

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

FAR NORTHERN REGIONAL CENTER,

Service Agency.

OAH No. 2014020190

DECISION

This matter was heard before Administrative Law Judge Susan H. Hollingshead, State of California, Office of Administrative Hearings (OAH), in Chico, California, on March 25, 2014.

The Service Agency, Far Northern Regional Center (FNRC), was represented by Phyllis J. Raudman, Attorney at Law.

Claimant was represented by his mother.

Jane Davidson, Spanish language interpreter, translated the proceedings.

Oral and documentary evidence was received. The record was closed and the matter submitted for decision on March 25, 2014.

## ISSUE

Is claimant eligible to receive regional center services and supports based on a qualifying condition of autism pursuant to Welfare and Institutions Code section 4512?<sup>1</sup>

## FACTUAL FINDINGS

1. Claimant is a six-year-old boy who lives in the family home with his parents and twin brother. The twins received First Steps services in the State of Missouri. First Steps is Missouri's Early Intervention system for infants and toddlers from birth to age three, who have delayed development or diagnosed conditions that are associated with developmental disabilities. At age three, Missouri's Early Childhood Special Education serves qualifying children. Claimant qualified for Missouri's special education services. He attended an early childhood developmental preschool in the Francis Howell School District and received physical therapy (PT), occupational therapy (OT) and speech therapy pursuant to his Individualized Education Program (IEP).

After the family relocated to California from Missouri in August 2013, claimant's parents sought FNRC services and supports for the twins based on autism. Claimant's twin brother was found eligible as an individual with the qualifying condition of autism.

2. Lisa Benaron M.D. is the FNRC Medical Director. She is double board certified in internal medicine and pediatrics and is an expert in neurodevelopmental disabilities. Diagnosing components of autism spectrum disorders is one of her main areas of expertise. As part of her role on the FNRC Eligibility Team, Dr. Benaron reviewed all available records and found that claimant had apparently been diagnosed with an autism

---

<sup>1</sup>Unless otherwise indicated, all statutory references are to the California Welfare and Institutions Code.

spectrum disorder on January 11, 2011, at 39 months of age. This determination was based on an incomplete document of that date authored by Denis Altman M.D., that did not include any test data or explanation for his conclusion. There was no evidence of a “best practices” autism assessment being administered.

In May 2013, prior to claimant’s relocation to California, records indicate that a Missouri School Psychologist completed a comprehensive evaluation and determined that any features of autism spectrum disorder were no longer apparent. Claimant qualified for special education based on a primary disability of Language Impairment. There was no secondary impairment.

Therefore, when claimant’s mother sought eligibility for claimant under the condition of autism, Dr. Benaron recommended a comprehensive best practices autism evaluation. Clinical Psychologist Ingrid Leckliter Ph.D., at the UC Davis MIND Institute, completed the evaluation on October 17, 2013. Dr. Benaron testified, “Dr. Leckliter did not see any behaviors suggestive of an autism spectrum disorder, nor was the score on the ADOS consistent with an ASD.”

3. The FNRC Eligibility Team determined that claimant did not meet the eligibility criteria for regional center services. As a result of that determination, a Notice of Proposed Action (NOPA) was issued on December 11, 2013, informing claimant that FNRC determined he was not eligible for regional center services. The NOPA stated:

Reason for action:

[Claimant] does not have intellectual disability and shows no evidence of epilepsy, cerebral palsy, or a disabling condition found to be closely related to intellectual disability or to require treatment similar to that required for individuals with intellectual disability. [Claimant] does have a diagnosis of

autism however the diagnosis was based on history (parent report only) not current functioning. Parent has declined to have him observed by Far Northern Regional Center's medical director in order to establish current signs and symptoms of autism. Psychological records show evidence of Mood Disorder NOS but that is not a qualifying condition for regional center services. Eligibility Review (multi-disciplinary team) determined [claimant] was not eligible for FNRC services based on Medical records reviewed by Dr. Lisa Benaron. Medical dated 2008-2013 by JFK Health Center in St. Louis, MO. Psychological dated 10/17/13 by UC Davis MIND Institute. Psychological dated 05/07/13 by Francis Howell School District, MO. Psychological dated 04/04/13 by Fran Weber, M.Ed. School Psych Examiner. Psychological dated 09/2012 by Life Skills, Touch Point Autism Services. Psychological dated 12/12/11-02/19/13 by Missouri Dept. of Mental Health. Intake summary dated 08/29/13 by Micki Rodstrom, Intake Specialist. IEPs dated 09/23/13 and 01/08/13 by Butte County SELPA. IEPs dated 05/07/13 and 03/28/13 by Francis Howell School District.

