

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

Claimant,

vs.

NORTH LOS ANGELES COUNTY REGIONAL
CENTER,

Service Agency.

OAH No. 2013080432

DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings, on March 24, 2014, in Van Nuys, California. Claimant was represented by his parent and authorized representative.¹ North Los Angeles County Regional Center (NLACRC or Service Agency) was represented by Rhonda Campbell, Contract Manager.

Oral and documentary evidence was received, and argument was heard. The record was closed, and the matter was submitted for decision on March 24, 2014.

ISSUE

Does Claimant have a developmental disability entitling him to receive regional center services?

¹ Claimant's and his parent's names are omitted to protect their privacy.

FACTUAL FINDINGS

1. Claimant is a 22-year-old male. He seeks eligibility for regional center services based on a diagnosis of Autism Spectrum Disorder.

2. On July 18, 2013, NLACRC sent a letter and a Notice of Proposed Action to Claimant, informing him that NLACRC had determined that he is not eligible for regional center services. Claimant requested a fair hearing. (Exhibit 1.)

3. Claimant lives with his parent. Claimant attends a local community college and is currently taking English 101, an Art History class "centered on African, native American and Oceania," a drawing class and an arithmetic class. (Testimony of Claimant.)

4. In the Intake Application for regional center services submitted by Claimant's parent, several suspected developmental disability categories are listed with adjacent boxes for the applicant to check. Claimant's parent checked the box next to the category of "Autism." The boxes next to "Mental Retardation," "Cerebral Palsy," "Epilepsy," and "Conditions Similar to Mental Retardation" were left blank. Under the section of the application entitled "1. Mental Retardation (Intellectual Disability)," Claimant's parent did not answer any of the posed questions, but instead indicated "N/A [not applicable]." Under the section entitled "Autism," Claimant's parent indicated that Claimant had been diagnosed with Autism at the United States Army Hospital in Germany when he was approximately two years old. Claimant's parent noted concerns with Claimant's language, stating: "[Claimant] is difficult to understand in his enunciation. Palate is deformed." She also noted her concerns with his social interaction, as follows: "[Claimant] has great difficulty in relations outside of family unit. Does not speak in public; unaware of, or does not perceive social customs." (Exhibit 4.)

5(a). On May 8, 2013, Claimant's parent underwent an initial interview by telephone to provide information for a Social Assessment report. (Exhibit 5.)

5(b). According to Claimant's parent, Claimant grew up in Germany where his parents were stationed in the Navy. Claimant's parent informed the interviewer that she

was Claimant's biological father, but went through a gender transition two years prior and is now his mother. Claimant's parents are divorced and his biological mother lives in another state. (Exhibit 5.)

5(c). Claimant earned the equivalent of a high school diploma in Germany, where he attended a special education class for one year and was eventually mainstreamed. Claimant moved to Los Angeles in 2009. At the time of the interview, Claimant was taking classes in preparation for the California High School Equivalency Examination (CAHSEE). The evidence did not disclose whether Claimant had taken the CAHSEE by the time of the fair hearing. (Exhibit 5.)

5(d). According to Claimant's parent, Claimant had been diagnosed with Noonan Syndrome.² During the first year of his life, Claimant underwent several surgeries, including eyelid, palette and heart surgery, and hernia repair surgery. Claimant's parent reported that the Navy had given him with a diagnosis of Asperger's Syndrome. No records were ever produced to confirm this diagnosis. (Exhibit 5.)

5(e). Regarding Claimant's development, his parent reported that he never cried as an infant or child and did not speak a single word until age six. According to Claimant's mother, he sat at age two, walked at age three, and wet his bed until age 13. (However, see Finding 6(a), below with differing documented milestones.) Claimant's mother reported that, when he was under age three, he was "catatonic or lethargic" and did not make noises or speak. At that time he was purportedly diagnosed with Autism. As a child he did not play with the other children, but liked to look at maps and make copies of them. (Exhibit 5.)

² Noonan Syndrome is a congenital disease which causes abnormal development in many parts of the body, including ptosis (sagging eyelids) and sometimes mild intellectual disability.

5(f). Regarding his motor skills, Claimant is able to ride a bicycle, although "not with confidence." His mother reported that he was not able to hold a pencil in the appropriate manner. (Exhibit 5.) However as evidenced by a schoolwork sample he submitted at the fair hearing, his penmanship was neat and legible. (Exhibit B.)

