BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: CLAIMANT, vs. GOLDEN GATE REGIONAL CENTER, Service Agency.	OAH No. 2014080657

DECISION

Administrative Law Judge Diane Schneider, State of California, Office of Administrative Hearings, heard this matter on September 25, 26, 27 and 28, in San Francisco, California.

Jay T. Jambeck and Mandy G. Leigh, Attorneys at Law, Leigh Law Group, P.C., represented claimant. Claimant was present during a brief portion of the hearing when she testified.

Rufus Cole and Dirk van Ausdall, Attorneys at Law, Rufus L. Cole and Associates, represented Golden Gate Regional Center (GGRC).

Submission of the case was deferred pending receipt of closing briefs. Claimant's closing brief was marked for identification as Exhibit HH. GGRC's closing brief was marked for identification as Exhibit 87. Claimant's reply to GGRC's closing brief was marked for identification as Exhibit II.

The record closed, and the matter was submitted for decision on December 12, 2017.

ISSUE

Is claimant eligible for regional center services on the basis of autism, or because she has a condition closely related to intellectual disability, or has a condition that requires treatment similar to that required for individuals with intellectual disability?

FACTUAL FINDINGS

INTRODUCTION AND SUMMARY OF CASE

1. Claimant, who is currently 26 years old, applied to GGRC for regional center services on August 14, 2014.[1]

2. By all accounts, claimant presents with a complex set of problems that defy neat categorization. Claimant has experienced a myriad of emotional, behavioral and psychiatric problems for many years. She has been diagnosed with autism, mild mental retardation, Asperger's disorder, pervasive developmental disorder, conduct disorder, oppositional defiant disorder, attention-deficit/hyperactivity disorder (ADHD), bipolar disorder, and psychotic disorder. The results of her IQ tests have varied over the years, ranging from high average to borderline impaired.

3. Claimant contends that she is eligible for services on the basis of autism because she suffers from Autism Spectrum Disorder (ASD) under the Diagnostic and

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[1] Claimant previously applied for, and was denied, services in 2000, 2006 and 2010. Claimant applied again in 2014, and GGRC declined to reevaluate her and sought to dismiss her application for services. After a series of legal issues were raised by the parties and resolved by the Superior Court of California, County of Marin, the Office of Administrative Hearings was ordered to conduct a hearing regarding claimant's eligibility for services. This hearing followed.

Statistical Manual of Mental Disorders, Fifth Edition (DSM-5),[2] and is substantially disabled by this condition. She also claims that she qualifies for services under what is commonly referred to as the fifth category, because she has a disabling condition that is either closely related to intellectual disability or which requires treatment similar to that provided to individuals with intellectual disability, and is substantially impaired by this condition.

4. Claimant testified at hearing, and prior to her testimony, GGRC experts had not seen claimant for 11 years. While GGRC experts acknowledge that claimant suffers from challenges to her adaptive living skills, they contend that claimant's impairments in adaptive functioning stem from a variety of psychological and behavioral problems, and possibly from a neurocognitive disorder, rather than a developmental disability. While the evidence established that claimant has psychiatric and behavioral challenges, and that she suffers from ADHD, the evidence failed to support GGRC's theory that claimant's difficulties in adaptive functioning stem solely from these conditions.

5. All of the experts offered credible testimony and impressive professional credentials, but notably, claimant's expert, Caitlin Costello, M.D., was the only expert witness who evaluated claimant under the DSM-5 criteria for ASD. Her diagnosis of claimant under the DSM-5 was not only unrebutted, it was also persuasive. Dr. Costello made a convincing case, based upon her review of prior assessments, that claimant had a longstanding diagnosis of pervasive developmental disorder not otherwise specified (PDD/NOS), which under the DSM-5, warrants a diagnosis of ASD. However, even aside from claimant's prior diagnoses of PDD/NOS, Dr. Costello determined that claimant

[2] The DSM-5 was published by the American Psychiatric Association in 2013.

meets the diagnostic criteria for ASD under the DSM-5,[3] and that she is substantially impaired by this condition. Accordingly, it is found that claimant is eligible for regional center services under the category of autism, and that her disability is substantially disabling. The evidence presented was voluminous. The pertinent facts are summarized below.

DSM-5 Criteria for ASD

6. The diagnostic criteria for ASD set forth in the DSM-5, at pages 50 and 51, are:

A. 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, 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] Insofar as Dr. Costello did not conclude that claimant suffers from a disabling condition that is either closely related to intellectual disability or which requires treatment similar to that provided to individuals with intellectual disability, claimant's contention that she is eligible for services based upon the fifth category is addressed only briefly.