4. Claimant filed a Fair Hearing Request through his parent, dated January 31, 2013, disputing his ineligibility for regional center services. The reason for requesting a fair hearing was "Because I am not satisfied with the results. I want him to be a regional center client to receive the necessary services."

5. Pursuant to the Lanterman Act, Welfare and Institutions Code section 4500 et seq., regional centers accept responsibility for persons with developmental disabilities. Welfare and Institutions Code section 4512 defines “developmental disability” as follows:

“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.... [T]his term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to intellectual disability<sup>2</sup> or to require treatment similar to that required for individuals with an intellectual disability [commonly known as the “fifth category”], but shall not include other handicapping conditions that are solely physical in nature.

6. California Code of Regulations, title 17, section 54000, further defines the term “developmental disability” as follows:

(a) “Developmental Disability” means a disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to

---

<sup>2</sup> Effective January 1, 2014, the Lanterman Act replaced the term “mental retardation” with “intellectual disability.” The terms are used interchangeably throughout.

mental retardation or to require treatment similar to that required for individuals with mental retardation.

(b) The Development Disability shall:

(1) Originate before age eighteen;

(2) Be likely to continue indefinitely;

(3) Constitute a substantial disability for the individual as defined in the article.

(c) Developmental Disability shall not include handicapping conditions that are:

(1) Solely psychiatric disorders where there is impaired intellectual or social functioning which originated as a result of the psychiatric disorder or treatment given for such a disorder. Such psychiatric disorders include psycho-social deprivation and/or psychosis, severe neurosis or personality disorders even where social and intellectual functioning have become seriously impaired as an integral manifestation of the disorder.

(2) Solely learning disabilities. A learning disability is a condition which manifests as a significant discrepancy between estimated cognitive potential and actual level of educational performance and which is not a result of generalized mental retardation, educational or psycho-social deprivation, psychiatric disorder, or sensory loss.

(3) Solely physical in nature. These conditions include congenital anomalies or conditions acquired through disease, accident, or faulty development which are not associated with a neurological impairment that results in a need for treatment similar to that required for mental retardation.

7. Welfare and Institutions Code section 4512, subdivision (l), defines "substantial disability" as:

(l) The existence of significant functional limitation 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.

8. California Code of Regulations, title 17, section 54001, provides:

(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 functional limitation, 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:

(1) Receptive and expressive language.

(2) Learning.

(3) Self-care.

(4) Mobility.

(5) Self-direction.

(6) Capacity for independent living.

(7) Economic self-sufficiency.

9. The Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR<sup>3</sup>) was the standard for diagnosis and classification at the time claimant was apparently diagnosed with autism.

---

<sup>3</sup> The DSM-IV-TR is a multi-axial system which involves five axes, each of which refers to a different domain of information as follows:



DSM-IV-TR section 299.00, Autistic Disorder, states:

The essential features of Autistic Disorder are the presence of markedly abnormal or impaired development in social interaction and communication and a markedly restricted repertoire of activity and interests. Manifestations of the disorder vary greatly depending on the developmental level and chronological age of the individual . . . The impairment in reciprocal social interaction is gross and sustained . . . The impairment in communication is also marked and sustained and affects both verbal and nonverbal skills . . . Individuals with Autistic Disorder have restricted, repetitive, and stereotyped patterns of behavior, interests, and activities.

To diagnose Autistic Disorder, it must be determined that an individual has at least two qualitative impairments in social

---

Axis I	Clinical Disorders
	Other Conditions That May Be a Focus of Clinical Attention
Axis II	Personality Disorders
	Mental Retardation
Axis III	General Medical Conditions
Axis IV	Psychosocial and Environmental Problems
Axis V	Global Assessment of Functioning

interaction; at least one qualitative impairment in communication; and at least one restricted repetitive and stereotyped pattern of behavior, interests, or activities. One must have a combined minimum of six items from these three categories. In addition, delays or abnormal functioning in at least one of the following areas, with onset prior to age three, is required: (1) social interaction, (2) language as used in social communication, or (3) symbolic or imaginative play.

