

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH Case No. 2013040171

DECISION

Daniel Juárez, Administrative Law Judge (ALJ), Office of Administrative Hearings, heard this matter on May 31, 2013, in Los Angeles, California.

Claimant's mother represented Claimant.¹

Lisa Basiri, Fair Hearing Coordinator, represented the Westside Regional Center (Service Agency).

The parties submitted the matter for decision on May 31, 2013.

STATEMENT OF THE CASE

Claimant contends he has autism and is therefore eligible for services from the Service Agency.

The Service Agency contends Claimant has no developmental disability that would make him eligible.

¹ Claimant is referred to by party title, and his mother is referred to by family relation to preserve Claimant's privacy.

FACTUAL FINDINGS

1. Claimant is a 16-year-old boy. His mother/representative became his foster mother at six weeks of age and she adopted him at two years of age. His biological family history includes psychiatric illness, drug abuse, suicide, and suicide attempts. Claimant's biological family is not involved in Claimant's life.

2. Claimant applied for services from the Service Agency on an undetermined date. On March 13, 2013, the Service Agency determined that Claimant had no developmental disability and was ineligible for services; the Service Agency notified Claimant of its determination on March 22, 2013. Claimant filed a request for hearing on April 3, 2013.

3. On April 10, 2013, the parties met in an informal meeting. (Welf. & Inst. Code, § 4710.7.) The parties did not resolve the dispute at that meeting.

4. The Service Agency agrees Claimant has many challenges, but contends the challenges do not emanate from a diagnosis of autism. The parties dispute solely the diagnosis of autism. None of the other four categories of eligibility in Welfare and Institutions Code section 4512, subdivision (a), are at issue. In its informal meeting letter, dated April 12, 2013, the Service Agency agreed that Claimant has "neuro-developmental issues which we believe account for his deficits in executive functioning and learning ability. His significant challenges with social appropriateness and interaction appear to be part of his sequelae of mental health symptoms." The Service Agency believes that social skills groups, social skills training, and psychotherapy will benefit Claimant.

5. Claimant first applied to the Service Agency for eligibility in 2002. The Service Agency conducted an intake interview in March 2002, when Claimant was four years old. At that time, Claimant was a picky eater who gagged on fruit, ate limited vegetables, and had unusual food preferences like eating uncooked, frozen French fries. At two and one-half years of age, Claimant had difficulty connecting with other children in preschool and understanding personal and social boundaries.

2002 EVALUATION BY J. WOLF, PH.D.

6. In 2002, the Service Agency had Claimant evaluated by Janet Wolf, Ph.D., a licensed clinical psychologist. Wolf evaluated Claimant on May 20, 2002, when Claimant had just turned five years old. She administered the Wechsler Preschool and Primary Scale of Intelligence-Revised (WPPSI) and the Vineland Adaptive Behavior Scales (Vineland); she also reviewed previous assessments, and interviewed Claimant and his mother. At that time, Claimant's problems included having trouble understanding the order of numbers and letters, having an interest in smelling things, and approaching unfamiliar women to touch or smell their hair. Wolf evaluated Claimant in her office and observed him at school. Wolf found that "Claimant's history and pattern of strength and challenges is not consistent with [sic] diagnosis of Autistic Disorder." She found that Claimant exhibited a tendency to shudder slightly when excited, had a short attention span, and exhibited task avoidance, and "mild self-regulatory challenges." Wolf also found that Claimant "sought ongoing reciprocal play and reciprocal affect with his peers," "demonstrated a healthy balance between spontaneous play and compliance with class structure," and "demonstrated ongoing spontaneous interactions with friends." Wolf noted that Claimant, "seemed comfortable with the proximity of other children and his own physical boundaries were appropriate."

