BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: CLAIMANT, vs. WESTSIDE REGIONAL CENTER, Service Agency.	OAH No. 2014110549

DECISION

This matter was heard by John E. DeCure, Administrative Law Judge with the Office of Administrative Hearings, on April 22, 2015, in Culver City, California. Claimant's father (Father) appeared at the hearing on behalf of Claimant, who was not present.[1] Westside Regional Center (WRC or Service Agency) was represented by Lisa Basiri, M.A., Fair Hearing Specialist.

Oral and documentary evidence was received, and argument was heard. The record was closed, and the matter was submitted for decision on April 22, 2015.

ISSUE

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

[1] Claimant's and his parents' names are omitted to protect their privacy.

FACTUAL FINDINGS

1. Claimant is a 10-year-old male. He seeks eligibility for regional center services based on a diagnosis of Autism Spectrum Disorder (ASD).

2. On October 10, 2014, WRC sent a letter and a Notice of Proposed Action to Claimant, informing him that WRC had determined that he is not eligible for regional center services. Claimant requested a fair hearing. (Exhibit 1.)

3. Claimant lives with his parents and his sister, age 7. Claimant is in a regular fourth grade program at a private school. He has an Individualized Education Program (IEP) through Redondo Beach Unified School District (RBUSD). (Exhibit A; Exhibit 5; Testimony of Father.)

4(a). On June 9, 2014, RBUSD issued a Multi-Disciplinary Assessment Report Initial Evaluation (RBUSD Initial Evaluation), dated the same, as a result of Claimant's parents' request for a special education evaluation due to their concerns with his struggles in academics and behavior. The purpose of the evaluation was for RBUSD to determine whether Claimant was eligible for special education.[2] The assessment team performing the evaluation consisted of a school psychologist, a special education teacher, a speech/ language pathologist, an occupational therapist, and a general education teacher. The assessment addressed the following:

1. What are [Claimant's] cognitive processing strengths and concerns?

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[2] Claimant lives in the catchment area of Los Angeles Unified School District (LAUSD), while Claimant's private school is in the catchment area of RBUSD. As a result, RBUSD was in a position to determine Claimant's eligibility for special education, but LAUSD was responsible for making the offer of a Free and Appropriate Public Education (FAPE). (See Exhibit B.)

2. What are his academic skills in the areas of reading, math, listening comprehension and written language?
3. Suspected disabilities:

- Specific Learning Disability, (SLD)
- Emotional Disturbance, (ED)
- Autism.

The evaluation, testing, and assessment procedures included: interviews with Claimant, his parents, and his teacher; observations; review of records; a health/ development screening; administration of the Wechsler Intelligence Scale for Children, Fourth Edition (WISC IV); Woodcock- Johnson III Tests of Achievement (measuring academic achievement); the Comprehensive Test of Phonological Processing (CTOPP) (assessing phonological awareness and memory); the Behavior Assessment System for Children, Second Edition (BASC-2); the Social Responsiveness Scale, Second Edition; and Gilliam Autism Rating Scale-3 (GARS-3). (Exhibit 7.)

4(b). The RBUSD Initial Evaluation assessed Claimant's health, development, and daily living skills. Claimant passed a hearing screening and vision screening with corrective lenses for far-sightedness. Claimant's mother (Mother), who works as a special education teacher, was also interviewed and reported that Claimant was not an easy child to parent. He was very "oral" and used a pacifier longer than she felt he should. He had night terrors and biting incidents before the age of three. He "inhales" food, does not like loud noises, and cannot tolerate Disneyland or shopping malls. Potty training was difficult. He becomes constipated to the point of requiring a laxative. Claimant wears his pants high above his stomach and refuses to lower them. He would not stop wearing a certain pair of socks and refuses to wear denim pants or pants with an inside adjustable button-tab. He has normal daily living skills and can cook eggs, put laundry away, bathe, use the toilet, brush his teeth, tie his shoes, and tidy his bedroom. When he

has night terrors he calms himself by sleeping with his parents. (Exhibit 7.)

4(c). Claimant was observed over the course of two days in his classroom, on the playground, and during testing. In the classroom, he sat in front and required several verbal prompts from his teacher to begin working on his task. His desk was cluttered, so the teacher had to help him clean up the desk area to find a book. He sat quietly in his seat and did not interact with peers as they collaborated in groups. On the playground, he walked the periphery of the playground alone with a bug catcher in hand. When the occupational therapist took away the bug catcher, Claimant climbed a ladder on playground equipment, but did not interact with his peers. On the second day of testing a group of boys on the playground either tried to kill a bug or take Claimant's bug catcher. Claimant, in trying to save the bug, inadvertently shoved a playground aide to the ground. (Exhibit 7.)

4(d). Testing was significant for little verbal interaction unless Claimant was asked about bugs. He cooperated with testing but became impatient during verbal portions and often refused to elaborate on a response. He enjoyed tasks within the Perceptual Reasoning Index and quickly assembled blocks and provided answers to perceptual tasks, but he worked slowly on Processing speed tasks. (Exhibit 7.)

4(e). The WISC-IV was used to evaluate Claimant's cognitive abilities. Claimant's Verbal Comprehension Index standard score was 81, which is in the tenth percentile and falls within the low average range of ability in verbal comprehension. Claimant's Perpetual Reasoning standard score was 121, which is in the ninety-fifth percentile and falls within superior range in perceptual reasoning. Claimant's Working Memory Index standard score was 97, which is in the forty-second percentile and falls within the average range in working memory. Claimant's Processing Speed Index standard score was 78, which is in the seventh percentile and falls within the average range in working memory. Claimant's full-scale Intelligence Quotient (IQ) score was 90

and within the average range for intellectual functioning. His perceptual reasoning skills were seen as a relative strength, while his processing speed and verbal comprehension were below average. (Exhibit 7.)

4(f). According to teacher and parent information and observation during testing, Claimant had difficulty coming to attention for tasks that were less preferred but had no difficulty coming to attention for tasks that were interesting to him. (Exhibit 7.)

4(g). Regarding cognitive abilities, Claimant demonstrated superior problem solving and reasoning abilities for tasks requiring perceptual reasoning but demonstrated a weakness in problem solving when asked to verbally express information. (Exhibit 7.)

