

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

Claimant,

OAH No. 2014030577

v.

WEST LOS ANGELES REGIONAL

CENTER,

Service Agency.

DECISION

Carla L. Garrett, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on May 20, 2014, in Culver City, California.

Lisa Basiri, Fair Hearing Coordinator, represented the West Los Angeles Regional Center (WLARC or Service Agency). Claimant's mother (Mother) represented Claimant.¹ Pamela Carreon, certified court interpreter, provided Spanish translating services.

Oral and documentary evidence was received, the record was closed, and the matter was submitted for decision on May 20, 2014.

ISSUE

Was Dr. Thomas L. Carrillo's diagnosis of Claimant of a developmental disability (autistic disorder) in 2008 clearly erroneous such that WLARC may withdraw Claimant's eligibility for regional center services?

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¹ Claimant is referred to by party title to preserve Claimant's privacy.

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FINDINGS OF FACT

1. Claimant is an 11-year-old boy, who resides with Mother. In 2007, when he was four years and eleven months old, Claimant began receiving special education services from the Los Angeles Unified School District (District) under the eligibility category of specific learning disability. In 2008, when Claimant was five years and two months old, Claimant was found eligible for services pursuant to the Lanterman Developmental Disabilities Act (Lanterman Act), California Welfare and Institutions Code, section 4500, et seq., as a result of a diagnosis of autistic disorder rendered by Dr. Thomas L. Carrillo on January 23, 2008. In 2013, after a psychological evaluation conducted by Dr. Alex Hernandez, as well as a review of past evaluations and records, WLARC's multidisciplinary clinical team determined the documentation was not supportive of Claimant having an eligible regional center diagnosis of mental retardation, autistic disorder, epilepsy, cerebral palsy, or a condition similar to mental retardation. Claimant filed a timely appeal.

DR. CARRILLO'S 2008 PSYCHOLOGICAL EVALUATION

2. Dr. Carrillo's psychological evaluation of Claimant consisted of his observation of Claimant in his office, and his administration of a number of tests. Specifically, Dr. Carrillo conducted the Leiter International Performance Scale (Revised), the Peabody Picture Vocabulary Test (Third Edition), the Vineland Adaptive Behavior Scales, Gilliam Autism Rating Scale, and the Childhood Autism Rating Scale.

3. Dr. Carrillo's written report included a very brief description of his behavioral observations of Claimant. Specifically, Dr. Carrillo reported that Claimant was highly active, easily distracted, tended to wander around the testing room, showed a high level of impulsivity, and demonstrated intermittent eye contact.

4. The test results showed that Claimant's cognitive abilities, based on the Leiter International Performance Scale, were in the normal to bright normal range. His communication skills, based on the Vineland Adaptive Behavior Scales and the Peabody Picture Vocabulary Test, showed that Claimant scored in the low normal range and the borderline to low normal range, respectively. Claimant's adaptive and social skills, based on the Vineland Adaptive Behavior Scales, fell within the mild range of delay.

5. Dr. Carrillo found Claimant's behavioral functioning to be similar to those found in autistic children. Specifically, Dr. Carrillo found Claimant to be easily distracted, difficult to engage, easily bored with stimulus items presented to him, highly impulsive, and used intermittent eye contact. Because of these behaviors, Dr. Carrillo screened Claimant for autistic spectrum disorder with the Gilliam Autism Rating Scale and the Childhood Autism Rating Scale, which consisted of questionnaires given to Mother for her to complete concerning Claimant's behavior. After scoring the rating scales, Dr. Carrillo found that Claimant scores fell within the average probability of autism range and within the mild range of autism, respectively.

6. Dr. Carrillo stated in his report that when comparing Claimant's symptomatology to the diagnostic criteria in the Diagnostic and Statistical Manual of Mental Disorders, DSM-IV-TR, Claimant seemed to have met many of the criteria, though Dr. Carrillo did not list each of the diagnostic criteria and state specifically how Claimant met or did not meet the criteria. However, Dr. Carrillo did state that Claimant demonstrated a diminished capacity to spontaneously seek shared enjoyment from others, showed stereotypic and repetitive patterns of behavior, and diminished capacity to facilitate eye contact in social situations. As such, Dr. Carrillo concluded that Claimant seemed to be most effectively described as a child with mild or high-functioning autism.