10. The only DSM-IV diagnoses in claimant's records appeared on his Person Centered Plan for services from the Missouri Department of Mental Health, Division of Developmental Disabilities as follows:

Axis I:	299.80 Pervasive Developmental Disorder NOS
	296.90 Mood Disorder NOS
Axis II:	799.9 Diagnosis Deferred on Axis II
Axis III:	348.39 Encephalopathy NEC
	V17.0 Fam Hist Psychiatric Condition

There was no evidence of psychometric testing or other data to support these diagnoses.

11. Sara Willis was claimant's Service Coordinator at the State of Missouri Department of Mental Health, Division of Developmental Disabilities. She testified telephonically and explained that claimant received services through the First Steps program and then transferred to the regional center at age three. She explained that the eligibility criteria to receive services are much broader than that required under the Lanterman Act. At-risk children can qualify with many conditions if there are functional limitations in two or more areas of major life activities. The limitations may be solely the

result of a physical condition or a learning disability, conditions that the Lanterman Act specifically excludes.

12. During April 2013, Claimant received a comprehensive assessment through the Francis Howell School District in Missouri. Assessments completed included:

Wechsler Nonverbal Scale of Ability

Adaptive Behavior Assessment System-Second Edition (ABAS-2)

The Clinical Evaluation of Language Fundamentals-Preschool 2

The Oral and Written Language Scales

Descriptive Pragmatic Profile (Clinical Evaluation of Language Fundamentals-PS)

Goldman-Fristoe Test of Articulation Second Edition

Language Sample

Gilliam Asperger's Disorder Scale (GADS)

Observation

Behavior Assessment for Children, Second Edition (BASC-2)

Peabody Developmental Motor Scales Second, Edition

13. After reviewing the assessment results, claimant's Missouri IEP team determined that he qualified for special education based on the qualifying condition of Language Impairment. There was no secondary condition.

On the Wechsler Nonverbal Scale of Ability, claimant obtained a Full Scale score of 87, which indicated that he was “functioning within the low average to average range of psychometric intelligence as related to nonverbal cognitive problem solving skills.”

The ABAS-2, completed by ECSE teacher Debbie LeJeune, fell in the low average range with a score of 83 on the General Adaptive Composite, “with relative weaknesses seen in his communication skills and social interaction with his peers.” The BASC-2 results “indicate no significant behavior problems.” Testing also showed that “there are no concerns in the area of visual motor” and claimant’s “gross motor skills are age appropriate at this time.”

Both Ms. LeJeune and SLP (Speech-Language Pathologist) Christa Blazevic completed the Gilliam Asperger’s Disorder Scale (GADS). Ms. LeJeune reported scores on the GADS that corresponded to an Asperger’s Disorder Quotient of 53, resulting in a low/not probable probability of Asperger’s Disorder. Ms. Blazevic reported scores that corresponded to an Asperger’s Disorder Quotient of 48, also resulting in a low/not probable probability of Asperger’s Disorder. During an observation by Kristin Bogan, Autism Programming-ECSE, there were few “characteristics of Autism in the form of Asperger’s Disorder observed.”<sup>4</sup>

Claimant was “observed to have age appropriate cognitive, fine and gross motor, social/emotional and adaptive skills in the preschool setting. [Claimant] demonstrates significant weaknesses with both receptive and expressive language development. This impacts his ability to follow directions, participate in conversations, answer questions

---

<sup>4</sup> Dr. Benaron testified that it is not appropriate to administer a test for Asperger’s in an individual with early language delays as the DSM-IV specifies that, in contrast to Autistic Disorder, an essential feature of Asperger’s Disorder is that there are no clinically significant delays or deviance in language acquisition.

related to both small and large group activities, label and use age appropriate vocabulary.”

The following diagnostic conclusion was given:

[Claimant] meets the eligibility for a Language diagnosis. This diagnosis indicates that the student consistently exhibits inappropriate use of any of these structures of language: morphology, syntax, and semantics, as measured by language sampling or other clinical tasks. The student’s language functioning is significantly below the student’s abilities as measures [*sic*] by two or more standardized language assessments. Significantly below is defined as: 2 standard deviations below the mean for children ages 3 to 5 but not eligible for kindergarten and 1.5 standard deviations below cognitive ability for students who are kindergarten eligible or older. The language disorder adversely affects the student’s educational performance. The language disorder is not a result of dialectal differences, second language influence, or lack of instruction in math, limited English proficiency, or lack of appropriate instruction in reading, including the essential components of reading instruction which means: explicit and systematic instruction in phonemic awareness, phonics, vocabulary development, reading fluency, including oral reading skills, and reading comprehension strategies.