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:

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 interest in sensory aspects of the environment (e.g., apparent indifference to pain/temperature, adverse response to specific sound or textures, excessive smelling or touching of objects, visual fascination with lights or movement).

C. Symptoms must be present in 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 development 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.

7. The diagnostic criteria section for ASD also provides that individuals with a well-established diagnosis of PDD/NOS,[4] should be given the diagnosis of ASD. (DSM-5, at p. 51.) In the explanation of the diagnostic features of ASD, it is noted that ASD encompasses several disorders that were referred to in previous versions of the DSM. (DSM-5, at p. 53.)

CLAIMANT'S EVIDENCE

Developmental and social history

8. Claimant was born on March 3, 1991. She reached normal developmental milestones until she was about three years old.[5] Claimant's mother reported that she

[4] The diagnosis of PDD/NOS, contained in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR), does not exist in the DSM-5. The DSM-IV-TR defines PDD/NOS as a "severe and pervasive impairment in the development of reciprocal social interaction associated with impairment in either verbal or nonverbal communication skills or with the presence of stereotyped behavior, interests, and activities" but the criteria are not met for a specific Pervasive Developmental Disorder. (DSM-IV-TR, at p. 84.)

[5] The information regarding claimant's early development is taken from information that claimant's mother provided to GGRC in 2000 and 2006.

first became concerned about claimant's development at ages three and four. When claimant was three she would wake up in the middle of the night and cry and fight. When she was preschool age, claimant's mother noted that she had an inability to stay with a group in learning environments. Instead, claimant would hide, run away, or act defiant. In her mother's words, the "terrible twos" never went away. In 2000, claimant's mother expressed concern that claimant exhibited "extreme ADHD" with "autistic like" behaviors, was "oppositional and defiant," and experienced auditory processing problems. Claimant's mother wrote in 2006 that claimant's tantrums continued to persist. Claimant's mother also noted a variety of problematic behaviors in 2006. She was worried because claimant lacked safety awareness, picked things off of the ground and put them in her mouth, and had social and interpersonal difficulties.

9. Claimant received special education services beginning in the first grade, based on a specific learning disability, and later, because she was seriously emotionally disturbed. Claimant had ongoing social and interpersonal difficulties in school, including aggressive and angry outbursts, that led to her placement, at age 10, in residential facilities. In the years that followed, claimant lived in residential treatment facilities, locked facilities, and group homes; and, was hospitalized in psychiatric facilities on a number of occasions for exhibiting threatening and violent behavior towards her mother and her mother's boyfriend, and for being a danger to herself. Claimant was prescribed psychiatric medications, and took them, on and off.

10. When claimant turned 18 years of age, she was conserved by her mother. Their relationship, however, was highly conflictual, and claimant's mother was unable to provide claimant with the level of support that claimant needed. In 2010 claimant was placed on a probate conservatorship by the Marin County Public Guardian. Soon thereafter, claimant became homeless. She lived in shelters and on the street for two years.

Current living and adaptive functioning

11. Claimant has never been able to live independently or work; she receives social security disability[6] in the amount of $932 each month. Claimant lives in a room at the Budget Inn in Marin County, which is funded by the Marin County Public Guardian.[7] Before the Marin County Public Guardian secured housing for claimant, she was homeless and ate out of garbage cans. She would often sit near the Public Guardian's Office or in the Public Defender's Office and refuse to leave, because she had no place to go.

12. Deputy Public Guardian Blengino oversees the financial management and personal care for individuals who are disabled and under probate conservatorships. Her duties include advocating for conservatees to ensure that they have sufficient food, clothing, shelter and quality of life.[8] When Blengino was assigned to claimant in January 2016, she immediately realized that she needed to build a social relationship with claimant.

13. Blengino has years of experience serving developmentally disabled clients, and in her view, claimant's presentation is akin to that of her developmentally disabled clients. Blengino talks to claimant three-to-four times per week and visits her once per

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[6] According to Marin County Deputy Public Guardian Erika Blengino, claimant was granted social security based upon a diagnosis of autism.

[7] It is highly unusual for the Marin County Public Guardian to fund housing for a conservatee. The decision was made in order to ensure claimant's safety. It is not clear if such funding will continue.

