Dr. Aita's psychological evaluation included a thorough review of pertinent records, an extensive interview of claimant and his mother, and standard diagnostic assessments. Dr. Juan Fishman found Dr. Aita's evaluation credible and persuasive. She concurred with his opinion that claimant demonstrated good communication and social interaction skills. Dr. Juan Fishman concluded claimant was not eligible for regional center services under ASD or ID. She opined mental health challenges better account for his behaviors.

58. Dr. Juan Fishman did not find Mr. Sisterson's psychoeducational evaluation persuasive evidence that claimant met the diagnostic criteria for ASD provided in the *DSM-V-TR*. She noted that Mr. Sisterson is a school psychologist, and his role was to determine claimant's eligibility for special education services. The criteria for qualifying for special education services are different than those for qualifying for regional center services. And, though it is possible for someone to qualify for both, qualifying for one does not automatically qualify him for the other.

59. Dr. Juan Fishman saw prior diagnoses of ASD during her review of claimant's mental health records. However, she did not see any records of formal assessments supporting such diagnoses. Additionally, Dr. Juan Fishman was unclear after reading Dr. Mancina's records whether he ever formally diagnosed claimant with ASD. There was no evidence of formal testing, and she could not determine how he concluded claimant was demonstrating sufficient symptoms to support an ASD diagnosis rather than a mental health crisis.

CLAIMANT'S MOTHER'S TESTIMONY

60. Claimant's mother explained claimant was speech delayed, and she suspected ASD at the time. However, he lived with an aunt at the time, and he was not evaluated for ASD or any other developmental disability.

61. Growing up, claimant was a "sweet," "sensitive" child who cried easily. He was "obsessed" with stuffed animals and would line them up on his bed. When he reached puberty, he became more "aggravated," "hostile," and "angry in general." Claimant's mother is convinced it was due to maladaptive social skills.

62. Claimant's mother opined that claimant demonstrates repetitive behaviors through his intense focus on things of interest and inability to switch

between tasks. He grew up "extremely fixated" and "hyper-focused" on video games. As he became older, claimant has become "obsessed" with guitars. He will break them apart just to put them back together.

63. Claimant's mother expressed frustration over the process of qualifying claimant for regional center services. She questioned the reliability of Dr. Aita's opinions over others who have diagnosed claimant with ASD because the others have spent more time observing claimant's interactions with people.

64. Claimant's mother believes that everyone is pointing fingers at everyone else, instead of focusing on helping claimant. His mental healthcare providers and the school district concluded he has ASD and should qualify for regional center services. ACRC concluded he does not qualify under ASD, and mental health challenges better account for his struggles.

Analysis

65. Claimant has the burden of demonstrating by a preponderance of the evidence that he qualifies for regional center services. His mother applied for services solely under ASD. Therefore, claimant must show it is more likely than not that he is eligible for services under ASD.

66. Claimant did not meet his burden. Mr. Sisterson is not qualified as a school psychologist to make the necessary diagnosis of ASD. He is licensed by neither the Board of Psychology nor the Board of Behavioral Sciences. Additionally, he concluded claimant qualified for special education services under ED because his emotional dysregulation had the biggest impact on his academic performance. Therefore, Mr. Sisterson explained he was precluded from qualifying claimant under educational autism.

67. The *DSM-V-TR* defines "autism" differently than the Individuals with Disabilities Education Act (20 U.S.C. § 1431). (See 34 C.F.R. § 300.8(c)(1)(i) ["Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance"].) Dr. Juan Fishman persuasively explained the *DMV-V-TR's* definition applies when determining eligibility for regional center services.

68. None of claimant's mental health records constitute persuasive evidence of claimant's eligibility for regional center services under ASD. Fremont Hospital's diagnosis was to "rule out" ASD. Dr. Mancina's diagnosis of ASD was only "provisional." Indeed, he did not write in his July 6, 2023 letter that claimant has been diagnosed with ASD. He wrote, "I support a second evaluation or appeal, if that is required, to reassess [claimant] given this additional information that may not have been apparent in the records received from Stanford Sierra Youth and Families."

69. Dr. Mancina dropped "provisional" from his diagnosis on a Diagnostic Summary Form of the same date as his initial psychiatric examination. But his examination did not include supporting diagnostic assessments. Similarly, records from the Mental Health Urgent Care and UC Davis did not include formal assessments supporting diagnoses of ASD.

70. On the other hand, ACRC presented persuasive evidence claimant is ineligible for regional center services under ASD. Dr. Aita performed a thorough psychological evaluation. His conclusions were supported by diagnostic tests commonly used when evaluating someone for ASD. He applied the diagnostic criteria for ASD outlined in the *DSM-V-TR*. Dr. Juan Fishman credibly explained why she found

Dr. Aita's conclusion more persuasive than any of those presented in claimant's records.