14. Claimant’s Francis Howell School District IEP was completed on May 7, 2013.
15. After claimant moved to California in August 2103, he began attending school in Chico. A Butte County SELPA IEP was completed on September 23, 2013, which

stated that he qualified for special education as a kindergartener with a primary qualifying disability of Speech or Language Impairment (SLI). There was no secondary disability referenced. Goals were developed to address his receptive and expressive language needs. The IEP team agreed on placement in a regular education kindergarten with fifty, 25-minute sessions of "pull out" language and speech services yearly.

16. Dr. Leckliter conducted her comprehensive best practices assessment of claimant at the UC Davis MIND Institute on October 17, 2013. Her final diagnostic impression was complicated by introduction of changes to the Diagnostic and Statistical Manual. The Diagnostic and Statistical Manual of Mental Disorders: Fifth Edition (DSM-V) was released in May 2013. It no longer recognizes a specific diagnosis of autistic disorder. The DSM-V established a diagnosis of autism spectrum disorder which encompasses disorders previously referred to as early infantile autism, childhood autism, Kanner's autism, high-functioning autism, atypical autism, pervasive developmental disorder not otherwise specified, childhood disintegrative disorder, and Asperger's disorder.

The plain language of the Lanterman Act's eligibility categories includes "autism" but does not include other Pervasive Developmental Disorders (PDD) diagnoses in the DSM-IV-TR (Rett's Disorder, Childhood Disintegrative Disorder, Asperger's Disorder, and PDD-NOS). The Lanterman Act has not been revised since the publication of the DSM-V to reflect the current terminology of Autism Spectrum Disorder. Claimant was originally diagnosed under the DSM-IV-TR, while the DSM-V was the operative version during his most recent evaluation.

17. DSM-V section 299.00, Autism Spectrum Disorder, states:

The essential features of Autism Spectrum Disorder are persistent impairment in reciprocal social communication and social interaction (Criterion A), and restricted, repetitive

patterns of behavior, interests or activities (Criterion B).

These symptoms must be present in early childhood and limit or impair everyday functioning. (Criterion C and D). . .

The impairments in communication and social interaction specified in Criterion A are pervasive and sustained . . .

Manifestations of the disorder also vary greatly depending on the severity of the autistic condition, developmental level, and chronological age; hence, the term *spectrum*. Autism spectrum disorder encompasses disorders previously referred to as early infantile autism, childhood autism, Kanner's autism, high-functioning autism, atypical autism, pervasive developmental disorder not otherwise specified, childhood disintegrative disorder, and Asperger's disorder.

To diagnose Autism Spectrum Disorder, it must be determined that an individual has persistent deficits in social communication and social interaction across multiple contexts, as manifested by the following, **currently or by history**: (1) deficits in social-emotional reciprocity, (2) deficits in nonverbal communication behaviors used for social interaction, and (3) deficits in developing, maintaining, and understanding relationships. The individual must also have restricted, repetitive patterns of behavior, interests, or activities, as manifested by at least two of the following, **currently or by history**: (1) stereotyped or repetitive motor movement, use of objects or speech, (2) insistence on sameness, inflexible adherence to routines, or ritualized

patterns of verbal or nonverbal behavior, (3) highly restricted, fixated interests that are abnormal in intensity or focus, and/or (4) hyper- or hyporeactivity to sensory input or unusual interest in sensory aspects of the environment. In addition, symptoms must be present in the early developmental period and must cause clinically significant impairment in social, occupational, or other important areas of current functioning.

(Bolding added.)

18. Results on the Kaufman Assessment Battery for Children, Second Edition (KABC-II), indicate that claimant does not have an intellectual disability. This instrument was selected due to his history of communication delays and his uncertain language preference, Spanish or English. His level of performance was comparable to that quantified on April 4, 2013, with the Wechsler Nonverbal Scale of Ability.