PSYCHOEDUCATIONAL EVALUATIONS

7. In August 2009, Claimant began receiving counseling and psychiatric care with Children's Bureau, including the administration of medication. On September 21, 2009, when Claimant was six years and ten months old, a Los Angeles Unified School District psychologist conducted a psychoeducational evaluation of Claimant in order to rule out emotional disturbance as an area of suspected disability for special education services. Claimant, who was in second grade, was aggressive toward peers, often insulting and threatening them. He also demonstrated defiant and violent behavior toward adults, and engaged in a number of dangerous, aggressive, and inappropriate behaviors such as climbing fences and buildings, hitting, spitting and kicking adults, refusing to enter and/or remain in his assigned classroom, and actively defying requests to return to class. Claimant exhibited significant levels of inattention and hyperactivity within the school setting.

8. The school psychologist reviewed school records, conducted observations, and administered the Behavior Assessment System for Children (Second Edition), the Attention Deficit Hyperactivity Disorder Rating Scale (Fourth Edition), and a Home and School Situations Questionnaire.

9. The school psychologist concluded that although Claimant had demonstrated difficulty maintaining satisfactory interpersonal relationships with peers and teachers, those characteristics did not appear to be exhibited consistently across settings to warrant an eligibility of emotional disturbance, especially given the insufficient elapse of time since psychiatric intervention. However, the results of the assessment indicated that Claimant continued to demonstrate a severe discrepancy between his cognitive ability and academic achievement; therefore, Claimant continued to meet eligibility criteria as a student with a specific learning disability.

10. In addition, the school psychologist concluded that Claimant's heightened alertness to environmental stimuli could be due to Attention Deficit Hyperactivity Disorder (ADHD), which could result in an eligibility category of other health impaired.

11. In November 2009, Claimant, after an incident at school where he kicked, hit, and swore at adults, was enrolled in a nonpublic school called Tobinworld, which had a specialized program serving students who struggled with severe emotional or behavioral challenges, and provided other services that Claimant required, such as speech and language services, and the implementation of a behavior support plan. While Claimant's behavior improved at Tobinworld in that he stopped demonstrating social, emotional, or behavioral problems, his behavior at home worsened. Specifically, at home, Claimant exhibited defiance, impulsivity, aggression, temper tantrums, hyperactivity, depression, withdrawal, and attention problems.

12. In 2012, when Claimant was nine years old, District conducted another psychoeducational assessment of Claimant. The school psychologist noted that while previous reports showed that Claimant's cognitive ability fell into the average range, on the 2012 assessment, it fell within the low average range. The school psychologist concluded that Claimant demonstrated behaviors and needs that were described under several special education eligibilities, but that his primary eligibility was specific learning disability.

DR. ALEX HERNANDEZ' 2013 PSYCHOLOGICAL EVALUATION

13. On February 25, 2013, March 4, 2013, and April 11, 2013, Dr. Alex Hernandez, who was a registered psychologist assistant under the supervision of Dr. Thompson J. Kelly of WLARC, conducted a psychological evaluation of Claimant for the purpose of clarifying his diagnosis of autism. Dr. Hernandez, who testified at hearing, prepared a written report. Dr. Hernandez administered the Wechsler Intelligence Scale for Children (Fourth Edition) (WISC-IV), Gilliam Autism Rating Scale (Second Edition), the

Childhood Autism Rating Scale, Vineland Adaptive Behavior Scales (Second Edition), Autism Diagnostic Observation Schedule (Module 3) (ADOS), Wide Range Achievement Test (Fourth Edition) (WRAT-4), the Conners CI (teacher form), Adaptive Behavior Assessment System (Second Edition) (teacher form), conducted a records review, performed observations of Claimant, and interviewed Claimant's teacher and school counselor. Dr. Hernandez administered the tests in both English and Spanish in an effort to obtain optimal results.