4(h). Claimant's verbal scores were at the low end of average. He demonstrated problems with speech articulation and had social language/ pragmatics difficulties. (Exhibit 7.)

4(i). Claimant's gross motor skills were a cause for difficulty and he often appeared clumsy. His fine motor skills were not age appropriate. His functional gross motor skills allow him to access the campus, classroom, and playground equipment. He can maintain himself upright in a classroom chair but often prefers to lay his head on his desk. He is right-handed and uses his left hand to stabilize three-dimensional objects. He uses a variety of grasps, and properly grips writing utensils with a tripod grasp. (Exhibit 7.)

4(j). Claimant's mother and teacher were interviewed and given the Social Responsiveness Scale- Second Edition, to help clarify social or emotional behavior often seen in those diagnosed on the autism spectrum. Both Mother and Claimant's teacher noted social communication as a specific area of weakness. (Exhibit 7.)

4(k). The Gilliam Autism Rating Scale, Third Edition (GARS-3), a screening instrument designed to identify behavior problems indicative of autism spectrum, was

used with Father providing input for six categories of behavior. The results were interpreted as "Level 1 Probability of ASD with minimal support required." Mother also provided input in an identical GARS-3 screening, with the results interpreted as "Level 2 Very likely probability of ASD requiring substantial support." (Exhibit 7.)

4(l). Claimant was given the self-report form of the Behavior Assessment System for Children– Second Edition (BASC). Overall, Claimant saw himself in a negative light with a clinically significant degree of social stress, depression, anxiety, sense of inadequacy, and low self-esteem. Certain answers he provided were considered "Critical Items" of particular interest, including the following: Nothing goes my way (true); I never seem to get anything right (true); Nobody ever listens to me (true); Sometimes I want to hurt myself (true); Other kids hate to be with me (true); No one understands me (sometimes); I feel sad (almost always); I feel like my life is getting worse and worse (almost always); Other people make fun of me (almost always). (Exhibit 7.)

4(m). Claimant's mother was interviewed and completed questionnaires regarding Claimant's social/ emotional behaviors. Mother said he is sad, moody, has temper tantrums, prefers to be alone or in the company of adults, and is quiet. He is not confident about academics and has difficulty reading instructions, learning, and struggles with his emotions.

He has difficulty with physical education and complains of back problems. His greatest interest is bugs and he wants to be an entomologist. (Exhibit 7.)

4(n). Claimant's father was interviewed and said Claimant had difficulty with inappropriate behavior toward boys in class with hugging. Claimant feels depressed at school and does not have friends. He wants to interact with peers but has not found a way. Other children reject his interest in bugs. Claimant is hard on himself and may punch himself if upset. He used a stick to jab into his arm at school. He often does not understand children's slang, assumes people don't know what he knows, and often

corrects others. He cries over studying spelling and has been unsuccessful with spelling tests. He loves the game Battleship and working on jigsaw puzzles, but he can over-focus to the point of cheating. He does not like to lose and cries. (Exhibit 7.)

4(o). Claimant's teacher said Claimant has not had many successes in school, starting out poorly with hugging boys and talking about bugs despite the disinterest of other children. Claimant does not have friends and has tremendous difficulty keeping his desk organized and finding his papers. His daily journal contained many passages depicting fear, self-loathing, and bizarre stories, including a powerful character who punishes or slays others. His stories also contain violence aimed toward himself. One story was entitled "The 20 dumbest ways to die" and detailed killing with guns and bazookas. The following passage from a story was excerpted (with spelling corrections) as an example:

> 3 things that I did to myself was 1. Slap myself in the face so many times that I almost got a rash on my cheek 2. I punch myself in the eye 50 times 3. I slapped my butt until it burns.

Claimant also had several altercations with students involving hugging, kicking, and kissing. Claimant has told his teacher he wanted to kill all third-graders. (Exhibit 7.)

4(p). A Woodcock Johnson III academic achievement evaluation was administered to determine Claimant's abilities in reading, math, listening comprehension, and written language. Claimant's oral language skills, academic skills, and ability to apply academic skills, were all in the average range for his age level. His fluency with academic tasks was within the low average range. (Exhibit 7.)

4(q). In summary, Claimant was found to have a wide range of cognitive processing abilities. He demonstrated superior visual perception skills, but low average verbal skills and processing speed. His executive function skills, including thinking,

reasoning, organizing, problem solving, and planning, vary according to task requirements. Claimant's performance improves when tasks require cognitive strength, while tasks requiring verbal responses and speed are most challenging. Academically, his weaknesses lie in mathematics, spelling, and punctuation and capitalization. In terms of identifying a specific learning disability, none were identified, as he did not exhibit a severe discrepancy in his standard scores as measured between academic test scores and full-scale IQ.[3] Claimant's social/ emotional functioning and communication skills were seen as factors in his ability to learn and enjoy social interaction with other students. His atypical behavior, including hugging, pushing, and wandering alone searching for insects, distanced him from normal socialization. He expressed inadequacy, anxiety, and depression over his socialization and ability to function. He has been socially rejected by peers and externalizes and internalizes his anger. (Exhibit 7.)

4(r). The assessment team considered Claimant's eligibility for special education due to suspected handicapping conditions including: specific learning disability; autism, and emotional disturbance. They found that despite his learning challenges, his measured academic skill "only mildly meets SLD eligibility criteria rather than demonstrating a severe discrepancy between ability and achievement, and his processing skills did not appear sufficiently impaired." (Exhibit 7.)