5(g). Claimant is toilet trained and attends to all of his self-care with prompts. He is able to cook when his parent is present. He does not use public transportation and is not able to drive an automobile. He can identify money and give correct change. He does not pay his own bills or use an automated teller machine. He needs minimal supervision at home, but needs constant supervision in the community because his parent has observed that he is naïve. (Exhibit 5.)

5(h). According to Claimant's parent, Claimant will answer others but not engage in a conversation. He does not know when to say "excuse me" or "thank you," and does not understand emotions such as "sad, happy or mad." Claimant does not have any friends but is attached to his parent. He does very little for enjoyment other than using the computer for online reading and viewing programs/videos. (Exhibit 5.)

5(i). When he was younger, Claimant had tantrums, but his last aggressive or destructive episodes were at age nine or 10. He still gets "cranky" when his routine is changed. Claimant suffers from depression and says that he does not feel his life is worth anything or that he is getting anywhere. (Exhibit 5.)

5(j). At the time of the interview, Claimant was in the process of applying for Supplemental Security Income (SSI) through the Social Security Administration. (Exhibit 5.)

6(a). The only documentation of Claimant's prior history is a medical report from Germany, dated November 11, 2002.³ That report, translated into English, stated:

Diagnosis:

Mental Disability (oligophrenia, 1st – 2nd degree) with gross and fine motor disturbance.

Chromosomal defect with fragile X chromosome syndrome.
Concentration problems.

Wears glasses, hypermetria of both eyes...

Status following several palpebral ptosis surgeries of both eyes.

Status following inguinal hernia surgery on both sides.

Status following ear therapy and surgery. Language disorder and speech defect.

Current Findings:

The boy has been mentally retarded for approx. 2-3 years.

In the United States, he received extensive therapy by a physician as well as additional educational support. In the United States, he attended a regular school, and he is able to say a great number of sentences in the American-English

³ Although NLACRC sent out requests for records to the United States Army Dependent Medical Records in Missouri and to Claimant's former elementary school district in Alaska, no records could be obtained. Claimant's parent was similarly unable to obtain additional records.

language. He speaks very little German. He has been in Germany for 26 months. [Claimant] is sometimes unable to concentrate and he understands simple questions well. More complicated requests and questions have to be repeated and explained to him several times; most of the time, he requires a long time to think about them, but ultimately he answers correctly. . . .

[Claimant] was born here at the Hospital of Itzehoe and he was discharged 3 to 4 days later in good health. During the pregnancy, the mother worked in the vicinity of a nuclear bomb storage facility... in a German-American base. His father was also employed at the base as a motor vehicle driver ... It was not until he was 10 months old that he was first able to sit on his own. He was not yet able to lift up his head when he was 6 months old. He never crawled. When he was 10 months old, he was able to stand upright, with the support of 2 hands. He was able to walk on his own when he was 20 months old.⁴ It was not until age 2 that he was able to speak (1-3 words). It was not until he was 6-7 years old that he was toilet trained (urine and stool) during the day. At present, nocturnal enuresis (bedwetting) occurs at times.

⁴ The information in this report regarding Claimant's developmental milestones differs the information given by Claimant's parent during the NLACRC intake interview. (See Finding 5(e), above.)

His illness was not determined until he was 2 years old in the United States. At the age of 5, he attended regular play school and then a regular school. He lived with his mother in the United States until August 2001.

His parents are divorced. The father lives in Germany and is remarried. The boy has been staying with his father for 16 months. He is attending the local school . . . for physically and mentally disabled children. . . .

[Claimant] suffers from a constant state of motor restlessness, accompanied by an urge to move his upper extremities and his mouth. He has difficulty getting dressed and undressed and is untidy. He wears glasses and is able to see very well with them. His hearing is good. He makes faces at times His speech is retarded and unclear due to an articulation disorder. He wears upper dental braces, which interfere with normal speech delivery even more. Multiple stammering phenomena can be detected. . . .His gait is somewhat spastic and insecure. When catching a ball with both hands, he is very clumsy. He cannot catch a ball using only one hand.