7. On the WPPSI, Claimant scored a full-scale intelligence quotient (IQ) of 96, a score Wolf noted was in the average range. On the Vineland, Claimant's adaptive behavior composite score was 85. Wolf noted that the Vineland score included average scores in the communication and socialization domains. According to Wolf, overall, Claimant's test scores did not support a diagnosis of autism. Wolf, however, administered no testing that was specific to diagnosing autism.

8. Wolf diagnosed Claimant with "Rule out Learning Disorder 315.9."

9. Wolf did not testify. There was no evidence of Wolf's educational and professional background.

THE SERVICE AGENCY'S 2002 ELIGIBILITY DETERMINATION

10. On July 7, 2002, the Service Agency informed Claimant's mother that Claimant was ineligible for regional center services. Claimant's mother failed to appeal the denial; she accepted the Service Agency's determination. At the instant hearing, she expressed distress, which she described as being "brokenhearted," in failing to pursue regional center eligibility in 2002 because she believes Claimant's autism should have been treated and addressed earlier.

CLAIMANT'S DESCRIPTION

11. Claimant's mother described Claimant as follows. As a baby, Claimant did not like to be held, although later, he did. He would not make eye contact with his mother when she fed him with a bottle. Claimant had several sensory issues, including only wearing socks without seams and underwear without elastic. He would smell everything, and always sought to smell and touch hair on everyone, including strangers. Claimant would become startled and upset by loud noises. He did not and does not show empathy or compassion. Since a very young age, he has been unable to make friends. He cannot be part of a group. Throughout his childhood, peers have considered Claimant "weird." He was teased and isolated in school. Eventually, his isolation at school and in his community led to his withdrawal and depression. In the past and currently, Claimant has described himself as "socially retarded" and "stupid." As the teasing and isolation from peers continued, Claimant stopped trying to make friends. He has experienced feelings of sadness and being alone. He has learned to withdraw, cry, and demand adult attention to calm down. He began receiving mental health services to address his depression and anxiety. He first verbalized wanting to die in first grade. He has had a history of suicidal ideation. Currently, Claimant plays and sleeps with stuffed toys, and plays with army figures. He obtains good grades in school. His mother describes him as bright, sweet, and loving, but he still has trouble completing his daily living tasks. He needs to be reminded

to use the bathroom and to eat. He needs prompts to wake up, dress, and to remember to eat his breakfast. Claimant has caused fires when cooking. He does not remember to unlock doors or grab keys when going outside. Claimant continues to have little sense of social propriety. His mother explained that, even today, if Claimant were to constantly poke someone and that person were to push Claimant away to stop the poking, Claimant would not understand why the person would have pushed him away. Claimant is very literal; he takes sarcastic comments literally. Claimant tries to talk to peers but he consistently cannot engage in appropriate conversation. Claimant's mother's descriptions of Claimant were consistent with the descriptions and evaluation results of Betty Jo Freeman, Ph.D., discussed *post*, and were credited.

CLAIMANT'S EDUCATIONAL HISTORY

12. Claimant has received special education services since the second grade (April 2005). He has received school-based mental health services since the seventh grade. The school district has noted his problems with suicidal ideation, anxiety, depression. The school district has not diagnosed Claimant with autism; instead, it has diagnosed him as having emotional disturbance and a specific learning disability.

2012 EVALUATION BY B.J. FREEMAN, PH.D.

13. Betty Jo (B.J.) Freeman, Ph.D., evaluated Claimant in August, September, and October 2012, when Claimant was 15 years old. Freeman testified.

14. Freeman received her doctorate from Southern Illinois University in 1969. She is a nationally recognized expert in autism and in diagnosing autism. Her professional experience includes professorships at the University of California at Los Angeles (UCLA) School of Medicine's Department of Psychiatry and Biobehavioral Sciences since 1973. Currently and since 2004, Freeman has been an Emerita Professor of Medical Psychology at the UCLA School of Medicine. She has presented numerous lectures and papers and

written numerous publications on diagnosing autism. When compared to the backgrounds and experience of the other health care professionals who opine differently than Freeman and are discussed herein (Wolfe, Valerie Benveniste, Ph.D., discussed *post*, and Thompson J. Kelly, Ph.D., discussed *post*), Freeman has considerably more experience and training in diagnosing autism. Notably, she is also the only evaluator to have administered testing designed to assess whether a person has autism. (Factual Finding 19.) Freeman was also the only evaluator to have interacted with Claimant, assessed him directly, and testified. Consequently, Freeman's opinions are given significant and greater weight than the other professionals considered herein.