4(s). Claimant's eligibility criteria for autism was also considered pursuant to California Code of Regulations, title 5, section 3030, subdivision (g), which requires that to qualify for special education services under the "Autistic-Like Behaviors" category, a student must exhibit two or more of the seven sub-categories of autistic-like behaviors. Claimant was found to exhibit two of the seven behaviors (findings were noted as "YES"

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[3] The report noted, however, that full-scale IQ is considered unreliable as a benchmark of cognitive functioning due to a wide variance of index scores.

or "NO," followed by corresponding comments) as follows:

- An inability to use verbal and nonverbal language for appropriate communication and social interaction. (YES. On standardized tests, teacher, parent and professionals observe impaired ability to function within the normal range of verbal and nonverbal social interaction and appropriate communication. While test scores range at the low end of the average range, his social interaction and social communication is impaired.)
- A history of extreme withdrawal or relating to people inappropriately and continued impairment in social interaction from infancy through early childhood. (YES. [Claimant] demonstrates atypical behaviors with peers and often withdraws from social interaction.)
- An obsession to maintain sameness such as resistance to environmental change or change in daily routines. (NO. [Claimant] demonstrates mild resistance to behavioral controls, but is not severely impaired.)
- Extreme preoccupation with objects or inappropriate use of objects or both. (NO While demonstrating a preoccupation with insects, [Claimant] is not reported to exhibit extreme preoccupation with objects or inappropriate use.
- Extreme resistance to controls. (NO. [Claimant] demonstrates mild resistance to controls, but not extreme.)
- Displays peculiar motoric mannerisms and motility patterns such as repetitive activities and stereotyped movements. (NO. [Claimant] demonstrates some mild physical awkwardness and is reported to have difficulty with physical activities and playing games, but his behavior does not appear to meet the criteria.)

5. Self-stimulating, ritualistic behavior. (NO. Parents do not report this behavior although [Claimant] has some behaviors that could mildly meet this criteria.)

The assessment team concluded that based on the above criteria, "[Claimant] meets the eligibility criteria for Autism." (Exhibit 7.)

4(t). The assessment team also considered Claimant's eligibility criteria for "Emotional Disturbance" pursuant to California Code of Regulations, title 5, section 3030, subdivision (i), which requires that to qualify for special education services under the Emotional Disturbance category, a student must exhibit one or more of five sub-categories of characteristics listed in the subdivision, and the exhibited characteristic(s) must have existed over a long period of time, to a marked degree which adversely affected the student's educational performance. Claimant was found to exhibit three of the five listed characteristics (findings were noted as "YES" or "NO," without corresponding comments) as follows:

- An inability to learn which cannot be explained by intellectual, sensory or other health factors. (NO)
- An inability to build or maintain satisfactory interpersonal relationships with peers and teachers. (YES)
- Inappropriate types of behavior or feelings under normal circumstances exhibited in several situations. (YES)
- A general pervasive mood of unhappiness or depression. (YES)
- A tendency to develop physical symptoms or fears associated with personal or school problems. (NO)

(Exhibit 7.)

4(u). The RBUSD assessment team made final recommendations that the RBUSD IEP team determine Claimant's eligibility for primary or secondary special education, that Claimant and his parents continue with counseling, and that Claimant be referred to LAUSD for an offer of Free and Appropriate Public Education (FAPE). (Exhibit 7.)

5(a). Following Claimant's RBUSD evaluation, his parents sought a psychological evaluation from Service Agency to determine whether he would be eligible for services as a regional center client. On September 4, 2014, and September 9, 2014, Claimant was evaluated by Janet Wolf, Ph.D., a licensed clinical psychologist with over 20 years of experience evaluating children, to determine his current functioning level and to assess for possible ASD. The evaluation included an interview with Claimant's parent, observations of Claimant in a testing room and while in school, and administration of diagnostic tools for measuring cognitive functioning and adaptive skills, for the purpose of ascertaining characteristics of autism. (Exhibit 6.)

5(b). Dr. Wolf collected background information as reported by Claimant's parents and gathered from prior records: She noted that Claimant is the product of an uncomplicated pregnancy and neonatal period. Ages of attainment of early motor milestones fell within the late-normal range with walking at 14 months and combining words by 19 months. He was not toilet trained until he was four and one-half years old. Claimant attended a Montessori school between the ages of five and eight. He recently attended a private school, where he repeated the third grade at his parent's request. He was assessed through RBUSD in June of 2014 and was given a classification of autism.[4] He continues to attend a private school. Modifications within the classroom include a reward chart. (Exhibit 6.)

5(c). Dr. Wolf noted that Claimant's parents expressed concern that Claimant began "punishing himself" last year by scraping the surface of his arm with a stick. He began attending counseling last April and will resume weekly counseling in the near future. Additional concerns include his aggression towards others (hitting and biting). Father reported that this occurred around Mother but not around Father. Father

[4] See Factual Finding 4.

described Claimant's strengths as math and science (with the exception of word problems). Claimant is also "a bug expert." Father's primary concerns include Claimant's difficulties with "processing emotions" and his difficulties surrounding relationships with peers. New relationships are particularly difficult for him. (Exhibit 6.)

5(d). Mother described Claimant's strengths as being "bright" and as being motivated to help adults, especially at church. Her concerns included his difficulties with processing directions and his difficulties with description. Additional concerns included the following: (1) Claimant avoids public toilets because he is afraid of the unpredictable sound of flushing; (2) He does not "have an off switch" when he eats and is very messy, eats too quickly, and eats too much; and (3) He has daily tantrums due to his "rigid thinking," including crying, rolling on the ground and "punching the air" (e.g., at a recent "bug convention" they attended together, Claimant was convinced Mother had told him she would buy him a tarantula. He had a tantrum when she would not do so.); (4) He is very sensitive to smells; and (5) Transitions are hard for him when he "locks in" on what he is doing. (Exhibit 6.)

5(e). On September 4, 2014, Dr. Wolf observed Claimant, accompanied by Father, in a testing setting. Claimant was attentive to the activities of the cognitive assessment. His affect was solemn and his eye contact was diminished. He sometimes hummed or made low-volume sounds as he worked and he sometimes rocked (although this was barely noticeable). As he assembled geometric forms to copy designs, he made an abstract human form. He then punched the form and commented that "His head came off!" They took breaks to play with a large ball in the corridor. Claimant threw and kicked the ball reciprocally, but he did not seem pleased with either praise or his own mastery. His affect was flat, and he readily agreed to return to the testing room. As he became increasingly distracted towards the end of the testing, Dr. Wolf asked him if he wanted to take another break. He said he did not want to play

more ball but that he wanted to play with toys. He found a transistor radio without batteries, took out the instructions, and matched the pieces on the diagram with the parts of the actual radio. (Exhibit 6.)