In general, he is clumsy. In soccer, he does not hit the ball with precision. He likes crafts and shows a lot of interest in crafts. He is able to cut out a circle, albeit inaccurately. He likes to draw and is quite good at it. He holds the pen with an extremely tense posture and has a cramped handwriting. His process of thinking is slow.

He still knows pretty well what he learned in the United States. He has problems with mathematical calculations involving subtractions that cross tens numbers. He is not independent and needs a lot of help both at school and at home. He is not entirely toilet-trained either. He needs help with his own personal hygiene. He cannot be left alone in dangerous situations and situations requiring responsible actions. He has to be supervised by adults all the time. He thinks logically most of the time.

[F]rom a psychological point of view, he needs tender loving care and he only trusts people that are close to him. He is a timid, highly sensitive boy. He is not able to manage every-day tasks on his own. He is superficial and lacks interest. (Exhibit 3.)

6(b). The report does not indicate what testing had been administered to arrive at a finding that Claimant had been mentally retarded. Consequently, that diagnosis of mental retardation is given no weight. (See also Findings 8(c) and 8(f), below.)

7. On May 13, 2013, Carlo DeAntonio, M.D., F.A.A.P., with NLACRC determined from the available information that "there is no indication of substantially handicapping cerebral palsy, epilepsy or chronic major medical condition." (Exhibit 6.) Dr. DeAntonio recommended a psychological evaluation to determine regional center eligibility.

8(a). On May 31, 2013, licensed psychologist Anna Levi, Psy.D., conducted a psychological evaluation of Claimant to determine his current functioning level and to assess for possible Autistic characteristics. The evaluation included an interview with Claimant's parent, observations of Claimant, and administration of diagnostic tools for measuring cognitive functioning, and adaptive skills and for ascertaining characteristics of autism. (Exhibit 7.)

8(b). Dr. Levi noted the following Behavioral Observations: [Claimant] spoke with a lisp and mild articulation problem. He

conversed about books, history and places he goes, such as theater, and movies. He lived in Germany for a number of years and talked about that, as well as his biological father who went through a gender changed three years ago (and referred to as mother here . . .) . . .He reported having a hard time explaining how he feels. When asked what makes him happy, [Claimant] said, "reading books about alternative history by adding fantasy. He reported being anxious going out at night and fearing being attacked by someone. He explained anxiety as being "nervous, looking around." He feels angry when his mother brings up that he is "not dressed correctly." When angry, he feels headache if annoyed. He acknowledged that his mother feels sometimes worried about him not being as independent as he should. [Claimant] attends a special education facility every Tuesday and Thursday at City Career College . . .He studies math and English to refresh his education. He never worked. He has a high school diploma from Germany. In Germany he lived with two roommates. He cleaned his home, cooked basic stuff, like chicken nuggets and spaghetti. [Claimant] used a range of gestures. He does not have friends. First two years in Germany he had friends, then moved to [Los Angeles]in 2008 and since then, he had no friends because he is "not that social." He reported not having a girlfriend because he [has] "never shown a particular interest in a relationship." . . .He chats with people online, but

sometimes feels lonely because he "can't find like-minded people so easily in real life as online." He demonstrated good creativity, making up a story with unrelated objects. No preoccupations, repetitive behaviors or repetitive/stereotypic language were observed. Overall testing results appear to accurately reflect [Claimant's] current functioning. (Exhibit 7.)

8(c). To assess Claimant's cognitive functioning, Dr. Levi administered the Wechsler Abbreviated Scale of Intelligence (WASI-II). The measure of his overall intellectual abilities was in the average range (Full Scale IQ of 104). His nonverbal/perceptual reasoning abilities were in the high average range (113), and his verbal comprehension abilities were in average range (94). He demonstrated a strength/superior ability in perceptual organization of abstract block designs. (Exhibit 7.)

8(d). In the area of adaptive functioning, Dr. Levi administered the Adaptive Behavior Assessment System (ABAS-II); Claimant's parent provided the responses necessary for the completion of this test. His overall measure of adaptive functioning was in the mildly deficient range (standard score 58). Dr. Levi noted:

[Claimant's] communication skills are deficient as stated by [his parent]. Reportedly, [Claimant] places local phone calls, sometimes gives verbal instructions with two steps or activities, does not look at others' faces when they are talking, does not end conversations appropriately, and does not tell his parents or friends about his favorite activities.