15. Freeman interviewed Claimant and his mother and administered the Wechsler Abbreviated Scale of Intelligence, Second Edition; the Test of Problem Solving 2: Adolescent; the Adaptive Behavior Assessment System II (ABAS-2); the Gilliam Autism Rating Scale, Second Revision (GARS-2); the Autism Diagnostic Observation Schedule, Second Edition (ADOS-2); the Social Responsiveness Scale (SRS); the Behavior Rating Inventory of Executive Functioning (BRIEF); and the Childhood Depression Inventory (CDI).

16. In her evaluation report, Freeman described Claimant as having a "little professor persona." She described Claimant as, "literal and concrete, his speech was atonal and arrhythmic, and he made little eye contact. Affect was flat. [Claimant] used rote expressions, such as „where there's a will there's a way." In completing the block task, he was very systematic and rule bound."

17. Based on Claimant's scores on the ABAS-2, Freeman found that Claimant's ability to use skills on a day-to-day basis was "significantly impaired." Freeman wrote, "While he has normal cognitive ability, he presents with significant problem solving difficulties and significant deficits in social adaptive skills. These deficits greatly inhibit [Claimant's] ability to function independently at home and in the community."

18. On the GARS-2, Claimant scored an autism index score of 74, a score that Freeman opined was suggestive of a possible autism diagnosis.

19. Regarding the ADOS-2, Freeman opined that it is the “gold standard” test for finding autism. This opinion is credited as the ALJ has received a similar expert opinion in numerous other autism eligibility matters over the last decade. (See Gov. Code § 11425.50, subd. (c) [“The presiding officer’s experience, technical competence, and specialized knowledge may be used in evaluating evidence.”].) Based in part on the results of the ADOS-2, Freeman opined that Claimant has autism. Freeman described Claimant as follows. Claimant had little variation in pitch and intonation in his speech. Although he exhibited no echolalia or significant stereotypic use of words or phrases, Claimant engaged in very little reciprocal conversation. He used a limited range of conventional and descriptive gestures. His affect was very flat. He did not use eye contact or facial expressions to regulate social interaction. Claimant did not coordinate his speech with nonverbal communication such as eye contact, gestures, or vocal intonation. Freeman did note that Claimant showed some shared enjoyment in a story-telling activity, showed some understanding of at least one emotion, and showed no unusual sensory interests, hand or finger mannerisms, or self-injurious behavior, compulsions, rituals, or tantrums. Still, Freeman found that Claimant showed little to no insight into typical social relationships such as friendships. Freeman wrote, “The overall quality of [Claimant’s] social overtures was unusual and pedantic in nature. The level of [Claimant’s] social overtures and social responses for maintenance of attention was extremely limited. There was very limited reciprocal social communication, and the overall quality of the rapport was limited.” Freeman opined, “Taken in the context of a complete psychological evaluation, this measure is conclusive for a diagnosis of Autism Spectrum Disorder as part of this report.” At hearing, Freeman explained that when she uses the term “autism spectrum disorder,” she means autistic disorder, or autism. She considered the evidence presented by Claimant’s mother, his records, and his previous testing, and opined that the onset of Claimant’s behaviors that were consistent with autism began before the age of three.