Results from the ABAS-II rating scales completed by claimant's mother, showed claimant's "development of age-appropriate adaptive skills was <2<sup>nd</sup> percentile, indicating functional impairment and that he is unable to use his cognitive strengths to independently meet age-appropriate expectations in daily life."

ADOS-II results showed "minimal to no evidence" of autism or an autism spectrum disorder. Dr. Leckliter determined that "current behavioral observations and [claimant's] responses to standardized measures are not consistent with the presence of an autism spectrum disorder." However, she opined that claimant's "behaviors may have historically been consistent with ASD . . . The DSM-5 indicates that target behaviors may be present by historical report and do not need to be currently observed in order to



make the diagnosis. Hence the diagnosis of ASD appears appropriate based almost solely on history." Therefore, she offered the following diagnosis:

Autism Spectrum Disorder, 299.00

19. By letter dated February 5, 2014, Dr. Benaron received parental approval to observe claimant at "school and to interact with him, as well as speak to his teachers and other professionals." On February 12, 2014, she observed claimant at school and spoke with his kindergarten teacher, Cindy Steindorf. She also conducted a phone interview with Speech Therapist Ally Deery on February 18, 2014.

Results of the school observation did not support an autism spectrum disorder diagnosis. Dr. Benaron gave examples of school activities claimant was involved in where he "listened attentively, raised his hand to answer questions and waited patiently to be called on. He gave correct answers when he was called on. He maintained appropriate eye contact, did not demonstrate atypical behaviors, followed directions well, spontaneously initiated shared joint attention by commenting and showing his work to his classmates, used appropriate verbal and non-verbal communication, worked with a partner and played on the playground with other children.

She testified that he does not currently display any of the characteristics of a child with autism, and that he is doing well in school, shows much interaction with his peers and is able to participate in typical school activities.

20. Ms. Steindorf has experience working with children with autism. She did not see any evidence of an autism spectrum disorder. Claimant has some residual speech delays but does not show any characteristics of a child with an autism spectrum disorder. He does not stand out from the other children in her room. Overall, claimant is in her top-level academic groups and he is mostly well behaved in class. He functions at grade level for self-care and self-direction. His communication is delayed slightly but he

does not have the odd/idiosyncratic features of speech seen in children with autism spectrum disorders.

21. Ms. Deery, in her telephone interview with Dr. Benaron, said that she believes claimant's difficulties can be explained by his speech deficits, which was explained as follows:

He has trouble understanding questions and seems to guess at what is required of him. For example, when asked where an object is while viewing a picture with his speech therapist, he may answer what the object is instead of where. He is eager to please during his speech therapy sessions. He frequently seeks praise and attention. No deficits in non-verbal communication, no repetitive motor mannerism. She does not see evidence of social deficits. She feels that he doesn't quite engage with peers for the purpose of playing (only for attention seeking). He can be rule oriented (tells on peers who aren't following the rules). He demonstrates impulsivity but that is improving as the year goes on. He handles transitions well. No echolalia or idiosyncratic speech. No repetitive behaviors or highly focused interests.

Dr. Benaron reviewed the diagnostic criteria for Social Communication Disorder with Ms. Deery who opined that claimant meets the diagnostic criteria. Dr. Benaron's

impression was that claimant "may be more accurately described by the diagnosis of Social (Pragmatic) Communication Disorder."<sup>5</sup>

22. Claimant's mother testified to her concerns with claimant's behaviors. He does not play well with his brother, they often fight, and his behaviors are challenging for his parents. It is extremely difficult for her to take the twins out in the community. She explained that he has limited food preferences and still has language delays. In the home environment, she testified that claimant does not listen or follow directions. He will run away and not comply when asked to stop. She is concerned that he lacks safety awareness and could be injured running into the street.

When asked what services she desired from the regional center, claimant's mother responded that her primary concerns were services to address his speech and language deficits and assistance with claimant's behaviors/anger management. She testified that claimant "is better but needs help of professionals...she's just a mom."

23. Claimant's maternal aunt and uncle also testified at hearing. His uncle was concerned with claimant's lack of self-direction and self-care skills. Claimant still wears diapers at night and requires assistance changing his clothes and putting on shoes. He needs his hand held when crossing the street due to safety concerns. It is difficult to maintain a conversation with him as "he loses attention and is in his own world." Claimant's uncle opined that claimant's behaviors were reduced at school because "in school he's in a pattern and he's okay with pattern. He's following school rules."