His social skills according to the ABAS-II, are deficient. Reportedly, he does not have friends, does not state when he or others feel happy, sad, angry or scared, compliment others for good deeds, or offer guests food, but sometimes laughs in

response to funny comments, places reasonable demands on friends, and has good relationships with family members.

[Claimant's] self-care skills according to the ABAS-II are low average. He reportedly cuts meats when eating, dresses himself, buttons his clothing, washes hands with soap, uses a fork to eat, ties his shoes, washes his hair, brushes teeth, combines hot and cold water, and sometimes gets out of bed on time by himself. (Exhibit 7.)

8(e). To address autism concerns, Dr. Levi administered the Autism Diagnostic Observation Schedule - Module 4 (ADOS-4), an observational assessment of Autism Spectrum Disorders, and the Autism Diagnostic Interview – Revised (ADI-R), with Claimant's parent providing the necessary responses. On the ADOS-4, all three scores (in communication, social interaction and overall score) were below the autism and autism spectrum cutoff scores (i.e. not indicative of autism). According to Claimant's parent report, his scores on the ADI-R indicated that social interaction and repetitive behaviors were above the autism cutoff and communication was below the autism cutoff. However, Dr. Levi noted, "There were more reported symptoms than observed." (Exhibit 7.)

8(f). In assessing whether Claimant had Mental Retardation, Dr. Levi noted:

The DSM-IV-TR (Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision; Washington, DC; American Psychiatric Association; 2000)[⁵] diagnosis of mental

⁵ The Administrative Law Judge takes official notice of the Diagnostic and Statistical Manual of Mental Disorders as a generally accepted tool for diagnosing mental and developmental disorders. At the time of Dr. Levi's report, the DSM-IV-TR was being used. An updated edition, the DSM-V, was published around the time of Dr. Levi's report and

retardation requires significantly sub-average intellectual functioning with concurrent deficits in adaptive functioning. [Claimant's] adaptive skills are reportedly mildly deficient, but his overall intellectual abilities are in the average range, thus, he is not mentally retarded. (Exhibit 7.)

8(g). In assessing whether Claimant had autistic disorder, Dr. Levi considered the 12 criteria set forth in the DSM-IV-TR for a diagnosis of autistic disorder, "six of which must be present (including qualitative impairment in at least two areas of social interaction, qualitative impairment in one area of communication and one restricted or repetitive activity) Dr. Levi found qualitative impairment in one area of social interaction in that he demonstrated a "failure to develop peer relationships appropriate to developmental level," based on the report that he had no friends and difficulty with peers since a young age. Dr. Levi also found a qualitative impairment in one area of communication in that Claimant demonstrated "marked impairment in the ability to initiate or sustain a conversation with others." Dr. Levi noted:

[Claimant's] reserved nature and lack of friends (as reported by [Claimant's parent]) alone do not meet DSM-IV-TR criteria for the diagnosis of Autistic Disorder, Asperger's Disorder or Pervasive Developmental Disorder Not Otherwise Specified [(PDD NOS)]. The last two disorders require an impairment in at least two areas out of three (social, communication, and repetitive behavior). He does not have any significant

subsequently utilized as the current tool for diagnosing mental and developmental disorders.

impairment in the area of repetitive stereotyped behaviors. He does not have two necessary significant impairments in the social area. There is a great variability in personality among 'normal' adults, including an introvert versus an extrovert, or how reserved and self-contained versus gregarious and social they are. (Exhibit 7.)

8(h). Dr. Levi provided no DSM-IV-TR diagnoses for Claimant. Her recommendations were as follows:

1. No intensive or professional intervention is necessary.
2. Joining a club or association based on his interests and appropriate to his age would be helpful for [Claimant] to develop better social communication in groups and sustain association/friendship with people in the group.
3. Counseling/psychotherapy may be helpful to address any social discomfort or negative emotions. (Exhibit 7.)

9. On July 17, 2013, the NLACRC eligibility committee met, and using the criteria from the DSM-IV-TR and the newly published DSM-V, determined that Claimant is not eligible for regional center services. (Exhibit 8.)

10. In February 2014, the Social Security Administration found Claimant eligible to receive SSI benefits "based on being disabled." (Exhibit A.) At the fair hearing, Claimant's parent maintained that his qualifying disability for SSI was "Autism Spectrum Disorder." However, Claimant provided no documentation to verify this asserted diagnosis.