20. Freeman explained in her report that the SRS is "designed to aid in diagnosis and treatment planning, and to measure the severity of autism spectrum symptoms as they occur in natural social settings in children from 4 to 18 years of age." On the SRS, Freeman noted a difference in the parent report scores (mostly in the severe range of behavior) and the teacher report scores (mostly in the normal and mild to moderate range of behavior). She explained the difference as follows: "It is not uncommon for parent and teacher scores to differ, even significantly, on this measure. Children with autism often do better in a 1:1 situation with adults, who are more patient and tolerant of social deficits. It is well recognized that the primary deficit in ASD is the child's relationship to peers, not to adults." Freeman opined that Claimant's scores on the SRS, when the parent report is considered, supported her diagnosis of autism.

21. In her report, Freeman explained that the BRIEF assesses the "executive functioning in school-aged children both in the home and school environments." Freeman found Claimant to have "a great deal of difficulty inhibiting impulsive responses, independently initiating tasks or activities or generating problem solving strategies, keeping information in mind for completing tasks (i.e., working memory), planning and organizing problem solving approaches, and monitoring his own behavior." Freeman opined that Claimant has difficulty modulating or controlling his emotions and adjusting to changes in routine or task demands, although he is able to organize his environment and materials at an age appropriate level. Freeman opined that Claimant is substantially disabled by his condition.

22. On the CDI, Freeman found that while he has low self-esteem, Claimant denied depressive episodes.

23. Overall, Freeman wrote, "[Claimant's] developmental history suggests a diagnosis of autism from an early age. However, his past mental health issues have obscured the reality of this diagnosis." Freeman explained that his mental health problems have made it difficult to uncover his autistic condition, a common problem for individuals

with dual diagnoses of these types. Freeman acknowledged Claimant's mental health challenges. She asserted that a person could have both mental health disabilities and autism, as Claimant in Freeman's opinion does. Freeman acknowledged that Claimant's mental health symptoms fit mental health diagnoses and autism criteria, but given the overall presentation of Claimant, his history, and his current functioning, Freeman opined that in addition to his mental health deficits, Claimant also has autism. Freeman conceded that in her report, she left out Claimant's diagnoses of anxiety and depression; she described the omission as an oversight.

THE OPINION OF A. TEMEROVA, M.D.

24. Andrea Temerova, M.D., is a child and adolescent psychiatrist who has been treating Claimant since May 2011. In a letter dated October 12, 2012, Temerova asserted that Claimant has difficulties communicating in social settings, has restricted interests, and repetitive motor mannerisms. Temerova referenced Freeman's evaluation and wrote, "I strongly believe that [Claimant's] ongoing mood and anxiety symptoms are result [sic] of not receiving adequate support and treatment for his Autism Spectrum Disorder."

25. Temerova's opinions were given little weight because her opinion appeared to be solely based on her observations without any evidence that she administered any psychological testing. Additionally, there was no evidence in the record to support a finding that Claimant has any significant repetitive motor mannerisms, as Temerova asserted. Temerova failed to describe any such mannerisms with particularity. Lastly, there was no evidence of Temerova's educational and professional background to demonstrate her particular capacity to diagnose autism. Temerova did not testify.

2013 EVALUATION BY V. BENVENISTE, PH.D.

26. Valerie Benveniste, Ph.D., a consulting psychologist for the Service Agency, evaluated Claimant in February 2013, when Claimant was 15 years old. Benveniste

interviewed Claimant and his mother, and administered a mini-mental status exam; the Delis- Kaplan Executive Function System (D-KEFS); the Beery Buktenica Developmental Test of Visual Motor Integration-VI; the Vineland, Second Edition; the Behavior Assessment System for Children-2 (BASC-2); and the Robert's Apperception Test for Children-2. She also reviewed Claimant's testing history

27. Benveniste found that, overall, Claimant sustained appropriate eye contact, and was "able to modulate social turn-taking." On the BASC-2, Claimant's scores were what Benveniste described as "clinically significant results" in social stress and atypicality, showing signs of "prodromal paranoia." He scored in the "at-risk" range for interpersonal relationships with others. Benveniste found that Claimant had emotional disturbance problems, but not autism.