5(f). On September 9, 2014, Dr. Wolf again observed Claimant in a testing setting. He was accompanied to the assessment by Father. When Dr. Wolf entered the waiting area, Claimant was playing a hand-held electronic game and did not stop the game when she told him that it was time to go. He did not stop when asked to do so by Father and complained. When he continued playing, Father took the game from him. Claimant walked out of the room with an angry expression and did not glance at Dr. Wolf. He walked ahead of her to the testing room and walked past the entrance. (Exhibit 6.)

5(g). After Claimant entered the testing room and seated himself, Dr. Wolf administered activities from the Autism Diagnostic Observation Schedules, Module 3 (ADOS). When she presented a container of action figures and accessories, he looked inside the container with interest. Claimant spent some time manipulating miniature tools, seemingly oblivious to Dr. Wolf's presence. (Exhibit 6.)

5(h). Dr. Wolf presented Claimant with props for a bathroom sink and asked him to show her what he did when he brushed his teeth. He used his finger as a toothbrush and pretended to brush his uppers and his lowers with precision. He pretended to sip and then spit into the sink. He looked at Dr. Wolf, seemingly to determine if she was satisfied. (Exhibit 6.)

5(i). Dr. Wolf presented Claimant with a fantasy picture book and asked him to look through the book and to tell her the story. He held the book close to his face so that she could not see it as he flipped through the pages. He laughed a few times but did not look at her to share his laughter. Claimant began to discuss downloading

gameplay "modes" for Minecraft.[5] He stated that he played Minecraft with "CJ," although he did not explain who CJ was. (Exhibit 6.)

5(j). Dr. Wolf asked Claimant about his experience of various emotions. He averted eye contact throughout most of this discussion. He responded to questions about what made him happy, frightened, angry, and sad. (Exhibit 6.)

5(k). Claimant confirmed with Dr. Wolf that he was teased at school. When asked what he did when he was teased, he replied, "I hit them." He sometimes got into trouble for this but said that "they deserve it." When asked if anyone at school helped him, he replied, "They sometimes stop me from skinning myself." (Exhibit 6.)

5(l). When Dr. Wolf asked Claimant if he had any "best friends," he said he had a lot of best friends. One moved to Vancouver but was coming back for eighth grade. Claimant described a second friend with whom he built Lego structures. When asked if he ever felt lonely, he replied, "Lots of times." (Exhibit 6.)

5(m). Dr. Wolf presented Claimant with various objects and asked him to use them to create a story. While manipulating the objects, he was mumbling under his breath and seemed to be enacting a play-related dialogue. When Dr. Wolf reminded him about making up a story, he mumbled a dialogue with low volume that was difficult for her to understand. (Exhibit 6.)

5(n). Dr. Wolf observed Claimant in his fourth grade classroom of 13 students and one teacher. He sat quietly at his desk and wrote as his teacher called up children individually to review their homework assignments. At one point, he turned towards the

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[5] Minecraft is a popular downloadable video game, the creative and building aspects of which allow players to build constructions out of textured cubes in a 3D procedurally generated world. Other activities in the game include exploration, gathering resources, crafting, and combat.

boy next to him and smiled and waved. He then snapped his fingers quietly to try to get the boy's attention and then spoke quietly to him. He resumed writing, but he also spent time looking around the room. When the teacher asked the children to take out their journals, he continued his previous assignment and did not attend to the lesson. When the teacher approached him to ask him to take out his journal, he complied. When he and his classmates brought their work to the front of the class, he held a picture of a face in front of his own face to show a peer and then his teacher. She directed him to the next activity. He constantly fidgeted with objects as his classmates took turns reading aloud. (Exhibit 6.)

5(o). At recess time, he began speaking with a classmate, but the classmate ignored him and spoke with another child. Claimant tapped the boy to try to gain his attention, but the boy did not seem interested. As Claimant lined up for recess, he approached Dr. Wolf and said hello. He walked onto the yard, kneeled next to a crack and began killing red ants. He then approached male classmates that were playing ball. He walked back around the periphery of the yard. He stopped as a male adult spoke briefly with him and gave him a "high five." He returned to the crack and began shouting into it. When Dr. Wolf asked him about this, he explained that he was "trying to scare the queen out." He stated that the ants that he was killing were males, and he explained how to differentiate males from females. When asked why he was trying to scare the queen out, he explained, “That's the only way that I can start an ant farm,” because the queen was the only ant who would give birth. A younger child then ran to tell Claimant that he had found a spider. Claimant immediately took control by accompanying the boy to a spider that was just outside the play yard. When the yard supervisor instructed the boys to return to the play yard, they complied. When Dr. Wolf thanked Claimant for letting her see his school, he nodded and returned to the crack with the ant colony. (Exhibit 6.)

5(p). Claimant's teacher reported that although Claimant had difficulty turning in assignments and seemed distracted during class, he did seem to learn the material. She expressed concern regarding his diminished empathy for classmates, explaining that if a child was upset or hurt, he sometimes laughed inappropriately. (Exhibit 6.)

5(q). As part of her evaluation, Dr. Wolf assessed the information, testing, and the results of RBUSD's Initial Evaluation of Claimant. (Exhibit 6; See also Factual Conclusion 4.)

5(r). In assessing Claimant's cognitive functioning, Dr. Wolf administered the Stanford-Binet Intelligence Scales, Fifth Edition. Claimant's performance was similar to his performance on the WISC-IV administered through RBUSD. During Dr. Wolf's assessment, Claimant's performance fell in the average range with performance of nonverbal skills in the high average range and performance of verbal skills in the average range. (Exhibit 6.)