14. Dr. Hernandez conducted behavioral observations of Claimant. Once testing commenced, Claimant presented as a highly active child who was easily distracted and who Dr. Hernandez frequently redirected to the task at hand. Claimant engaged in intermittent eye contact with Dr. Hernandez. Dr. Hernandez noted that Claimant responded appropriately to his questions, and engaged appropriately in imaginative play with numerous toys offered during the evaluation. Claimant engaged in conversation using complete sentences with appropriate use of tone, inflection, and gestures. Dr. Hernandez opined, overall, that Claimant made a reasonable effort to respond to test items to the best of his ability however, there were periods during the evaluation that Claimant lacked focus and had difficulty sustaining attention. As a result, Dr. Hernandez concluded that Claimant's scores on the tests showed a lowered estimate of Claimant's actual abilities.

15. Claimant's scores on the ADOS, which is a behavioral measure used to elicit examples of communication, socialization, and play skills for determining the presence of an autistic spectrum disorder, showed that overall, Claimant performed appropriately on all tasks, and he demonstrated no difficulty transitioning from one task to another when instructed. Specifically, on the construction task, which is a task in which a subject is instructed to place puzzle pieces onto a form board, Claimant enthusiastically completed the puzzle. On the make-believe play task, Claimant

interacted appropriately with the toys that Dr. Hernandez presented to him, and engaged in appropriate fantasy play with Dr. Hernandez when Dr. Hernandez joined him with toy warrior figures. In the demonstration task, which tests whether the subject represents familiar actions in gestures, Claimant had no difficulty demonstrating how to put toothpaste on his brush, brush his teeth, and then rinse.

16. On the description of a picture task, Dr. Hernandez showed Claimant a picture of a resort, and asked Claimant to describe what was occurring in the scene. Claimant was very vocal and able to describe a number of activities. In the telling a story from a book task, Claimant was able to describe emotions that were represented in the pictures. Claimant struggled with the cartoon task, which required him to describe a scene in a series of picture cards, as his responses lacked character motivations, emotions, and humor. In terms of language abilities, Claimant spoke well of topics that were of interest to him, and was able to relate to personal experiences. In creating a story task, Claimant was able to incorporate the use of unusual items in a story he created that included a beginning, middle, and an ending. Claimant was able to report on events and did not demonstrate any difficulties when elaborating on ideas or themes during the evaluation.

17. Claimant's results on the WISC-IV, which tested his cognitive abilities, showed that Claimant's verbal IQ was 67, his performance IQ was 86, his working memory was 77, his processing speed was 109, and his full IQ was 71. Specifically, his verbal comprehension fell into the mildly subnormal range, and his perceptual reasoning and full scale IQ fell in the upper limits of the borderline range. His performance indicated challenges in processing and verbal concept formation, and he fell in the low average range of abilities in the areas of reading, comprehension, and written language skills. In addition, in the area of mathematics, his performance fell in the low average range. Claimant's academic skills as measured by the WRAT-4 fell in the

upper limits of the borderline range of abilities in the areas of word reading (SS 75), sentence comprehension (SS 85), spelling (SS 82), and math computation (SS 81).

18. On the Vineland Adaptive Behavior Scales-II with Mother serving as informant, Claimant's scores in the areas of communication (SS 62) and socialization (SS 61) fell within the upper end of the mild range of abilities, while his performance score of daily living skills (SS 71) fell within the borderline range.

19. On April 11, 2013, Dr. Hernandez observed Claimant at his special day classroom at his school (Tobinworld). When Claimant got off the bus to enter the school, he saw Dr. Hernandez and waved at him. In the classroom, Claimant went directly to his assigned seat, took out his homework, and gave it to the teacher. He also volunteered to read out loud to the class. Dr. Hernandez observed that Claimant was attentive in class, was able to follow instructions appropriately, and was very compliant. Claimant also interacted appropriately with a classmate who sat across from him.

20. Dr. Hernandez interviewed Claimant's classroom teacher, Mr. Chang, and his one-on-one aid. Mr. Chang described Claimant as a cooperative young man who was the best behaved student in the classroom. Mr. Chang also stated that claimant demonstrated good attention concentration skills, and could stay on task for well over 30 minutes, which is something Dr. Hernandez observed in Claimant during his visit. His one-on-one aide had similar comments regarding Claimant, and noted that on the rare occasions when Claimant acted out, he was easy to redirect and get back on task. Mr. Chang stated that Claimant was "somewhat behind for his age," in that Claimant worked at a third grade level instead of at a fifth grade level.