28. Benveniste wrote in her amended report, dated March 19, 2013, "At this time, although [Claimant] shows some behaviors that may be interpreted as consistent with Autism Spectrum Disorder (ASD), it is the strong impression of this examiner that [Claimant] is not on the spectrum." Benveniste was skeptical of autism because, in her opinion, she found other conditions to explain Claimant's problems and noted that Freeman was the only evaluator to diagnose Claimant with autism. Benveniste reviewed Claimant's history of difficulties and his history of evaluations, including several psychological and behavioral evaluations from 2002 (including Wolfe's evaluation) to 2004, and in 2007.

29. Benveniste considered whether Claimant's condition met the criteria for autism. (See Factual Finding 40.) In Benveniste's opinion, the sole characteristic of autism that Claimant exhibited was his difficulty with peer relations—thus, meeting only one criterion: the "qualitative impairment in social interactions." Meeting this one criterion is insufficient to warrant a diagnosis of autism. Moreover, as to that criterion, Benveniste opined that his deficit in this area was due to severe social anxiety, not autism.

30. Saliently, and as opined by Freeman at hearing, Benveniste found symptoms within Claimant that met all of the required criteria for an autism diagnosis. With regard to the “qualitative impairment in social interactions” criterion, Benveniste’s findings established that Claimant fails to develop peer relationships appropriate to his developmental age, and that he lacks the spontaneous seeking to share enjoyment, interests, or achievement of other people. This last point was somewhat arguable, when one considers that Claimant can interact with adults, but his inability to interact with peers makes it reasonable to presume that his deficit with peers is adequate to meet the criterion. With regard to the “qualitative impairments in communication” criterion, Benveniste found that Claimant could not sustain conversation with peers. With regard to the “restricted repetitive and stereotyped patterns of behavior, interests, and activities” criterion, Benveniste agreed that Claimant has an “intense interest in history including WWII and communism,” but she did not observe such an intense interest during her evaluation and did observe that he was able to transition to other topics easily. As to other restricted behaviors, however, Benveniste wrote that Claimant shows “exceptional rigidity with respect to certain behaviors. For example, he has a whole ritual developed around working out at his gym that he feels compelled to follow even though it interferes with his ability to get to the gym by himself.” She further found that he had an “intense interest in smelling hair from a very young age.” Benveniste opined that these problems were better explained by his anxiety disorder, including obsessive- compulsive tendencies. There was insufficient evidence to credit Benveniste’s opinion that Claimant’s mental health diagnoses were the origin of his autistic behaviors and characteristics. While the evidence was lacking in that respect, there was no reason to discredit Benveniste’s behavioral findings regarding Claimant’s autistic characteristics as discussed in this Factual Finding. Thus, Benveniste found behaviors in Claimant that met the diagnostic criteria for autism.

31. On the D-KEFS, Claimant scored within the adequate range on most tests and subtests in executive functioning, while on some tests he was below average.

Benveniste found that Claimant's overall scores reflected adequate executive functioning. Pertinent here, Benveniste wrote that she found "some deficits in set-shifting which is consistent with [Claimant's] self-reported temperamental rigidity and difficulties adapting to novel situations."

32. None of the results of tests administered by Benveniste persuaded her that Claimant had autism.

33. Benveniste diagnosed Claimant as follows:

Axis I 311 296.90 Mood Disorder—Not Otherwise Specified

315.9 Learning Disorder—NOS

300.00 Anxiety [D]isorder—NOS

Rule out 312.30 Impulse Control Disorder (NOS)

Axis II V71.09 No diagnosis on Axis II (Intact intellectual functioning)

Axis III None Reported

Axis IV V62.81 Relational Problem, NOS

V61.20 Parent-Child Relational Problem

V62.3 Academic problems

34. At hearing, Claimant's mother argued that Benveniste was biased against her and had discounted her contributions to Claimant's evaluation. The evidence failed to establish that Benveniste was biased or that she discounted Claimant's mother's contributions to the evaluation process and Claimant's history. While Benveniste's evaluation and opinion were less persuasive than that of Freeman's (Factual Finding 14 &

Legal Conclusion 6), the evidence did not establish any impropriety by Benveniste based on bias.