11(a). At the fair hearing, Heike Ballmaier, Psy.D., testified credibly on behalf of the Service Agency. According to Dr. Ballmaier's review of the records, Claimant does not meet the criteria for a diagnosis of Autistic Disorder (under the DSM-IV-TR) or Autism Spectrum Disorder (under the DSM-V).

11(b). Dr. Ballmaier's testimony established that Claimant does not have Mental Retardation (now designated as Intellectual Disability under the DSM-V), since his intellectual functioning is in the low average range. Although the record from Germany indicated that Claimant was mentally retarded, Dr. Ballmaier discredited that diagnosis. She noted that Mental Retardation is a lifelong disability, so it is not possible to be mentally retarded prior to age 18 and later have much higher cognitive functioning. Consequently, if someone is diagnosed with Mental Retardation prior to age 18, and tests during adulthood indicate cognitive functioning in the average range, the initial diagnosis of Mental Retardation would be considered erroneous.

11(c). Dr. Ballmaier's testimony further established that, given his average cognition, Claimant does not have a condition similar to Mental Retardation, nor does he require treatment similar to that of people with Mental Retardation. Consequently, Claimant does not qualify for regional center services under the fifth category. (Testimony of Heike Ballmaier, Psy.D.)

12. At the Fair Hearing, Claimant's parent acknowledged that Claimant does not suffer from Mental Retardation/Intellectual Disability nor does he qualify under the fifth category. She reiterated the deficits that she had reported during the intake interview and to Dr. Levi. She did not believe that the approximately one-hour long evaluation by Dr. Levi was sufficient to assess Claimant and insisted that NLACRC needed to conduct a "real life" assessment including obtaining records from, and observing him at, his community college. She complained that, "in one hour, [they] tossed [out] all of my heartache in 20 years without a second opinion." According to Claimant's parent, "all [she] wanted was another evaluation."

13. The totality of the evidence did not establish that Claimant suffers from Autism Spectrum Disorder, Mental Retardation/Intellectual Disability or a condition similar to Mental Retardation or requiring treatment similar to that of people with Mental Retardation.

LEGAL CONCLUSIONS

1. Claimant did not establish that he suffers from a developmental disability (Autism Spectrum Disorder) which would entitle him to regional center services under the Lanterman Developmental Disability Services Act (Lanterman Act).⁶ (Factual Findings 1 through 13.)

2. Throughout the applicable statutes and regulations (Welf. & Inst. Code, §§ 4700 - 4716, and Cal. Code Regs., tit. 17, §§ 50900 - 50964), the state level fair hearing is referred to as an appeal of the Service Agency's decision. Where a claimant seeks to establish his eligibility for services, the burden is on the appealing claimant to demonstrate by a preponderance of evidence that the Service Agency's decision is incorrect. Claimant has not met his burden of proof in this case.

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

a disability which originates before an individual attains age 18, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual.. . .This [includes] mental retardation, cerebral palsy, epilepsy and autism. [It also includes] disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, but shall not include other handicapping conditions that are solely physical in nature.

⁶ Welfare and Institutions Code section 4500 et seq.

4(a). To prove the existence of a 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):

"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.

4(b). 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.

5(a). In addition to proving a "substantial disability," a claimant must show that his disability fits into one of the five categories of eligibility set forth in Welfare and Institutions Code section 4512. The first four categories are specified as: mental retardation, epilepsy, autism and cerebral palsy. The fifth and last category of eligibility is listed as "Disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation." (Welf. & Inst. Code, § 4512.)

5(b). Whereas the first four categories of eligibility are very specific, the disabling conditions under this residual fifth category are intentionally broad to encompass unspecified conditions and disorders. However, this broad language is not intended to be a catchall, requiring unlimited access for all persons with some form of learning or behavioral disability. There are many persons with sub-average functioning and impaired adaptive behavior; under the Lanterman Act, the Service Agency does not have a duty to serve all of them.