21. Dr. Hernandez also interviewed Claimant's school counselor, Nicole King, who had been providing therapeutic services to Claimant since he entered Tobinworld approximately five years before. Ms. King stated that when she first began working with Claimant, he was non-compliant, had poor impulse control, had difficulties following

classroom rules, lacked good judgment, was aggressive, hyperactive, and exhibited defiant behaviors. Ms. King now described Claimant as “a completely different young man” who was respectful of others and well-behaved. Ms. King stated that Claimant had become “socially adapt,” and considered him a “model student.” Claimant had responded well to counseling. She did indicate that Claimant at times still struggled with focus and sustained attention, and that his occasional lack of attention had a role in his academic challenges. Ms. King opined to Dr. Hernandez that Claimant did not meet the criteria for autism spectrum disorder, but rather a learning disorder and ADHD.

22. Dr. Hernandez, considering Claimant’s young age at the time of Dr. Carrillo’s assessment (five years and two months old), noted the behavior in young children could rapidly change, thus showing developmental growth in rapid spurts that could rule out diagnoses that were suspected previously or offered provisionally. By way of example, Dr. Hernandez noted that when Claimant’s school conducted its assessment of Claimant when he was four years and eleven months old, the school district concluded that Claimant had a learning disorder, and noted that his assessment scores placed him in the unlikely range for the probable presence of autism. The school district concluded the same thing in its assessment of Claimant when he was six years and ten months old, and suggested that Claimant had ADHD.

23. Dr. Hernandez noted that in five years prior to his assessment of Claimant, Claimant had an opportunity to grow developmentally through the delivery of specific services, such as speech therapy, school counseling, behavioral intervention services, and other ancillary services. Additionally, Claimant had acquired some skills simply by being exposed to experiences in the community, school, social skill groups, and from his home environment.

24. Dr. Hernandez noted that Claimant had not presented with any stereotyped behaviors or oddities of communication, or difficulties with social

interaction that were present when Dr. Carrillo diagnosed him when he was five years old. In addition, during Dr. Hernandez' assessment, Claimant demonstrated appropriate communication skills and reciprocal social interaction skills, and he demonstrated no excessive interest with any one object or topic. Claimant also engaged in joint interactive play, displayed good facial expressions, and could transition from one activity to another without any difficulties. In terms of language skills, Claimant spoke well of topics that were of interest to him, was able to relate to personal experiences like taking trips to amusement parks with his family, and demonstrated no problems expressing his thoughts, emotions, or feelings.

25. Dr. Hernandez concluded that while Claimant presented with upper limits of the borderline range to average cognitive abilities, Claimant's deficits did not appear to be related to a developmental disability, but more so to a learning disorder, as his results were consistent with Claimant's most recent performance scores from his psychoeducational assessments. In addition, Dr. Hernandez concluded that Claimant, consistent with prior evaluations, did not present with any unusual or repetitive verbal or physical mannerisms, or fixed preoccupations or interests that would suggest a continued diagnosis of autism. Dr. Hernandez opined that Claimant's scores and developmental history appeared to be more suggestive of possible deficits in attention, ability to sustain prolonged focus, and self-regulation, indicative of ADHD. As such, Dr. Hernandez recommended that Claimant receive a referral to the Department of Mental Health to confirm or rule out ADHD as a possible diagnosis.

DR. THOMPSON KELLY'S OBSERVATIONS

26. Dr. Thompson Kelly, who testified at hearing, is a licensed clinical psychologist, and the chief psychologist at the Westside Regional Center. Dr. Kelly has been working with individuals with developmental disabilities since he was 12 years old, as his father was a principal at a special education school. He has spent half of his career

with individuals with mental health problems and the other half with individuals with developmental disabilities. As the chief psychologist at WLARC, Dr. Kelly oversees the psychology department and the psychologists therein, including Dr. Hernandez. Dr. Kelly also participates as a member of the eligibility team, which make determinations whether individuals meet the requirements necessary to procure regional center services.

27. Approximately one week prior to the hearing in this matter, Dr. Kelly observed Claimant at school, and interviewed Claimant's teacher. During that observation, he did not see any characteristics of autism in Claimant, such as fixations, preoccupations, vocalizations, motor idiosyncrasies, or echolalia. Dr. Kelly explained that in a token economy school system like Tobinworld, one can expect to see improvements in the child, but the improvements will not eliminate autistic characteristics like restricted affect in smiling and frowning, inflections in the voice, and stereotypic behaviors. Dr. Kelly further explained that autism is chronic and pervasive among all settings, even in very structured environments, even if only in a nuanced way. In Claimant, Dr. Kelly saw no such characteristics.