35. Benveniste did not testify. There was no evidence of Benveniste's educational and professional background.

THE OPINIONS OF T.J. KELLY, PH.D.

36. Thompson J. Kelly, Ph.D., a licensed psychologist, testified for the Service Agency. Since December 2007, Kelly has been the Service Agency's Chief Psychologist and Autism Consultant. He received his doctorate in 2002 from the Pacific Graduate School of Psychology in Palo Alto, California. Kelly is competent to diagnose autism.

37. Kelly observed Claimant at his school in 2013. Kelly observed Claimant while Claimant was involved in a school project with other special education students. Claimant was aware of Kelly's presence. Kelly observed Claimant work collaboratively with other students. Kelly noted that Claimant's affect was restricted and that Claimant had a low-key demeanor. However, Kelly opined that he did not observe any characteristics or mannerisms that supported a diagnosis of autism. Kelly conceded his observation was "limited" and that it was difficult to find characteristics of autism in Claimant with the limited time he had for his observation. Kelly opined that Claimant's interest in World War II was a predominant interest for Claimant, but not one that rises to the level of a restricted, repetitive, or stereotyped pattern of behavior, interest, or activity sufficient to meet the diagnosis of autism. Kelly also opined that some characteristics of Claimant's mental health diagnoses could appear to meet the diagnostic criteria for autism, but were characteristics of his mental health deficits and not autism. In Kelly's opinion, Claimant has a "mental health constellation." Kelly conceded that Claimant is substantially disabled, but opined that his substantial disability is the result of his mental health condition and not autism. The Service Agency's representative also conceded at hearing that Claimant is substantially disabled by his condition.

CLAIMANT'S CURRENT SOCIALIZATION SERVICES

38. Claimant currently receives social skills training from Groupworks West in Culver City. According to Claimant's mother, Groupworks West is a social skills group for teens with autism spectrum disorder.

THE DSM-IV-TR

39. The parties used the diagnostic criteria for autism found in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR). The DSM-IV-TR is published by the American Psychiatric Association.

40. According to the DSM-IV-TR, a person has autism when s/he meets the following:

(A) A total of six (or more) items from (1), (2), and (3), with at least two from (1), and one each from (2) and (3):

(1) qualitative impairment in social interaction, as manifested by at least two of the following:

(a) marked impairment in the use of multiple nonverbal behaviors such as eye-to-eye gaze, facial expression, body postures, and gestures to regulate social interaction

(b) failure to develop peer relationships appropriate to developmental level

(c) a lack of spontaneous seeking to share enjoyment, interests, or achievements with other people (e.g., by a lack of showing, bringing, or pointing out objects of interest)

(d) lack of social or emotional reciprocity

(2) qualitative impairments in communication as manifested by at least one of the following:

- (a) delay in, or total lack of, the development of spoken language (not accompanied by an attempt to compensate through alternative modes of communication such as gesture or mime)
- (b) in individuals with adequate speech, marked impairment in the ability to initiate or sustain a conversation with others
- (c) stereotyped and repetitive use of language or idiosyncratic language
- (d) lack of varied, spontaneous make-believe play or social imitative play appropriate to developmental level
- (3) restricted repetitive and stereotyped patterns of behavior, interests, and activities, as manifested by at least one of the following:
 - (a) encompassing preoccupation with one or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus
 - (b) apparently inflexible adherence to specific, nonfunctional routines or rituals
 - (c) stereotyped and repetitive motor mannerisms (e.g., hand or finger flapping or twisting, or complex whole-body movements)
 - (d) persistent preoccupation with parts of objects
- (B) Delays or abnormal functioning in at least one of the following areas, with onset prior to age 3 years: (1) social interaction, (2) language as used in social communication, or (3) symbolic or imaginative play.
- (C) The disturbance is not better accounted for by Rhett's Disorder or Childhood Disintegrative Disorder.