---

<sup>5</sup> DSM-V Social (Pragmatic) Communication Disorder 315.39 diagnostic criteria includes persistent difficulties in the social use of verbal and nonverbal communication with deficits that result in functional limitations in effective communication, social participation, social relationships, academic achievement, or occupational performance, individually or in combination.

Claimant's aunt shared her concerns with claimant's various behaviors that she finds unusual and opined that these behaviors evidence autistic traits. She agreed that he needs assistance with "changing, putting shoes on and being told how to behave." He fights with his brother and she often needs to separate them. She "can't have normal communication with him." She is worried that he will be hit by a car or harmed by a stranger due to his lack of safety awareness. His aunt feels that he needs help with speech and communication and daily living activities, because "he can't rely on himself."

24. While evidence showed that claimant's concerns are difficult for his very supportive family, Dr. Benaron testified persuasively that his presentation rules out autism. After the confusion with the UC Davis MIND Institute final diagnosis of ASD, after determining that "current behavioral observations and [claimant's] responses to standardized measures are not consistent with the presence of an autism spectrum disorder," Dr. Benaron spoke with Dr. Leckliter and her supervisor, Sally Rogers, Ph.D., who was a member of the committee that produced the DSM-V criteria for autism spectrum disorders. Dr. Rogers indicated that she would not give an ASD diagnosis to a child who had shown symptoms in the past but no longer manifested the characteristic behaviors. Dr. Benaron testified that she agreed with this interpretation and felt confident that this represented the intentions of the committee. She offered the following insight:

Children who meet criteria for an autism spectrum disorder at a young age, but no longer meet criteria as they mature, is occurring more and more often now that early diagnosis and intensive behavioral intervention is available. Between 20-30% of children who receive a diagnosis of an autism spectrum disorder prior to age 3 go on to "lose" the diagnosis, as they get older. The explanation behind this phenomenon is that intensive early intervention can re-wire the brain so that the

child develops skills that were deficient at the time of the initial evaluation for an autism spectrum disorder.

25. Based on all the available information, FNRC appropriately concluded that claimant does not meet eligibility criteria for regional center services. Dr. Benaron testified that FNRC has two ways of considering eligibility in this matter with both approaches resulting in the decision that claimant is not eligible:

1. FNRC could accept the ASD diagnosis from Dr. Leckliter, even though we do not agree that the diagnosis is accurate. Even if [claimant] is considered to carry the diagnosis of an ASD, he is not eligible for services based on the absence of substantial disability in 3 of the 7 areas defined in the Lanterman Act.
2. Take the position that [claimant] does not currently meet criteria for an autism spectrum disorder diagnosis, and deny eligibility based on the absence of a qualifying condition.

Dr. Benaron testified that, in her clinical opinion, claimant “will be best served by removing the diagnosis of an ASD because the diagnosis does not accurately describe his behaviors.”

## LEGAL CONCLUSIONS

1. Eligibility for regional center services is limited to those persons meeting the eligibility criteria for one of the five categories of developmental disabilities set forth in section 4512 as follows:

“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....[T]his term shall

include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with intellectual disability [commonly known as the "fifth category"], but shall not include other handicapping conditions that consist solely physical in nature.

Handicapping conditions that consist solely of psychiatric disorders, learning disabilities or physical conditions do not qualify as developmental disabilities under the Lanterman Act.

2. Claimant bears the burden of establishing that he meets the eligibility requirements for services under the Lanterman Act.<sup>6</sup> He has not met that burden. The evidence presented did not prove that claimant is substantially disabled by a qualifying condition that is expected to continue indefinitely. Accordingly, he does not have a developmental disability as defined by the Lanterman Act and is not eligible for regional center services.

3. Claimant's family will continue to receive regional center services and supports based on his brother's eligibility. In addition, claimant's school district will continue monitoring his needs through the IEP process.

---

<sup>6</sup> California Evidence Code section 500 states that "[e]xcept as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting."

## ORDER

Claimant's appeal from the Far Northern Regional Center's denial of eligibility for services is DENIED. Claimant is not eligible for regional center services under the Lanterman Act

DATED: April 4, 2014

\_\_\_\_\_/s/\_\_\_\_\_  
SUSAN H. HOLLINGSHEAD  
Administrative Law Judge  
Office of Administrative Hearings

## NOTICE

**This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)**