5(c). The Legislature required that the qualifying condition be "closely related" (Welf. & Inst. Code, § 4512) or "similar" (Cal. Code. Regs., tit. 17, § 54000) to mental retardation or "require treatment similar to that required for mentally retarded individuals." (Welf. & Inst. Code, § 4512.) The definitive characteristics of mental retardation/intellectual disability include a significant degree of cognitive and adaptive deficits. Thus, to be "closely related" or "similar" to mental retardation, there must be a manifestation of cognitive and/or adaptive deficits which render that individual's disability

like that of a person with mental retardation/intellectual disability. However, this does not require strict replication of all of the cognitive and adaptive criteria typically utilized when establishing eligibility due to mental retardation (e.g., reliance on I.Q. scores). If this were so, the fifth category would be redundant. Eligibility under this category requires an analysis of the quality of a claimant's cognitive and adaptive functioning and a determination of whether the effect on his performance renders him like a person with mental retardation/intellectual disability. Furthermore, determining whether a claimant's condition "requires treatment similar to that required for mentally retarded individuals" is not a simple exercise of enumerating the services provided and finding that a claimant would benefit from them. Many people could benefit from the types of services offered by regional centers (e.g., counseling, vocational training or living skills training, speech therapy, occupational therapy). The criterion is not whether someone would benefit. Rather, it is whether someone's condition *requires* such treatment.

6. In order to establish eligibility, a claimant's substantial disability must not be solely caused by an excluded condition. The statutory and regulatory definitions of "developmental disability" (Welf. & Inst. Code, § 4512 and Cal. Code. Regs., tit. 17, § 54000) exclude conditions that are *solely* physical in nature. California Code of Regulations, title 17, section 54000, also excludes conditions that are *solely* psychiatric disorders or *solely* learning disabilities. Therefore, a person with a "dual diagnosis," that is, a developmental disability coupled with either a psychiatric disorder, a physical disorder, or a learning disability, could still be eligible for services. However, someone whose conditions originate from just the excluded categories (psychiatric disorder, physical disorder, or learning disability, alone or in some combination) and who does *not* have a developmental disability would not be eligible.

7. The Lanterman Act and its implementing regulations contain no definition of the qualifying developmental disability of "mental retardation." Consequently, when determining eligibility for services and supports on the basis of mental retardation, that

qualifying disability had previously been defined as congruent to the DSM-IV-TR definition of "Mental Retardation." Under the DSM-IV-TR, the essential features of Mental Retardation were identified as significantly sub-average general intellectual functioning accompanied by significant limitations in adaptive functioning in certain specified skill areas. (DSM-IV-TR at pp. 39-43.) With the May 2013 publication of DSM-V, the term mental retardation has been replaced with the diagnostic term "Intellectual Disability."

8. The DSM-V describes Intellectual Disability as follows:

Intellectual disability . . . is a disorder with onset during the developmental period that includes both intellectual and adaptive functioning deficits in conceptual, social and practical domains. The following three criteria must be met:

- A. Deficits in intellectual functions, such as reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience, confirmed by both clinical assessment and individualized, standardized intelligence testing.
 - B. Deficits in adaptive functioning that result in failure to meet developmental and socio-cultural standards for personal independence and social responsibility. Without ongoing support, the adaptive deficits limit functioning in one or more activities of daily life, such as communication, social participation, and independent living, across multiple environments, such as home, school, work, and community.
 - C. Onset of intellectual and adaptive deficits during the developmental period.
- (DSM-V, p. 33.)

9. The DSM-V notes that the most significant change in diagnostic categorization accompanying the change from the DSM-IV-TR diagnosis of Mental Retardation to the DSM-V diagnosis of Intellectual Disability is the need for assessment of

both cognitive capacity and adaptive functioning, and that the severity of intellectual disability is determined by adaptive functioning rather than IQ score. (*Id.* at 37.) The DSM-V notes no other significant changes. Furthermore, the DSM-V revisions do not appear to have altered the Lanterman Act's fifth category eligibility analysis. Therefore, in order to qualify for regional center services under the fifth category of eligibility, the evidence must establish that a claimant's disabling condition is one closely related to Intellectual Disability or requiring treatment similar to the treatment provided to individuals with Intellectual Disability.