28. Dr. Kelly reviewed Claimant's prior assessments, including Dr. Hernandez' report, and noted Dr. Hernandez' report was thorough and consistent with best practices, particularly when evaluating autism. On the hand, Dr. Kelly found Dr. Carrillo's report lacking. Specifically, Dr. Kelly noted that Dr. Carrillo failed to observe Claimant in multiple settings, in violation of California's best practices, and did not administer the ADOS. In addition, it appeared that Dr. Carrillo primarily relied on parent rating scales when diagnosing Claimant, to the exclusion of other forms of data. Dr. Carrillo's report also failed to include the criteria of autism, and how Claimant met the criteria. Dr. Kelly opined that, based on the information he reviewed coupled with his personal observations of Claimant, Dr. Carrillo's diagnosis of autism was incorrect. Dr. Kelly also

opined that Claimant, given the scatter in his achievement scores, was reflective of a child with ADHD or a learning disorder.

MOTHER'S TESTIMONY

29. At hearing, Mother explained that Claimant has always been restless. In preschool, she noticed language issues, and in kindergarten, he began exhibiting behavioral problems. In second grade, Claimant began demonstrating even more problematic behavior, which resulted in daily phone calls to her from the school. Claimant was placed on medication by a psychiatrist to address his hyperactivity. At one time, the school called the police on Claimant because he tried to climb a fence, threw things, and became disrespectful of his teacher. Thereafter, he was placed at Tobinworld. Prior to Claimant's placement in Tobinworld, he only exhibited negative behavior at school. However, after his placement in Tobinworld, he eventually stopped exhibiting behavioral problems at school, but began exhibiting them at home. At home, he became very aggressive and violent (hitting, kicking, screaming, spitting, etc.), requiring Mother to call the police on him on two separate occasions, the most recent one occurring three weeks before hearing, when he physically assaulted her. Claimant was placed on anti-anxiety medication, as well as medication to help him stay focused. Despite medication, beginning three weeks before hearing, Claimant has refused to go to school, and when prompted by Mother and school officials to get onto the school bus, has locked himself in the bathroom. On the Friday before the hearing, Claimant grabbed a knife at home and threatened to hurt himself. At the hearing, Mother showed several videos of Claimant engaged in a 45 minute tantrum prompted by Mother's denial of his request to eat at McDonald's. Mother also showed a video of Claimant acting out because he did not want to do his homework.

30. Mother believes Claimant has autism, because he demonstrates some characteristics of autism, such as not maintaining eye contact. In addition, Claimant acts

like a child of three or four years of age, according to Mother, as evidenced by his proclivity for tantrumming and playing with actions dolls. Mother explained Claimant required constant redirection and constant reminders. Mother believes Claimant has progressed because he has had many years of therapy, both from the regional center and from three years of mental health services. However, Mother would like for Claimant to continue to receive regional center services to help address Claimant's behaviors, and to help him become "as normal as possible."

LEGAL CONCLUSIONS

Claimant is not eligible to receive regional center services, as discussed in more detail below:

1. The Service Agency bears the burden of proving that the initial determination that Claimant was and is eligible for services under the Lanterman Act was "clearly erroneous." (§ 4643.5, subd. (b); Evid. Code, § 500.) However, if the Service Agency carries that burden, the Claimant bears the burden of proving another ground of eligibility as section 4643.5 does not require a regional center to disprove other grounds of eligibility, other than the initial basis of eligibility. The Claimant's burden is by 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. When reassessing for continuing eligibility a determination of whether or not consumer is substantially disabled, the criteria that existed at the time of the original determination shall be utilized. (§ 4512, subd. (l).)

