BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: CLAIMANT, vs. CENTRAL VALLEY REGIONAL CENTER, Service Agency.	OAH No. 2016110797

DECISION

This matter was heard by John E. DeCure, Administrative Law Judge with the Office of Administrative Hearings, on March 15, 2017, in Fresno, California.

Claimant, who was present for part of the hearing, was represented by Hilda Espinoza, L.M.F.T., of Madera County Behavioral Health Services (MCBHS), an agency that currently provides services to claimant.[1]

Central Valley Regional Center Inc. (CVRC or Service Agency) was represented by Shelley Celaya, Program Manager.

Oral and documentary evidence was received, and argument was heard. The record was closed, and the matter was submitted for decision on March 15, 2017.

[1] Claimant's name, and her relatives' and caretakers' names, are omitted to protect their privacy.

ISSUE

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

FACTUAL FINDINGS

1. Claimant is a 20-year-old female. She seeks eligibility for regional center services based on a school district's determination of Intellectual Disability (ID), and on MCBHS's diagnosis of Autism Spectrum Disorder (ASD).

2. On September 13, 2016, CVRC sent a letter and a Notice of Proposed Action to Claimant, informing her that CVRC had determined that she is not eligible for regional center services. Claimant requested a fair hearing.

BACKGROUND INFORMATION

3. Claimant lived with her grandfather, who was her legal guardian, until he passed away in December 2016. Claimant's grandmother died in 2015. Claimant lived with her grandparents since she was approximately three weeks old. She had some contact with her biological mother while growing up, but her mother died in 2013. Claimant has no contact with her biological father. After the death of claimant's grandfather, she was taken in by her neighbors and current caretakers, Mr. and Mrs. B., who had known claimant for approximately two years and are now serving as her temporary legal guardians.

4. Claimant was born prematurely at 35 weeks and weighed four pounds, five ounces at birth. She was diagnosed with Fetal Alcohol Syndrome during her early infancy. Her mother reportedly abused methamphetamines, heroin, and alcohol and smoked cigarettes during her pregnancy with claimant. Claimant sat up by herself at nine months, crawled at 10 months, walked at 12 months, said her first words at 13 months, utilized word pairs at 18 months, and utilized sentences at between 24 and 30

months. Her grandfather reported he had concerns with general delays across all domains since claimant's birth. Claimant's medical history is unremarkable. She eats normally, but only specific foods. She has corrective lenses but refuses to wear them. She has night terrors. When she was five years old she was diagnosed with Attention Deficit/Hyperactivity Disorder (ADHD) and was prescribed Adderall for her ADHD and Atarax (Hydroxyzine) to help her sleep.

5. Claimant was a student within the Golden Valley Unified School District (Golden Valley) since 2001, receiving special education courses. She graduated from Liberty High School in 2015 with a Certificate of Completion. She currently attends Madera Center Community College within the Disabled Students Programs and Services project.

6. Although claimant contends she has many friends, her grandfather reported that she seldom interacts with friends. Mrs. B., her temporary guardian, similarly described claimant as claiming to be sociable but actually spending most of her free time in her bedroom. Mrs. B. testified that claimant engages in inappropriate social behaviors, including: observing others in play without engaging herself as well; failing to identify herself when she initially engages with others; not knowing how to ask for a touch or a hug; abruptly leaving the company of others; talking to herself; pacing excessively when faced with a conundrum; exhibiting a "startle reflex" when she hears a loud noise; and constantly attempting to guess where conversations with others are going. Claimant has reported she believes she sometimes sees a raven that will actually talk to her. Victoria Martinez, an MCBHSA mental health case worker who has worked with claimant for approximately 10 years, testified that claimant had many problems in the home, including: an inability to be empathetic toward her ailing grandfather; difficulty articulating her wants and needs; an inability to verbalize her medical needs with treating professionals; not having any friends; being rigid about wearing the same

clothes, no matter the weather conditions; not sharing her feelings, thoughts, or concerns with others; overreacting when upset; and being unable to use the stove.

CLAIMANT'S EVIDENCE REGARDING DISABILITIES

7. Claimant relied on a school-district report in arguing that she met the criteria for ID. In April 2015, Golden Valley issued a Triennial Assessment of claimant, at the request of her grandfather, to determine appropriate placement and services for claimant after she graduated from high school. The assessment was provided by a multidisciplinary team, including the school psychologist, James E. Brannon, who authored the report. The team considered health/development information, work samples, observations of claimant's behavior, a review of her social, behavioral and academic school performance, and the results of a series of psycho-educational tests.

8. In particular, the assessment concluded that claimant was eligible for special education services based on the results of her intellectual and academic achievement testing. On the Kaufman Assessment Battery for Children: Second Edition (KABC-II), which measures processing and cognitive abilities, claimant received the following scores: sequential - 80 (low average); simultaneous – 69 (extremely low); learning – 78 (low); planning – 69 (extremely low); knowledgeable – 92 (average); and fluid crystallized index (composite score) – 73, (low range of intellectual abilities). On the Kaufman Test of Educational Achievement: Third Edition (KTEA), claimant received the following scores: broad reading – 95 (average); letter word recognition – 108 (average); reading comprehension – 83 (low average); broad mathematics – 65 (extremely low); math concepts and application – 65 (extremely low); math calculation – 68 (extremely low); broad written language – 83 (low average); spelling – 95 (average); and writing expression – 71 (low). The assessment based its finding of claimant's eligibility for special education services upon the term "Handicapping condition: Intellectual Disability," and stated that it should be "listed as [the] primary handicapping condition."

9. The assessment team also found claimant to suffer from "Other Health Impairments," meeting the eligibility criteria for special education on a secondary basis. These other health impairments were described as claimant's diagnosis of Fetal Alcohol Syndrome, which the team believed had an adverse effect on her educational performance.