5(s). The Vineland Adaptive Behavior Scales, which is a checklist of basic skills, was administered to assess Claimant's social-adaptive skills and was completed with the assistance of Father. According to his report, Claimant's communication and socialization skills are borderline and his daily living skills fall in the low average range. With regard to communication, he follows one- and two-step instructions. His grammar is age-appropriate. He does not stay on topic but instead maneuvers the conversation to his interests. He does not move easily from one topic to the next but monopolizes and tries to remain on his subject of interest. He reads and understands material at grade level, and he enjoys reading age-appropriate books. He needs assistance with writing reports. Concerning daily living skills, he can dress and attend to basic hygiene and does need to be reminded to complete some hygiene tasks. He does not dress appropriately for the weather because he likes specific clothes (such as sweat pants) independent of the weather. He can find the restroom in a mall by reading the store's

map. He is responsible for keeping his room clean and for putting away his clean clothes. Some days he needs more prompts than others. He assists with some cooking. He has helped his father by using a screwdriver. He has also vacuumed and cleared the table when asked. He tells time on an analog clock and points to the date on the calendar. He identifies and states the values of various coins and understands that some cost more than others. He listens to documentaries on insects. He demonstrates computer skills like searching for topics of interest on the Internet. With regard to socialization skills, he shows interest in peers but does not initiate interaction. He will show a desire to please by complimenting others, but he will also relentlessly insist that he is right when in disagreement. He responds to small talk but "does better with adults." He does not use words to convey emotions but expresses what he wants or needs. He does not appear to have preferred friends, but peers do initiate interaction with him. He expresses concern if someone is hurt. He does not show the same level of emotion as others but he is either "flat or very emotional." He talks with others about his specific interests but tends to monopolize. He follows the rules to simple games but sometimes quits playing early because he is losing. He plays board games and takes turns without reminders. He shares his possessions. He does not like to play sports and is more likely to look for bugs during recess. He sometimes changes easily from one activity to the next at home. He changes his behavior based upon how well he knows another person. He says "please" and "thank you." He responds appropriately to reasonable changes in routine and will apologize for an unintended mistake. He sometimes accepts helpful suggestions (e.g., regarding game strategies) and sometimes keeps secrets. (Exhibit 6.)

5(t). Regarding emotional/ behavioral observations, Dr. Wolf utilized the ADOS to observe the quality of Claimant's Social Affect and quality of Restricted and Repetitive Behavior over the course of several play-based activities. (See Factual Finding

5(h).) Quality of social affect and restricted and repetitive behavior were assessed relative to autism spectrum-related symptoms and rated to reflect (1) Moderate to severe level of autism spectrum-related symptoms (2) mild to moderate level of autism spectrum-related symptoms (3) low level of autism spectrum disorder related symptoms or (4)"minimal to no evidence." In her report, Dr. Wolf warned that these ratings provide additional clinical data but are not a substitute for diagnostic determination via the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-V).[6] (Exhibit 6.)

5(u). Dr. Wolf found that Claimant's quality of social affect and quality of Restricted and Repetitive Behavior reflected a high level of autism spectrum related symptoms. (Exhibit 6.)

5(v). With regard to Social Affect/Communication, Claimant sometimes demonstrated stereotyped/ idiosyncratic use of phrases by enacting dialogues with low volume (so that Dr. Wolf could not hear) over the course of play. With regard to conversation and reporting, he described events and required prompts to explain them because his descriptions were overly detailed and lacking in contextual references. He did not demonstrate reciprocal conversation. He frequently monopolized discussion of his favorite topics (e.g., Mine Craft), gave too many details, and did not provide an adequate context or overview. When asked for explanations or clarification, he tended to be insistent about finishing his statements before he would listen to a question. He demonstrated some gestures during play, but the gestures were part of self-directed play and not directed towards others. (Exhibit 6.)

5(w). With regard to Social Affect/Reciprocal Social Interaction, Claimant

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[6] The Administrative Law Judge takes official notice of the Diagnostic and Statistical Manual of Disorders as a generally accepted tool for diagnosing mental and developmental disorders.

demonstrated limited sharing of affective states because of his limited reciprocal conversation and narrow range of emotional expression. He laughed as he looked through a picture book but did not share enjoyment by looking at or speaking with others. The quality of his social interactions was affected by his use of interaction to make personal demands and the narrow range of interests that were reflected through his speech. He generally did respond to questions, but his responses were frequently, "I don't know." When questions were regarding his specific interests, his responses could be either hard to hear or overly detailed and without appropriate context. Reciprocal communication was frequently a response to questions, a request, or detailed information regarding his specific interests. The overall quality of rapport was affected negatively by his very quiet demeanor, his limited use of nonverbal forms of communication, his frequent response of "I don't know," and his overly detailed descriptions surrounding his specific interests. (Exhibit 6.)

5(x). With regard to Stereotyped Behaviors and Restricted Interests, Dr. Wolf did not observe Claimant to demonstrate unusual sensory interests in people or play materials and did not observe him to demonstrate atypical motor mannerisms. He demonstrated excessive interest in highly specific areas of interest (details surrounding video games). He did not demonstrate compulsions or rituals. (Exhibit 6.)

5(y). Dr. Wolf described Claimant's strengths and challenges relative to diagnostic criteria for ASD as set forth in the DSM-V. Her findings as to whether he met or failed to meet the criteria are set forth below in parentheses following each criteria:

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. (Findings: criteria met.)

2. Deficits in normal 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 of and use of gestures; to a lack of facial expression and nonverbal communication. (Findings: criteria met.)
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. (Findings: criteria met.)

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

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). (Findings: neither observed nor reported.)
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). (Findings: criteria met.)
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). (Findings: criteria met.)
4. Hyper- or hypo-reactivity to sensory input or unusual interest in sensory aspects of the environment (e.g., apparent indifference to pain/temperature,

adverse response to specific sounds or textures, excessive smelling or touching of objects, visual fascination with lights or movement). (Findings: criteria met per report.)

C. Symptoms must be present in the early developmental period (but may not become fully manifest until social demands exceed limited capacities, or may be masked by learned strategies in later life). (Findings: criteria met.)

D. Symptoms cause clinically significant impairment in social, occupational, or other important areas of current functioning. (Findings: criteria met.)

In conclusion, Dr. Wolf stated that Claimant demonstrated challenges of Social Affect and of Restricted and Repetitive Behavior that are consistent with the diagnosis of ASD. He did not demonstrate intellectual or language impairment. However, he did demonstrate impairment of social pragmatics of speech. Regarding his social affect, Claimant requires support. Without supports in place, deficits in social communication can cause noticeable impairments. He has difficulty initiating social interactions based upon clear examples of atypical or unsuccessful responses to social overtures of others. He may appear to have decreased interest in social interactions. Regarding restrictive and repetitive behaviors, Claimant is also requiring support. His inflexibility of behavior causes significant interference with functioning in one or more contexts. He has difficulty switching between activities. Problems of organization and planning hamper his independence. (Exhibit 6.)