5. Here, based on the credible testimony of Dr. Hernandez and Mother, buttressed by the findings set forth in Claimant's psychological and psychoeducational evaluation reports, the evidence establishes that Claimant is substantially disabled by his condition, given his significant functional limitations in three major life activities. Specifically, in the area of learning, Claimant's testing results show that Claimant has a potential learning disorder. In the area of self-direction, Claimant exhibits significant behavioral problems and a lack of self-control, resulting in a refusal to go to school, and violence against his Mother. In the area of receptive and expressive language, Claimant

demonstrated language issues as early as kindergarten, prompting Mother to obtain speech and language services for Claimant.

6. However, the issue at hand is whether Claimant's substantial disability emanates from a developmental disability within the meaning of Welfare and Institutions Code section 4512, subdivision (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. The question is whether Claimant truly has autism. Consequently, this Decision solely considered autism as the contended basis of Claimant's eligibility.

7. All psychological evaluation reports admitted into evidence referenced the diagnostic criteria for autism found in the DSM-IV-TR. The DSM-IV-TR, which is published by the American Psychiatric Association, declares that a person has autism when he or she 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 Rhetts' Disorder or Childhood Disintegrative Disorder.

8. Here, when applying the diagnostic criteria set forth in DSM-IV-TR, it is clear Dr. Carrillo was erroneous when he diagnosed Claimant with autistic disorder, as established by the report and persuasive testimony of Dr. Hernandez. Specifically, Dr.

Hernandez explained that when considering Claimant's young age at the time of Dr. Carrillo's assessment (five years and two months old), care had to be taken in the formation of a diagnosis, as the behavior in young children could rapidly change, as was the case in Claimant. This developmental growth in Claimant in apparent spurts could rule out diagnoses that were suspected previously or offered provisionally, according to Dr. Hernandez.

9. Thus, when Dr. Hernandez conducted his evaluation of Claimant, and applied the diagnostic criteria set forth in DSM-IV-TR, Claimant had not presented with any stereotyped behaviors or oddities of communication, or difficulties with social interaction. In addition, Dr. Hernandez found Claimant demonstrated appropriate communication skills and reciprocal social interaction skills, and demonstrated no excessive interest with any one object or topic. Claimant also engaged in joint interactive play, displayed good facial expressions, and could transition from one activity to another without any difficulties. Dr. Hernandez also established that, in terms of language skills, Claimant spoke well of topics that were of interest to him, was able to relate to personal experiences like taking trips to amusement parks with his family, and demonstrated no problems expressing his thoughts, emotions, or feelings. Finally, Dr. Hernandez concluded that Claimant, consistent with prior evaluations, did not present with any unusual or repetitive verbal or physical mannerisms, or fixed preoccupations or interests that would suggest a continued diagnosis of autism.

10. Dr. Hernandez' conclusion is buttressed by the observations of Dr. Kelly, which were conducted approximately one year after Dr. Hernandez' evaluation. Specifically, Dr. Kelly did not see any characteristics of autism in Claimant, such as fixations, preoccupations, vocalizations, motor idiosyncrasies, or echolalia. In addition, Dr. Kelly credibly testified that Dr. Carrillo's report lacked depth. Dr. Carrillo failed to observe Claimant in multiple settings, in violation of California's best practices, did not

administer the ADOS, and primarily relied on parent rating scales when diagnosing Claimant. Dr. Kelly also found that Dr. Carrillo's report failed to include the criteria of autism, and how Claimant met the criteria. Given the above, it is reasonable to conclude that Dr. Carrillo's diagnosis was erroneous.

11. No other eligible condition was established on this record. That is, there is no evidence whatsoever that Claimant suffers from epilepsy, cerebral palsy, mental retardation, or a condition similar to mental retardation.

12. Based on the foregoing, Claimant's appeal must be denied, and the Service Agency may terminate his services.

13. However, Claimant has firmly established that he does, in fact, have substantial behavior problems at home, and Mother is encouraged to explore further mental health resources for Claimant. In addition, as established by psychoeducational assessments, Dr. Hernandez' assessment, and Dr. Kelly's opinion, Claimant has a potential learning disorder, as well as ADHD. Claimant is encouraged to obtain an assessment to rule out or confirm such diagnoses.

14. Cause does not exist to grant Claimant's appeal, as set forth in Factual Findings 1 - 30, and Legal Conclusions 1 - 12.

ORDER

Claimant's appeal is denied, and the Service Agency may terminate his services.

Date: June 3, 2014

CARLA L. GARRETT
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.