LEGAL CONCLUSIONS

Applicable Burden/Standard of Proof

1. Claimant has the burden of proving he is eligible for regional center services under ASD. (*In re Conservatorship of Hume* (2006) 140 Cal.App.4th 1385, 1388 [the law has "a built-in bias in favor of the status quo," and the party asking a court to do something has the burden "to present evidence sufficient to overcome the state of affairs that would exist if the court did nothing"].) The applicable standard of proof is preponderance of the evidence. (Evid. Code, § 115.) This evidentiary standard requires claimant to produce evidence of such weight that, when balanced against evidence to the contrary, is more persuasive. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.) In other words, claimant must prove it is more likely than not he is eligible for regional center services under ASD. (*Lillian F. v. Super. Ct.* (1984) 160 Cal.App.3d 314, 320.)

Applicable Law

CARE FOR THE DEVELOPMENTALLY DISABLED

2. Under the Lanterman Act (Welf. & Inst. Code, § 4500 et seq.), the State of California accepts responsibility for persons with developmental disabilities and pays for the majority of the "treatment and habilitation services and supports" to enable such persons to live "in the least restrictive environment." (Welf. & Inst. Code, § 4502, subd. (b)(1).) The State Department of Developmental Services is charged with

implementing the Lanterman Act, and is authorized to contract with regional centers to provide the developmentally disabled access to the services and supports needed. (Welf. & Inst. Code, § 4620, subd. (a); *Williams v. State of California* (9th Cir. 2014) 764 F.3d 1002, 1004.)

ELIGIBILITY FOR REGIONAL CENTER SERVICES

3. Eligibility for regional center services is dependent on the person having a developmental disability, that originated before his 18th birthday, is likely to continue indefinitely, and constitutes a substantial disability. (Welf. & Inst. Code, § 4512, subd. (a)(1); Cal. Code Regs., tit. 17, § 54000, subd. (b).) Under the Lanterman Act, developmental disability includes ID, CP, ASD, epilepsy, and the Fifth Category. (Welf. & Inst. Code, § 4512, subd. (a)(1); Cal. Code Regs., tit. 17, § 54000, subd. (a).)

4. Developmental disability does not include disabling conditions "that are solely psychiatric in nature." (Cal. Code Regs., tit. 17, § 54000, subd. (c)(1).) Nor does it include conditions that are "solely learning disabilities." (*Id.*, § 54000, subd. (c)(2).)

5. A "substantial disability" is one that causes the person "significant functional limitations in three or more of the following areas of major life activity: "self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency. (Welf. & Inst. Code, § 4512, subd. (l)(1) (A)–(G).)

SPECIAL EDUCATION SERVICES

6. The Individuals with Disabilities Education Act (IDEA, 20 U.S.C. § 1400 et seq.) and state law give disabled children the right to a free appropriate public education. (20 U.S.C. § 1400(d); Ed. Code, § 56000.) The IDEA expressly defines a child

with ASD as a disabled child if, "by reason thereof, [he] needs special education and related services." (20 U.S.C. § 1401(3) (A)(i), (ii); 34 C.F.R. § 300.8(a)(1).) State law refers to "individuals with special needs" and incorporates the IDEA's definition of a disabled child. (Ed. Code, § 56026, subd. (a).)

7. The IDEA defines autism as:

> [A] developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

(34 C.F.R. § 300.8(c)(1)(i).)

AUTHORITY UNDER A PUPIL PERSONNEL SERVICES CREDENTIAL – SCHOOL PSYCHOLOGY

8. One holding a pupil personnel services credential with a specialization in school psychology is authorized to do the following:

> [P]rovide services that enhance academic performance; design strategies and programs to address problems of adjustment; consult with other educators and parents on issues of social development, behavioral and academic difficulties; conduct psycho-educational assessments for

purposes of identifying special needs; provide psychological counseling for individuals, groups and families; and coordinate intervention strategies for management of individual and school-wide crises.

(Cal. Code Regs., tit. 5, § 80049.1, subd. (a)(3).)

Conclusion

9. Claimant did not meet his burden of demonstrating he is eligible for regional center services under ASD. Therefore, his appeal from ACRC's Notice of Action dated August 23, 2023, should be denied.

ORDER

Claimant's appeal from Alta California Regional Center's August 23, 2023 Notice of Action finding him not eligible for regional center services is DENIED. He is not eligible for regional center services under the Lanterman Act.

DATE: November 16, 2023

COREN D. WONG
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. Each party is bound by this decision. Either party may request a reconsideration pursuant to subdivision (b) of Welfare and

Institutions Code section 4713 within 15 days of receiving the decision, or appeal the decision to a court of competent jurisdiction within 180 days of receiving the final decision.