5(z). Dr. Wolf's diagnostic impression was "299.00 Autism Spectrum Disorder."[7] She noted, in summary, that Claimant's cognitive skills fell in the average range and he did not meet diagnostic criteria for Specific Learning Disability. Based on

[7] 299.00 is a reference number identifying the Diagnostic Criteria for Autism Spectrum Disorder in the DSM-V.

her cognitive assessment, his verbal skills fell in the average range, his nonverbal skills fell in the high average range, and he demonstrated adequate mastery of the building blocks of speech. He was able to navigate the world of facts and academics, but had difficulty navigating the social world because of fears, (e.g., public toilets), sensory sensitivities (smells), limited empathy for others, and a combination of rigid thinking and difficulties with self-regulation. "[Claimant's] greatest challenges fall in the realms of unpredictability and inability to control as well as social connection," she concluded. Her recommendations were as follows:

1. Continue with counseling. Goals might include the following:

- assisting [Claimant] with verbalizing negative feelings
- confirming that others take his discomfort seriously and
- practicing social problem-solving in relation to vignettes and real situations.

2. Explore insurance coverage to determine [Claimant's] eligibility for attending a social skills group. Social skills groups are usually semi-structured ways of interacting with peers and can assist:

- by having adults model positive group interactions (e.g., praising others, reflecting what others have said)
- by permitting opportunities for rehearsing newly learned strategies for engagement and interaction
- by providing opportunities for group problem-solving
- by providing ongoing opportunities for parents to learn ways of assisting their children with peer engagement
- and by providing "homework assignments". (For example, a homework assignment might involve a parent-facilitated semi-structured play date at a museum, library, miniature golf or any other preferred activities that provides structure along with opportunities for interaction.

(If parents are interested in this resource, they should be able to find referrals through the Regional Center. However, if [Claimant's] health insurance provides coverage, parents will need to check to be sure that providers of interest to them are contracted with their insurance company. (Exhibit 6.)

6. On September 13, 2014, Florence Garcia, an Intake Coordinator for the Service Agency, performed an intake interview with Claimant and Father. Father requested a diagnostic assessment to rule out or determine autism and eligibility for regional center services. He reported Claimant's background and history in highly similar terms to the histories reported in both the RBUSD assessment (see Exhibit 7) and Dr. Wolf's assessment (see Exhibit 6). Due to the request for an autism assessment, Intake Coordinator Garcia discussed with Father that Service Agency's evaluation team would also have to determine whether three or more areas of "substantial disability" exist as required for Claimant to receive regional center services under the Lanterman Developmental Disability Services Act (Lanterman Act).[8] (Exhibit 5.)

7(a). On December 17, 2014, Mayra Mendez, Ph.D., L.M.F.T., a certified group psychotherapist, mental health specialist, and licensed marriage and family therapist, performed a school observation of Claimant on behalf of the Service Agency as part of its multidisciplinary-team evaluation of Claimant regarding eligibility. In her resulting report, Dr. Mendez stated the purpose of her observation as "Clarification of substantial handicaps through behavioral observation in natural social setting of the school." (Exhibit 3.)

7(b). Claimant was observed at his school, where he was in a regular fourth grade class with approximately 15 other children and one teacher. The students were engaged in test taking. Claimant was seated in the front row corner seat. The teacher

[8] Welfare and Institutions Code section 4500 et seq.

said that particular seat was the least distracting for Claimant. He was observed to work on the test before him with repeated moments of distraction. He would complete a problem of the test, and then put his head down. He remained with his head down for approximately one to two minutes, then he would do another problem. He appeared to have difficulty focusing his attention steadily to complete the test and broke attention after completing each problem. Claimant fiddled with his pencil, wiggled his feet, took his shoes off then put them back on, tapped his feet, then swung his feet to the side of his desk. He remained in constant motion without leaving his seat. He yawned persistently and lay his head down on the desk, seemingly tired. The teacher reported that this was typical, daily behavior. Claimant cracked his knuckles three times during the observation. He remained quiet throughout this observation. (Exhibit 3.)

7(c). Claimant maintained a stern scowl throughout the observation and even when the teacher was speaking to him. The teacher stated that Claimant does this all the time. She stated that he makes comments about being sad and his affect seems depressed most of the time. (Exhibit 3.)

7(d). By the morning recess, Claimant had not finished the test. He and three other students had to remain in the classroom until the test was completed. He did not protest over missing recess time and worked on finishing the test. He then abruptly stood up from his seat, threw the chair harshly and loudly into the desk and quickly walked out of the classroom. The teacher called him back to provide him with instructions on what he would be doing during recess. She told Claimant to go out to the playground rather than sit in the office for the recess period. He asked why but did not wait for the response from the teacher and walked directly to the playground. (Exhibit 3.)

7(e). Dr. Mendez observed Claimant outside during recess. Claimant wandered the play area. For approximately 15 minutes he was alone standing apart from

peers. At one point he was observed to follow a female student whom the teacher reported was Claimant's sister. She stated that the siblings are kept apart, as Claimant interacts aggressively with his sister. She stated that he hits, kicks, and threatens his sister. During this observation Claimant followed his sister for a brief time then retreated when his sister joined other girls from her class. Just before the bell rang indicating the conclusion of the recess time, he was approached by a boy from his class whom the teacher described as the only boy with whom Claimant interacts. The boy grabbed Claimant, giving him a bear-hug as the two boys jumped up and down together. The teacher stated that the boys interact by touching each other inappropriately all the time. When the boys stopped bear-hugging, they separated and Claimant returned to solitary wandering. (Exhibit 3.)