[8] Claimant retains control over her medical needs. She is not presently on psychotropic medication.

month. The majority of the calls are initiated by claimant. Although Blengino was initially startled by claimant's looks, she was not, and is not, afraid of claimant. Blengino has concerns about claimant for the following reasons.

a. Claimant has poor hygiene and grooming. For example, she does not like showering and does so about once a week; instead of showering, claimant covers herself in baby powder, which she believes will make herself clean. (It is hard to breathe in claimant's room because it smells of dust and baby powder.) On one occasion claimant let her hygiene go the point that she had infected sores on her genitals that required her to receive in-home care until the wound had sufficiently healed. Claimant does not brush her teeth regularly.

b. Claimant cannot take care of her basic needs independently in that she is incontinent in her bladder and is unable to learn what to do after she urinates. Additionally, claimant cannot read medication instructions, cook,[9] clean, or keep house on her own. Claimant does not take out her trash.

c. Claimant's interpersonal skills are deficient, which, according to Blengino, makes "every interaction problematic." Claimant avoids eye contact and cannot read facial cues; she also lacks basic social skills, to the point that claimant will ask Blengino why a cashier is talking to her. Claimant also lacks empathy, which leads her to act inappropriately with others, such as laughing when a disabled person fell down steps. Claimant has had four or five In-home Support Services workers, since January 2016, but

[9] Claimant is able to use the microwave and prepare cups of noodles and frozen dinners, but sometimes she cooks things in the microwave that should not be heated there. Claimant calls Blengino with basic questions such as how to cook food or whether certain foods should be refrigerated. At times, she will only eat one food, such as mushrooms or soup.

each worker has left due to claimant's difficulties in getting along with them. In spite of these impairments, claimant is lonely and wants to attend a day program; she does not, however, know how to attain this goal on her own or participate appropriately. Blengino facilitated respondent's participation in two day programs, but respondent did not succeed in either program due to her inappropriate boundaries and poor social skills.

d. Claimant lacks safety awareness and the skills to be mobile. She cannot read street signs and has no concept of an address; and she cannot use a crosswalk or public transportation.[10] Claimant cannot tell the difference between her left and right, and has spent the night outside because she has gotten lost and required the assistance of a police officer to take her home. Claimant's inability to get herself from her home to locations such as her pharmacy makes it impossible for claimant to pick up her medications. Additionally, claimant makes herself vulnerable to men on the internet, by posting personal information and asking for toys, and lacks insight that in so doing, she might be placing her physical safety at risk.

e. Claimant has difficulty learning. Blengino has tried to teach claimant how to cross the street or how to tell her left from her right, but in Blengino's words, "every time is like the first time." Claimant has also found it difficult to learn the rules at her hotel, or how to avoid clogging her toilet. At the same time, with the help of Blengino and claimant's life skills coach, she has learned how to improve her social skills.

f. Claimant is too impaired to hold a job, manage her money or pay bills. Claimant wants to work, particularly at an animal shelter, because she loves animals.

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[10] Claimant is able to take Whistlestop, which provides transportation to individuals who are developmentally disabled, but she lost Whistlestop privileges because, due to her poor time management, claimant was not where she was supposed to be to obtain the ride. It is not known if these services have resumed.

Blengino made inquiries but the shelter declined because claimant is too impaired to work. Claimant cannot read invoices or write checks. Claimant receives $20 per week on her "true link" card, and manages this with the help of her life skills coach.

g. Claimant cannot live independently without the financial and living skills assistance provided by the Marin County Public Guardian's Office and by Kelly Smith, claimant's life skills coach.

14. Blengino hired Smith to provide claimant with guidance regarding daily chores, such as shopping, laundry, cleaning and hygiene. Smith goes to claimant's motel three times a week for about three or four hours per visit. She has worked with claimant for almost two years, with some positive results. For example, with Smith's help, claimant has learned how to find items in Trader Joe's; and, claimant knows she can buy a burrito and water for a little over two dollars, but she cannot count change. Claimant has learned to organize her refrigerator to store her food; she has places for everything. On the other hand, purchasing items for over five dollars is more difficult for her. Additionally, claimant tries hard to learn how to complete tasks like doing laundry, but gets confused. Smith has explained to claimant how to use the crosswalk and hand signals, but her instructions do not seem to "sink in."

15. In Smith's view, claimant presents as childlike; she cannot execute plans or live on her own without assistance. For example, claimant requires reminders to maintain her hygiene, eat proper food, take out her garbage and do her laundry.