APPLYING THE AUTISM CRITERIA TO CLAIMANT

41. The evidence established that Claimant meets the diagnostic criteria for autism. Claimant fails to develop peer relationships appropriate to his developmental level. (Factual Findings 11, 19, & 30.) Claimant lacks the ability to engage in social and emotional reciprocity. These constitute two items within the "qualitative impairment in social

interaction” criterion. Claimant has adequate speech, but has a marked impairment in his ability to initiate or sustain a conversation with others. This manifests itself when Claimant attempts to interact with peers. (Factual Findings 11, 19, & 30.) This constitutes one item within the “qualitative impairment in communication” criterion. Claimant has an inflexible adherence to specific, nonfunctional routines or rituals, as found by Benveniste. (Factual Finding 30) This constitutes one item within the “restricted repetitive and stereotyped patterns of behavior, interests, and activities” criterion. Additionally, the evidence established that the onset of Claimant’s delays and abnormal functioning occurred prior to the age of three (Factual Finding 19) and that these delays and abnormal functioning exist in his social interactions (Factual Findings 11, 19, & 30.)

LEGAL CONCLUSIONS

1. As Claimant seeks eligibility, Claimant bears the burden of proof. The standard of proof is a preponderance of the evidence.
2. Welfare and Institutions Code section 4512 states:
 - (a) “Developmental disability” means a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature.
3. Welfare and Institutions Code section 4512, subdivision (l) states:

(l) "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:

- (1) Self-care.
- (2) Receptive and expressive language.
- (3) Learning.
- (4) Mobility.
- (5) Self-direction.
- (6) Capacity for independent living.
- (7) Economic self-sufficiency.

(See also Cal. Code Regs., tit. 17, § 54001.)

4. The parties did not dispute that Claimant is substantially disabled by his condition. (Welf. & Inst. Code, § 4512, subd. (l); Cal. Code Regs., tit. 17, § 54001.) The facts separately support this conclusion.

5. The question is then whether Claimant has autism. (Welf. & Inst. Code, § 4512, subd. (a).) The parties did not argue that Claimant had mental retardation, cerebral palsy, epilepsy, or a condition found to be closely related to mental retardation or to require treatment similar to persons with mental retardation. Thus, this Decision solely considered autism as the contended basis of Claimant's eligibility.

6. Freeman diagnosed Claimant with autism. Taking into consideration her background and training, her specific testing of Claimant, and Freeman's testimony, her diagnostic conclusions were persuasive. Benveniste's 2013 behavioral findings, as discussed in Factual Finding 30, further support Freeman's conclusion of autism. When Freeman's opinions are compared to those of the other experts at issue, her opinions remain convincing. Although Freeman was the only evaluator to diagnose Claimant with autism, Freeman was the only evaluator to have administered any autism-specific testing. Wolf and Benveniste failed to administer the ADOS-2, any autism screening tool, or other

similar tests. Further, neither Wolf nor Benveniste testified and there was no evidence as to their professional backgrounds. Kelly made a limited observation of Claimant at school and administered no testing to Claimant. When considered in total, the opinions of Freeman carry significantly more weight than those of Wolf, Benveniste, and Kelly.

7. Claimant has autism in addition to his mental health diagnoses. He is eligible for regional center services.

8. Cause exists to grant Claimant's appeal, as set forth in Factual Findings 1-41, and Legal Conclusions 1-7.

ORDER

Claimant's appeal is granted in case number 2013040171.

Dated: June 12, 2013



DANIEL JUAREZ

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision. This Decision binds both parties. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.