10. Claimant's parent admitted that Claimant does not suffer from Mental Retardation/Intellectual Disability or from a condition similar to Mental Retardation/Intellectual Disability. Given his average IQ, Claimant does not meet the criteria under the DSM-V for a diagnosis of Intellectual Disability, and therefore does not qualify for regional center services under the category of mental retardation. Additionally, Claimant has not established that he demonstrates deficits in cognitive and adaptive functioning such that he presents as a person suffering from a condition similar to Mental Retardation/Intellectual Disability. Moreover, the evidence did not establish that Claimant requires treatment similar to that required for individuals with Mental Retardation/Intellectual Disability. Based on the foregoing, Claimant does not fall under the fifth category of eligibility.

11. As with mental retardation, the Lanterman Act and its implementing regulations contain no definition of the qualifying developmental disability of "autism." Consequently, when determining eligibility for services and supports on the basis of autism, that qualifying disability had previously been defined as congruent to the DSM-IV-TR definition of "Autistic Disorder." With the May 2013 publication of the DSM-V, the qualifying disability of "autism" is defined as congruent to the DSM-V definition of "Autism Spectrum Disorder." Autism Spectrum Disorder encompasses the DSM-IV-TR's diagnoses of Autistic Disorder, Asperger's Disorder, Childhood Disintegrative Disorder, Rhett's

syndrome, and Pervasive Developmental Disability-Not Otherwise Specified (PDD-NOS). (DSM-V at p. 809.) Therefore, an individual with a well-established DSM-IV-TR diagnosis of Autistic Disorder, Asperger's Disorder, or PDD-NOS is now given the diagnosis of Autism Spectrum Disorder. (*Id.* at 51.)

12. The DSM-V, section 299.00 discusses the diagnostic criteria which must be met to provide a specific diagnosis of Autism Spectrum Disorder, 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.

[¶] . . . [¶]

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

1. Stereotyped or repetitive motor movements, use of objects, or speech (e.g., simple motor stereotypies, lining up toys or flipping objects, echolalia, idiosyncratic phrases).
2. Insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior (e.g., extreme distress at small changes, difficulties with transitions, rigid thinking patterns, greeting rituals, need to take same route or eat same food every day).
3. Highly restricted, fixated interests that are abnormal in intensity or focus (e.g., strong attachment to or preoccupation with unusual objects, excessively circumscribed or perseverative interests).
4. Hyper- or 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 objects, visual fascination with lights or movement).

[11] . . . [11]

- C. Symptoms must be present in the early developmental period (but may not become fully manifest until social demands exceed limited capacities, or may be masked by learned strategies in later life).
- D. Symptoms cause clinically significant impairment in social, occupational, or other important areas of current functioning.
- E. These disturbances are not better explained by intellectual disability (intellectual development disorder) or global developmental delay. Intellectual disability and autism spectrum disorder frequently co-occur; to make comorbid diagnoses of autism spectrum disorder and intellectual disability, social communication should be below that expected for general developmental level. (DSM-V at pp. 50-51.)

13(a). Although Claimant maintains that he is eligible for regional center services under a diagnosis of Autism Spectrum Disorder, this diagnosis was not established by the totality of the evidence.

13(b). After conducting psychological testing, Dr. Levi found that Claimant did not meet the criteria for a DSM-IV-TR diagnosis of Autistic Disorder. Additionally, the NLACRC eligibility committee later applied the broader criteria set forth in the DSM-V and found that Claimant did not meet the criteria for a diagnosis of Autism Spectrum Disorder. Consequently, the evidence did not establish that Claimant has ever been diagnosed with Autistic Disorder or Autism Spectrum Disorder by a qualified psychologist.

13(c). Although Claimant's parent asserted that he had been diagnosed with autism as a toddler and that the Social Security Administration found his qualifying disability to be "Autism Spectrum Disorder," there was no documentation to support these asserted diagnoses.

13(d). Based on the psychological testing and application of the DSM criteria, Claimant does not meet the requisite clinical criteria to diagnose him with Autism Spectrum Disorder. While Claimant may manifest some deficits in his communication and social skills, his symptoms do not cause clinically significant impairment which would satisfy the required DSM-V criteria for a diagnosis of Autism Spectrum Disorder. Consequently, Claimant has not established that he is eligible for regional center services under the diagnosis of autism.

14. The preponderance of the evidence does not support a finding that Claimant is eligible to receive regional center services.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

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

DATED: April 4, 2014



JULIE CABOS-OWEN

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.