16. Claimant testified at hearing. She exhibited poor eye contact and engaged in rocking herself. Claimant brought three stuffed animals to hearing, whom she introduced. She does not know her birthday, the cost of her hotel, or what a crosswalk or a pharmacy is. Claimant stated that she "does not like people or crowds" and she "crosses the street at night to avoid people." She wants to work in an animal shelter and believes she is capable of brushing and feeding animals. Claimant plays "animal shelter

and sled dog team" in her motel room. She also watches Nickelodeon, cartoons, and plays the game Wizard 101. Claimant would like to make friends and move in with "other people like her," who she referred to as "autis" (this was understood to mean people with autism). Although claimant cannot use a keyboard, with the help of "Siri," she is able to go on the internet, where she converses with people on Craigslist and plays Wizard 101. "Siri" also helps her call Blengino. Claimant explained that she has imaginary friends, such as Ally the wolf. She also views Blengino and Kelly as her friends.

Evaluation by Caitlin Costello, M.D.

17. Dr. Costello is the Medical Director of Child and Adolescent Outpatient Services at the Langley Porter Psychiatric Hospital and Clinics. She is also an Assistant Clinical Professor, Division of Child and Adolescent Psychiatry, Department of Psychiatry, at University of California, San Francisco. As Medical Director, she evaluates and treats patients and supervises medical students, residents and fellows. Dr. Costello is board certified by the American Board of Psychiatry and Neurology in general psychiatry, child and adolescent psychiatry, and forensic psychiatry.

18. Dr. Costello evaluated claimant and determined that claimant meets the criteria for a diagnosis of ASD. In making her diagnosis, Dr. Costello reviewed documents and reports contained in claimant's file with the Marin County Public Guardian; she clinically evaluated claimant during a two-hour meeting on March 17, 2017; and she interviewed Blengino regarding claimant's adaptive functioning skills. Dr. Costello did not perform testing on claimant because the wealth of information supporting a diagnosis of ASD made testing unnecessary.

CLAIMANT'S WELL-ESTABLISHED HISTORY OF PDD/NOS

19. The documents Dr. Costello reviewed contained reports and assessments rendered by multiple providers across many years and many contexts of claimant's life.

This evidence, summarized herein, demonstrated to Dr. Costello that claimant had a "longstanding history" of symptoms beginning in at least early childhood that, at the time, qualified her for a diagnosis of PDD/NOS.[11] Dr. Costello found that the symptoms that provided a basis for the PDD/NOS diagnosis also supported a diagnosis of ASD.

20. When claimant entered kindergarten in 1996, she was referred for special education evaluation because of inappropriate behaviors in class and difficulties getting along with her teacher and other students. Although cognitive testing performed by Diane Martin, Ph.D., in 1999, revealed average to above average intelligence, Dr. Martin noted in her November 12, 1999 report, that claimant has a "complex combination of neurological and emotional problems," including impulsivity, inattention, and behavior "oddities" that make it difficult for claimant to relate to other students. Dr. Martin also noted an "Autistic-like" quality to her responses which suggest a more pervasive developmental disorder."

21. A mental health assessment by Tobrina Goldbaum, M.A., dated January 26, 2000, noted that Harvey Lerchin, M.D., had collaborated with claimant's therapist, and had concluded that claimant exhibited "marked symptoms" of PDD. Goldbaum noted that when she met claimant, she was hyperactive, intrusive, had poor boundaries, and poor reciprocal communication skills. A psycho-educational report written by Robert Key, Ed.S., District Psychologist, in February 2000, when claimant was eight years old, noted that claimant had a history of problems controlling her impulses, changing tasks,

[11] GGRC suggests that because the authors of various reports reference PDD rather than PDD/NOS, the authors of such reports did not intend to make a diagnosis of PDD/NOS. Dr. Costello, however, disagreed, and persuasively so: in her experience, clinicians frequently use the term PDD as shorthand way of referring to PDD/NOS. She has done so herself.

and engaging in socially appropriate behavior. Dr. Key opined that claimant's behaviors were consistent with an individual with PDD and ADHD, because the hallmarks of PDD are impairments in cognitive functioning, communication, social interaction and bizarre behaviors. Additionally, claimant's discharge summary from St. Mary's Medical Center on May 6, 2004, states that claimant is "very childlike and primitive and because of her pervasive developmental disorder, she has a hard time interacting with others."