7(f). In Dr. Mendez's interview with the lead teacher, the teacher stated that Claimant requires a shadow (i.e., a one-to-one aide) for all breaks and lunch time. He has extensive peer and social challenges, as he exhibits aggressive behaviors, inappropriate touching of peers, and verbally inappropriate language and comments towards peers. Claimant tells peers that he hates them, calls them ugly, and threatens to hurt them. Claimant's social challenges do not permit him to be unsupervised around peers and the school has required him to have a shadow provided by the parents to ensure the safety of others and provide him with behavioral structure. Regarding schoolwork, the teacher described Claimant as academically within grade level, cognitively bright, but emotionally challenged. Claimant has a scowling look on his face all the time and rarely expresses his emotions. He prefers to be alone rather than engaged with peers. Claimant does not interact with peers spontaneously and he does not initiate peer exchanges. The teacher described him as "depressed" and "always sad." She witnessed Claimant trying to choke himself with a sweat shirt, and she identified him as presenting with emotional disturbance and having mental health needs. She said

the school has referred the family to seek mental health services for him, and she had grave concern for his emotional and mental state. He appears to suppress feelings and unleashes through inappropriate and dangerous behaviors towards others. (Exhibit 3.)

7(g). Dr. Mendez concluded that during the observation, Claimant presented with significant and substantial concerns in social skills, including: peer engagement, limited conversation and limited ability to demonstrate appropriate conversation and reciprocity. Claimant further presented with atypical emotional expression, maintaining a scowling expression, and he did not engage peers or staff in an effort to share pleasure or interests. Based on the teacher interview, direct observation of Claimant, and a review of data providing historical evaluations of Claimant, the overall profile presented to Dr. Mendez was "suggestive of a history of mental health concerns[,] specifically depressive characteristics." (Exhibit 3.)

7(h). Dr. Mendez further noted that the teacher expressed fear that Claimant's emotional challenges "are impacting his social and self-regulatory capacities." Dr. Mendez stated that a second area of handicaps is "self-regulation" and explained that Claimant "presents with significant challenges with attention, impulses, social problem solving capacities and emotional awareness. He has difficulty managing emotions and reactions such that his dysregulation[9] interferes with his ability to access recess and lunch time at school safely, make and maintain friendships, think about and implement problem resolutions and maintain self-safety." (Exhibit 3.)

7(i). Dr. Mendez noted a third area of handicap as "social decision making[,] as [Claimant] requires support for all social tasks. Without such support, Claimant "engages in unsafe, aggressive behaviors." (Exhibit 3.)

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[9] The Oxford Dictionary defines dysregulation as an "abnormality or impairment of a metabolic, physiological, or psychological process."

7(j). In her review of the assessment records regarding Claimant, Dr. Mendez noted that Claimant demonstrates average range cognitive functioning and has the capacity to complete age and grade level academics. During her observation, Dr. Mendez noted that he "clearly presented with a level of dysregulation that was constant and negatively impacting to his social-emotional capacities." Her clinical impression based on record review and school observation was that Claimant "could benefit from mental health treatment to address history of depression, behavioral dysregulation and social-emotional challenges." In addition, he could benefit from "participation in a peer support group with emphasis on learning coping skills socially and emotionally." (Exhibit 3.)

8. On October 8, 2014, the WRC eligibility committee met, and using the criteria from the DSM-V and in the Lanterman Act, determined that Claimant is not eligible for regional center services. (Exhibit 2.)

9. On November 6, 2014, Claimant's parents submitted a Fair Hearing Request form. In the space provided beneath the portion of the form stating "Reason(s) for requesting a fair hearing," Claimant's parents wrote: "[Claimant] requires occupational and speech therapy in order to handle issues with hygiene and daily living skills." In the space provided beneath the portion of the form stating "Describe what is needed to resolve your complaint," Claimant's parents wrote: "Speech and occupational therapy to handle issues [with] bathing, dress, eating, [and] communicating."

10. At the fair hearing, Claimant's father maintained that Claimant's qualifying disability for regional center services was ASD.

11(a). At the fair hearing, Thompson J. Kelly, Jr., Ph.D., the Chief Psychologist and Manager of Intake and Eligibility Services at WRC, testified credibly on behalf of the Service Agency. According to Dr. Kelly's review of the records, Claimant does, indeed, meet the criteria for a diagnosis of ASD under the DSM-V. However, Claimant meets

only one of the six possible areas of "substantial disability" under the Lanterman Act and Title 17 regulations, for "self-determination," whereas a minimum of three areas of substantial disability must be established for Claimant to be eligible for regional center services. (Testimony of Thompson Kelly, Jr., Ph.D.)

11(b). Dr. Kelly testified credibly that all members of the WRC evaluation team, which he heads, agreed that according to the evidence they reviewed and considered, "self-direction" was the only area of substantial disability afflicting Claimant as a result of his ASD. Dr. Kelly described "self-direction" as a category of disability not easily defined, but as primarily evidenced by the ability to initiate and sustain concentration on-task. The record showed evidence of Claimant's significant struggles to concentrate and be on-task in a sustained manner, particularly in the classroom, and these struggles were confirmed by Dr. Mendez's in-school observation. However, Dr. Kelly noted that at times Claimant was actually on-task and very attentive to what was happening around him at school, whereas by contrast, more severely autistic children tend to exist "in a bubble." In Dr. Kelly's view, the evidence of deficit in self-direction, therefore, was only mild. (Testimony of Thompson Kelly, Jr., Ph.D.)

11(c). Dr. Kelly testified credibly that the evaluation team considered the five other areas of potential substantial disability listed in the Lanterman Act and Title 17 regulations, and none applied to Claimant. Regarding self-care, Claimant's capacity for self-care was average for a child his age. Regarding receptive and expressive language, although Claimant had difficulty sustaining communication, he was able to communicate in sentences and complete phrases with little trouble. Claimant's Stanford-Binet test score for verbal IQ was also in the average range, which did not suggest a language disability. Regarding learning, Claimant was an average reader and scored below average in math but within a normative range, whereas a child with a substantial disability in learning would score well below these ranges. The evaluation team did not

find evidence of a substantial disability in terms of mobility because although Claimant exhibited some physical awkwardness, his physical mobility was functional and he had little trouble moving about at home and in school. Regarding Claimant's capacity for independent living and his economic self-sufficiency, these criteria are neither ripe nor relevant for consideration in the case of a ten-year-old like Claimant because he is still many years away from entering adulthood. (Testimony of Thompson Kelly, Jr., Ph.D.)