22. In December 2009, when claimant was 18 years old, she was diagnosed by Jonathan Gonick Hallows, Ph.D., with PDD/NOS with autistic elements and elements of Asperger's disorder. Dr. Costello noted that Dr. Hallows could not have made this diagnosis unless there were symptoms of such disorder in early childhood. Claimant is also diagnosed with PDD/NOS in a 2010 Seneca Center treatment plan.[12] In an October 2010 psychiatric assessment, Sheryl B. Rand, M.D., diagnoses claimant with conduct disorder, childhood onset type, and PDD/NOS. She writes that symptoms were noted "as early as age 2 years and have significantly impaired functioning and ability to regulate affect." Dr. Costello believes that the diagnosis of conduct disorder is less supported by the records than the diagnosis of PDD/NOS.

CLAIMANT'S SYMPTOMS OF ASD

23. Dr. Costello analyzed claimant's behavior in the context of the diagnostic criteria for ASD. She determined that the symptoms described below, along with claimant's historical records and information from Blengino, support a diagnosis of ASD. In making her diagnosis, a number of symptoms stood out to Dr. Costello during her meeting with claimant in March 2017.

[12] This plan also states that claimant has bipolar disorder, but Dr. Costello believes this diagnosis not well-described.

24. ASD criteria "A": Dr. Costello noted that claimant met the criteria "A" for an ASD diagnosis in that claimant suffered from: 1) persistent deficits in social-emotional reciprocity; 2) deficits in nonverbal communication used for social interaction; and 3) deficits in understanding and maintaining relationships. As examples, Dr. Costello observed that claimant could not engage in back-and-forth conversation; claimant was not able to respond appropriately to nonverbal cues; she had little facial expressions and little modulation to her voice; she had poor eye contact, and was disturbed when Dr. Costello looked at her; she had notable deficits in theory of mind;[13] she could not play a game or take turns with Dr. Costello; and, she had a poor understanding of social relationships (e.g., claimant asked Dr. Costello to be her friend after Dr. Costello had made it clear that she was a doctor). Dr. Costello also noted that claimant appeared unkempt and disheveled.

25. ASD criteria "B": Based upon Dr. Costello's review of claimant's history, her interview with Blengino, and her observations of respondent, she also opined that claimant met criteria "B" for an ASD diagnosis in that claimant engaged in restrictive or repetitive patterns of behavior interests or activities. While only two subsets of symptoms under criteria "B" are necessary to support a diagnosis of ASD, Dr. Costello found evidence of all four, because claimant: 1) engaged in stereotyped or repetitive movements in that she rocked back and forth, gripping her pant legs; 2) insisted on sameness, inflexible routines or ritualized patterns of verbal or nonverbal behavior in that she exhibited extreme distress at small changes, had difficulties with transitions, and held rigid patterns of thinking; 3) had highly restricted, fixated interests that are abnormal in intensity, in that she was fixated on Pokeman, was preoccupied with her

[13] Dr. Costello explained the term theory of mind refers to our ability to understand something from another's perspective.

video game, and perseverated on listing all of her toys; and 4) exhibited hyper or hypo-reactivity to sensory input in that she was very disturbed by the sound of Dr. Costello's typing.

26. ASD Criteria "C": Dr. Costello found that this criterion was satisfied because claimant's symptoms were present in claimant's early childhood.

27. ASD Criteria "D": Dr. Costello noted that people with ASD often have deficits in executive functioning because they have difficulty planning, organizing, and carrying out sequential tasks. Dr. Costello found that criterion "D" was met because claimant's ASD symptoms cause her significant impairments in her social, occupational or other areas of functioning. Dr. Costello opined that by reason of her ASD, claimant is impaired in the following areas: self-care (claimant has poor grooming); learning (claimant's rigid thinking and lack of social reciprocity significantly interfere with her learning); mobility (claimant has problems finding her way and processing sensory information in her environment); self-direction (claimant cannot plan ahead and execute complex sequences and tasks); independent living (claimant cannot secure housing and safely live without assistance); and, economic self-sufficiency (claimant cannot maintain employment and manage money).

28. ASD Criteria "E": Dr. Costello found that this criterion was met because claimant's symptoms are not better explained by intellectual disability or global developmental delay. In Dr. Costello's view, it is not clear that claimant suffers from intellectual delay. She only performed what she described as "very basic" cognitive functioning testing.[14] Dr. Costello explained that even if claimant had an intellectual

[14] Dr. Costello could not say whether claimant's cognitive or adaptive functioning worsened since turning 18. She noted, however, that people with ASD can have a decrease in their IQ or adaptive functioning if their ASD symptoms impede their ability

disability, "her social deficits are well out of proportion to what could be explained by the cognitive problem alone"; the diagnosis of ASD, therefore, accounts for claimant's social deficits and restrictive behaviors.

29. Based upon Dr. Costello's evaluation of claimant, in conjunction with claimant's history and information provided by Blengino, she is certain that claimant meets the diagnostic criteria for ASD. Dr. Costello also found the presence of ADHD, by history. The fact that claimant is also impulsive and has attention deficits does not weaken Dr. Costello's finding that claimant suffers from ASD. As Dr. Costello made clear, a diagnosis of ASD may be co-morbid with other disorders.

GGRC EVIDENCE

30. Assessment history: Four witnesses testified regarding GGRC's prior assessments of claimant: Pat Albrecht, M.S.W., was on the assessment team in 2000, when claimant first applied for services; Gloria Jarquin, M.S.W., Telford Moore, Ph.D., M.P.H., and Teresa M. Keys, M.D., were on the assessment team when claimant applied for services in 2006. The observations and opinions of GGRC's assessment team members are set forth below.

31. Pat Albrecht, M.S.W.: Albrecht has worked at GGRC for 21 years and has extensive experience participating in eligibility assessments. She met with claimant at claimant's home on September 20, 2000, when claimant was nine years old. She found claimant active, verbal, friendly and engaging.

32. Gloria Jarquin, M.S.W.: Jarquin has worked at GGRC for 32 years and has extensive experience participating in eligibility assessments. She met with claimant on three separate occasions for over a total of five hours in March 2006, when claimant was

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to learn new information and skills; in such cases, people can "stay stuck."

15 years old. Jarquin thought that claimant was higher functioning than other applicants for GGRC services. She found that claimant had excellent verbal skills, made eye contact, was able to engage in conversation, and could take care of the family pet. Jarquin did not observe that claimant engaged in repetitive movements or lacked an interest in people, which are two symptoms of autism. Jarquin noted that claimant argued repeatedly with her mother and that her appearance was disheveled. She thought that claimant acted like a typical teenager, and not like someone with a developmental disability.

33. GGRC Psychologist Telford I. Moore, Ph.D., M.P.H.: Dr. Moore has worked at GGRC for 19 years and has extensive training and experience in the assessment and treatment of developmentally disabled individuals. As part of his assessment of claimant in 2006, he reviewed claimant's records. He also met with claimant on one occasion for one hour at her home and for one hour at the GGRC office, with the assessment team. Dr. Moore had not seen claimant since he evaluated her 11 years ago.

34. In determining whether claimant was eligible for GGRC services in 2006, he used the DSM-IV-TR, and determined that claimant did not meet the diagnostic criteria for autistic disorder[15] or PDD/NOS. In a two-page psychological eligibility report dated

[15] Section 299.00 of the DSM-IV-TR, sets forth the diagnostic criteria for autistic disorder:

> 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) 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,

May 18, 2006, Dr. Moore opined that claimant suffers from psychiatric disorders and not a developmental disorder. Dr. Moore also reviewed updated information in connection with claimant's 2010 application for services, and his opinion was unchanged. He concluded that because claimant did not meet the eligibility criteria for autistic disorder, or other conditions that would qualify her for services, claimant was not

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> 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 three 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 Rett's Disorder or Childhood Disintegrative Disorder.

eligible for GGRC services.[16]

35. Dr. Moore emphasized the importance of observing developmental symptoms prior to age three. In drawing his conclusion that claimant was not developmentally disabled, he relied heavily on a 1997 school report that found claimant ineligible for special education services based upon the categories of specific learning disability or serious emotional disturbance. This report noted claimant's diagnosis of ADHD and her average to above average intelligence. Dr. Moore believes that prior school evaluations suggesting that claimant suffers from PDD, particularly those that were done when claimant was young, i.e., before she was 11 years old, are not credible or reliable. Like others who evaluated claimant at GGRC, Dr. Moore opines that descriptions of claimant as very outgoing and verbally expressive are not consistent with someone with PDD/NOS. As such, Dr. Moore concluded that claimant did not have a well-established diagnosis of PDD/NOS.

36. Dr. Moore also relied on school reports in forming his opinion that claimant's problems are behavioral in nature and stem from her emotional complexity and fragility. He also believes that some of claimant's problems stem from visual motor difficulties that make it hard for claimant to process information.