11(d). Dr. Kelly's testified persuasively that Claimant's autism is mild, because while autistic children lack emotional connections and don't even recognize that they are being rejected by peers, Claimant showed substantial evidence of emotional disturbance and issues involving anxiety, depression, and lack of self-esteem. These are mental health issues requiring further inquiry, but in Dr. Kelly's opinion, they do not stem from autism. Dr. Kelly believed that Claimant's parents should consult with the Department of Mental Health regarding these issues, as they are equipped to deal with such challenges. (Testimony of Thompson Kelly, Jr., Ph.D.)

12. At the Fair Hearing, Claimant's father did not offer evidence that as a result of ASD, Claimant suffered from any area of "substantial disability" enumerated under the Lanterman Act or Title 17 regulations. Claimant's father agreed with the evaluation team's finding that Claimant has a substantial disability in the area of self-direction. (Testimony of Father.)

13(a). Claimant's father contended that Claimant's mental health issues and symptoms of depression were a result of his autism, but he did not offer evidence to support this position. However, Claimant's parents have secured Claimant's participation in a new study at the University of California, Los Angeles (UCLA) Autism Clinic, involving treatment which includes cognitive behavior therapy for youths with ASD, and according to Father, the UCLA study confirms Father's belief that a link exists between Claimant's symptoms of depression and emotional problems and ASD. (Testimony of Father;

Exhibit A.)

13(b). The UCLA Autism Clinic study's three-page Assessment that Father offered as evidence contains mostly historical information regarding Claimant's intake process and sets forth the program's parameters for treatment in general terms, including cognitive behavior therapy to teach Claimant coping skills and improve skills "directly related to ASD symptoms." The Assessment does not reference any research, studies, or data, nor does it address causal connections between depression and/or emotional problems and autism. (Exhibit A.)

14. The totality of the evidence established that Claimant suffers from ASD, and that he suffers from one area of substantial disability identified as self-direction.

LEGAL CONCLUSIONS

1. Claimant did not establish that he suffers from a developmental disability (Autism Spectrum Disorder) which would entitle him to regional center services under the Lanterman Developmental Disability Services Act (Lanterman Act). (Factual Findings 1 through 14.)

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

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

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

4(a). To prove the existence of a developmental disability within the meaning of Welfare and Institutions Code section 4512, a claimant must show that he has a "substantial disability." Pursuant to Welfare and Institutions Code section 4512, subdivision (l):

> "Substantial disability" means the existence of significant functional limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person:

(1) Self-care.

(2) Receptive and expressive language.

(3) Learning.

(4) Mobility.

(5) Self-direction.

(6) Capacity for independent living.

(7) Economic self-sufficiency.

4(b). Additionally, California Code of Regulations, title 17, section 54001

states, in pertinent part:

(a) "Substantial disability" means:

(1) A condition which results in major impairment of cognitive and/or social functioning, representing sufficient impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential; and

(2) The existence of significant functional limitations, as determined by the regional center, in three or more of the following areas of major life activity, as appropriate to the person's age:

(A) Receptive and expressive language;

(B) Learning;

(C) Self-care;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living;

(G) Economic self-sufficiency.

4(c). The totality of the evidence established that Claimant suffers from one area of substantial disability in the category of self-direction. No other areas of significant functional limitation within the definition of substantial disability were supported by the evidence.

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

but shall not include other handicapping conditions that are solely physical in nature." (Welf. & Inst. Code, § 4512.)

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

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

A. Persistent deficits in social communication and social interaction across multiple contexts, as manifested by the following, currently or by history (examples are illustrative, not exhaustive; see text):

1. Deficits in social-emotional reciprocity, ranging, for example, from abnormal social approach and failure of normal back –and-forth conversation; to reduced sharing of interests, emotions, or affect; to failure to initiate or respond to social interactions.

2. Deficits in nonverbal communicative behaviors used for social interaction, ranging, for example, from poorly integrated verbal and nonverbal communication; to abnormalities in eye contact and body language or deficits

in understanding and use of gestures; to a total lack of facial expressions and nonverbal communication.

3. Deficits in developing, maintaining, and understanding relationships, ranging, for example from difficulties adjusting behavior to suit various social contexts; to difficulties in sharing imaginative play or in making friends; to absence of interest in peers.

[¶] . . . [¶]

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

1.Stereotyped or repetitive motor movements, use of objects, or speech (e.g., simple motor stereotypies, lining up toys or flipping objects, echolalia, idiosyncratic phrases).

2. Insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior (e.g., extreme distress at small changes, difficulties with transitions, rigid thinking patterns, greeting rituals, need to take same route or eat same food every day).

3. Highly restricted, fixated interests that are abnormal in intensity or focus (e.g., strong attachment to or preoccupation with unusual objects, excessively circumscribed or perseverative interests).

4. Hyper- or hypo-reactivity to sensory input or unusual interests in sensory aspects of the environment (e.g., apparent indifference to pain/temperature, adverse response to specific sounds or textures, excessive smelling or touching objects, visual fascination with lights or movement).

[¶] . . . [¶]

C. Symptoms must be present in the early developmental period (but may not become fully manifest until social demands exceed limited capacities, or may be masked by learned strategies in later life).

D. Symptoms cause clinically significant impairment in social, occupational, or other important areas of current functioning.

E. These disturbances are not better explained by intellectual disability (intellectual development disorder) or global developmental delay. Intellectual disability and autism spectrum disorder frequently co-occur; to make comorbid diagnoses of autism spectrum disorder and intellectual disability, social communication should be below that expected for general developmental level. (DSM-V at pp. 50-51.)

8(a). Claimant maintains that he is eligible for regional center services under a diagnosis of Autism Spectrum Disorder. This diagnosis was established by the totality of the evidence.

8(b). However, Claimant has not established that he suffers from significant functional limitations in three or more areas of substantial disability as required under the Lanterman Act, and Title 17 regulations, to qualify him for regional center services. As a result, Claimant is not eligible for regional center services under the diagnosis of Autism Spectrum Disorder.

8(c). Therefore, a preponderance of the evidence does not support a finding that Claimant is eligible to receive regional center services.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

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

DATED: May 6, 2015

/s/

JOHN E. DeCURE

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.