37. In connection with the instant hearing, Dr. Moore reviewed updated reports and evaluations, and he observed claimant's demeanor during her testimony. He believes that claimant's functioning has deteriorated, and that such deterioration is

[16] Dr. Moore explained the differences between the DSM-5 and the DSM-IV-TR, which included diagnoses of PDD/NOS, Asperger's disorder and autistic disorder. The diagnostic criteria for ASD in the DSM-5 were developed to help pediatricians make diagnoses more easily and are more inclusive than the diagnostic criteria for autistic disorder in the DSM-IV-TR.

inconsistent with a diagnosis of ASD. Although Dr. Moore did not evaluate her under the DSM-5, he explained that if he were to do so, he would consider diagnoses that are not developmental disorders, such as neurocognitive disorder, social pragmatic disorder or disruptive mood dysregulation disorder.

38. Theresa M. Keys, M.D.: Dr. Keys is a board-certified pediatrician. She has worked at GGRC for 17 years and has extensive experience in evaluating children for services. In a report dated May 18, 2006, Dr. Keys opined that claimant was not developmentally disabled, and instead suffered from a thought disorder as well as ADHD and a specific learning disability. Dr. Keys concluded that claimant did not meet the diagnostic criteria for autistic disorder or PDD/NOS under the DSM-IV-TR. In forming her opinion, Dr. Keys noted that claimant had a history of above average cognitive abilities; she was not socially inappropriate in a way that is exhibited by individuals with autistic disorder; and claimant had not been previously evaluated as having PDD/NOS in a "professionally acceptable format." Dr. Keys noted that claimant has "deteriorated in functioning" over the years. Dr. Keys was "at a loss" to explain claimant's functioning although she postulated that claimant might suffer from dementia.

LEGAL CONCLUSIONS

1. In a proceeding to determine whether an individual is eligible for regional center services, the burden of proof is on the claimant to establish that he or she has a qualifying developmental disability. The standard of proof required is preponderance of the evidence. (Evid. Code, § 115.)

2. A preponderance of the evidence means "the evidence on one side outweighs, preponderates over, or is more than, the evidence on the other side, not necessarily in number of witnesses or quantity, but in its effect on those to whom it is addressed." (*People v. Miller* (1916) 171 Cal. 649, 652.)

3. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act. (Act). (Welf. & Inst. Code § 4500 et. seq.)[17] The purpose of the Act is to rectify the problem of inadequate treatment and services for the developmentally disabled and to enable developmentally disabled individuals to lead independent and productive lives in the least restrictive setting possible. (§§ 4501, 4502; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.) The Act is a remedial statute; as such, it must be interpreted broadly. (*California State Restaurant Association v. Whitlow* (1976) 58 Cal.App.3d 340, 347.)

4. As defined in the Act, a developmental disability is 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." (§ 4512, subd. (a).) The Act provides that the term "developmental disability" shall include intellectual disability, cerebral palsy, epilepsy, autism, and what is commonly referred to as the fifth category. (*Ibid.*) The fifth category includes "disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with intellectual disability." (*Ibid.*)

5. Under the Act, conditions that are solely psychiatric in nature, or solely learning or physical disabilities, are not considered developmental disabilities. (Cal. Code Regs., tit. 17, § 54000, subd. (c)(1), (2) & (3).)

6. The term "substantial disability" is defined by title 17, California Code of Regulations, section 54001, subdivision (a), as a "condition which results in major impairment of cognitive and/or social functioning" that requires "interdisciplinary

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[17] All statutory citations are to the Welfare and Institutions Code unless otherwise indicated.

planning and coordination of special or generic services to assist the individual in achieving maximum potential," and results in significant functional limitations in major life activities for the individual.

7. Pursuant to section 4512, subdivision (l), the term "substantial disability" is defined as "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."

CLAIMANT IS ELIGIBLE FOR GGRC SERVICES ON THE BASIS OF AUTISM BUT NOT THE FIFTH CATEGORY

Claimant suffers from ASD

8. Claimant presents a complex set of symptoms that have confounded even the most seasoned and qualified mental health professionals. Notably, Dr. Costello was the only expert who evaluated claimant under the DSM-5 and found that she meets the diagnostic criteria for ASD, and is substantially disabled by that condition. (Factual Findings 5, 18, 19, 23-29.) In contrast, because claimant was not reevaluated for services by GGRC following her 2014 application, neither Dr. Moore nor Dr. Keyes evaluated claimant under the DSM-5. In spite of Dr. Moore's and Dr. Keyes's tremendous wealth of experience, their assessments of claimant's eligibility for services were unpersuasive since they relied on diagnoses in the DSM-IV-TR, which no longer exist. Additionally, because GGRC personnel had not performed an assessment of claimant's adaptive living skills following her application for services in 2014, their opinions as to whether claimant is substantially disabled by her condition were accorded little weight.

9. Dr. Costello's analysis of claimant's condition was comprehensive and persuasive. She reviewed prior assessments that were performed in early childhood that

established claimant's longstanding history of PDD/NOS, which, according to the DSM-5 diagnostic criteria, alone warrants a diagnosis of ASD. Additionally, Dr. Costello personally evaluated claimant this year; and she obtained information regarding claimant's adaptive functioning from Blengino. The fact that Dr. Costello was the only expert to testify who evaluated claimant for ASD under the DSM-5, and her cogent evaluation of claimant's unusual presentation, were important factors in finding Dr. Costello's testimony the most persuasive. Accordingly, claimant established that she qualifies for services on the basis of autism, under section 4512, subdivision (a).

10. GGRC suggests that Dr. Costello's diagnosis of ASD is misplaced because claimant's diagnosis of PDD/NOS was not "well-established." This argument is not supported by the facts; and even if it was, the lack of a "well-established" diagnosis of PDD/NOS, as that term is used in the diagnostic criteria for ASD, would not preclude a diagnosis of ASD. While the text in the DSM-5 notes that people with "well-established" diagnoses of PDD/NOS should be given the diagnosis of ASD, it does not exclude individuals who lack that such diagnosis. GGRC also suggests that Dr. Costello's diagnosis is misplaced because claimant's symptoms did not appear early enough in her developmental period or were not sufficiently acute to fall within the purview of the diagnostic criteria. This contention is also unsupported: the fact that claimant had strengths as a young child does not negate the presence of her symptoms of ASD.

11. GGRC also maintains that claimant's cognitive and functional abilities have degenerated, which is inconsistent with the profile of someone with ASD. It was not, however, proven by competent and persuasive evidence that claimant's cognitive and functional abilities have, in fact, degenerated. Dr. Costello explained that people with ASD can "stay stuck" and find it difficult to learn new information and skills, which may result in a drop in IQ or adaptive functioning. Dr. Costello did not, however, determine if this occurred in the instant case.

Claimant's ASD constitutes a substantial disability for her

12. GGRC contends that claimant is ineligible for services because her difficulties in adaptive functioning stem from a mixture of psychiatric conditions rather than a developmental disability. This argument lacks merit. As a preliminary matter, it is settled that the presence of any psychiatric conditions or learning disorders do not disqualify claimant from regional center eligibility unless they are her sole condition. (Cal. Code Regs., tit. 17, § 54000, subd. (c)(1), (2) & (3).)

13. Claimant's psychiatric conditions would only preclude her eligibility for GGRC services if her impairments in adaptive functioning stem solely from her psychiatric conditions. Such is not the case. The testimony of Dr. Costello,[18] Blengino, and Kelly more than amply established that claimant's ASD symptoms have caused her substantial impairments in adaptive functioning skills in multiple domains. Thus, while claimant may well suffer from a variety of psychiatric disorders in addition to ASD, the evidence clearly establishes that by reason of her ASD, claimant experiences significant functional limitations in self-care, learning, mobility, self-direction, capacity for independent living, and economic sufficiency. (Factual Findings 13 through 16, and 27.) These substantial limitations render her unable to live on her own without the assistance provided by the Marin County Public Guardian and by her life skills coach. For these reasons, claimant established that her ASD symptoms constitute a substantial disability for her within the meaning of section 4512, subdivision (l).

[18] By definition, Dr. Costello's diagnosis of ASD includes a determination that claimant's symptoms cause "clinically significant impairment in social, occupational, or other important areas of current functioning." (DSM-5, ASD Diagnostic Criteria "D.")

Claimant did not establish eligibility under the fifth category

14. Claimant's expert, Dr. Costello, did not perform extensive cognitive testing, or opine that claimant suffers from a condition that is closely related to intellectual disability or requires treatment similar to that provided to individuals with intellectual disability. While several written reports allude to claimant suffering from intellectual disability or a cognitive disorder that impairs her ability to function, such reports do not constitute competent and persuasive evidence as to claimant's eligibility for services under the fifth category. As such, claimant failed to establish that she is eligible for GGRC services on this ground.

CONCLUSION

The evidence of claimant's eligibility for services on the basis of autism was nothing less than prodigious. All contentions made by the parties not specifically addressed herein were considered and are found to be without merit.

ORDER

Claimant's request for regional center eligibility, dated August 14, 2014, is granted. Claimant is eligible for GGRC services.

DATED: December 21, 2017

_____/S/_____

DIANE SCHNEIDER

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.