10. Claimant relied on Hilda Espinoza's report, contained in an MCBHSA Diagnosis Review Form she completed on December 13, 2016 (the MCBHSA report), to establish that she met the criteria for ASD. Ms. Espinoza testified that she completed the MCBHSA report the day after claimant's grandfather passed away, because she was concerned that claimant, who was now effectively without any family, was being "underserved" to date and had made little progress and personal development as an MCBHSA client since 2007. Ms. Espinoza also considered claimant's grandfather to have been a poor historian of several behaviors Ms. Espinoza believed to signify ASD. Under diagnostic impressions and conclusions, Ms. Espinoza stated:

> [Claimant] cannot socially/emotional[ly] reciprocate with others; very rigid routines and has huge meltdowns with any small change; has not been able to make or maintain friendships; religious preoccupations; low frustration tolerance that affects her ability to communicate her thoughts/ideas/feelings with others; very anxious about everything; and low intellectual functioning. Currently CVRC has denied her and [she is] appealing that process. Client reports she is capable of doing more than what she can. Grandfather before passing did not understand her [diagnosis] and was [a] poor historian.

Under the subheading for "presenting problem," Ms. Espinoza stated:

> [Claimant] displays having ADHD sxs: poor concentration, impulsivity, hyperactivity, distractibility. She also displays negative behaviors at home: arguing, yelling, physical and verbal aggression, anger problems, irritability, depression, crying episodes, obsessive thinking, all sx occur daily. She also has poor social skills and has difficulty making friendships with peers; has none. [Claimant] also is anxious of physical changes and changes to her routine; and will have rage for two hours when her routine has been changed. [Claimant] spends most of her day iso[lated] in her bedroom with the lights off. [Claimant] cannot cook or develop meal plans to meet her needs.

Under the subheading for "current symptoms," Ms. Espinoza stated:

> [Claimant] displays having ADHD & Autistic sxs: poor concentration, impulsivity, hyperactivity, distractibility. She also displays negative behaviors at home: arguing, yelling, physical and verbal aggression, anger problems, irritability, depression, crying episodes, obsessive thinking, all sx occur daily. She also has poor social skills and has difficulty maintaining friendships with peers; blunted affect. [Claimant] is apprehensive of any changes in her routine. Clinician has witnessed client have meltdowns when she cannot make sense of things and will rant for over an hour over anything she perseverates on.

Under the subheading "traumatic events," Ms. Espinoza recounted the death of claimant's maternal grandmother two years earlier and the death of her grandfather the day before, noting that claimant struggled to "grieve her loss appropriately as she is limited with her disability." Under the subheading "psycho/social history," Ms. Espinoza reiterated the deaths of claimant's grandparents, and further stated:

> [Claimant] is now 20 years old. [Claimant and her current caretakers] live in Madera Ranchos and [claimant] will [attend] Madera Center [to take] life skills. [Claimant] has no friends and struggles to [emotionally]/socially reciprocate with others. She likes spending most of her day alone in her bedroom with all lights off. Grandfather reports she likes her routine exactly the same or she will have huge meltdowns. [Claimant] is not able to care for [all] her needs such as cooking and cleaning and preparing meals. [Claimant] has no extended family support to provide her supervision and guidance. She is receiving SSI as testing completed by that agency revealed [claimant] is disabled for life based on an evaluation.

Under the portion of the MCBHSA report listing diagnoses, in particular "Axis II: Personality Disorders and Mental Retardation," Ms. Espinoza reported "Mild intellectual disabilities." In the portion describing challenges the client faces, Ms. Espinoza described claimant in part as "mildly delayed."

11. Ms. Espinoza testified further that in her judgment, claimant is "autistic-like," but she had grandparents who simply could not distinguish between her normal development and her disabilities. Currently Ms. Espinoza provides psychotherapy

sessions to claimant twice per month. She believes claimant has "a huge problem" applying basic living skills to her daily routine.

SERVICE AGENCY'S EVIDENCE

12. On August 11, 2016, Emon Abdiksalehi-Najafi, Ph.D. (Dr. Najafi), evaluated claimant on CVRC's behalf and issued a Psychological Eligibility Evaluation report (Dr. Najafi's report), dated the same. The purpose of the evaluation was to assess claimant's intellectual and adaptive functioning, and to consider a potential diagnosis of ASD, in order to determine whether claimant is eligible for services as a CVRC client. Dr. Najafi reviewed several Golden Valley assessments from 2007 to 2015, a Madera-Mariposa County Individualized Education Program (IEP), a 2016 CVRC intake assessment, a Ceres Unified School District (Ceres) 2001 Psychometric Summary, and a 2004 Ceres Psychoeducational Assessment.[2] Dr. Najafi also interviewed claimant and her grandfather. Her behavioral observations of claimant included: good eye contact; flat affect; engaging appropriately with evaluator; socially referencing evaluator and reciprocating hand shake; frequently referencing grandfather; anxious social approach, questioning how long the test would take; engaged and interested in interview; attuned to what grandfather was saying (based on her facial expressions); speaking in full sentences; rapid in rate with no errors in discourse noted; good grasp of receptive and expressive verbal abilities and could engage in adequate two-way conversation; and slightly anxious during testing, but put forth a good effort.

13. Dr. Najafi administered a Wechsler Adult Intelligence Scale: Fourth Edition (WAIS-IV) to test for cognitive deficiencies. While a score of 70 or below is considered

---

[2] Claimant had been a student in the Ceres Unified School District when she was very young.

indicative of cognitive deficiency, claimant received the following scores: verbal comprehension – 100; perceptual reasoning – 73; working memory – 71; processing speed – 81; and full scale IQ – 79.

14. Dr. Najafi also administered an Adaptive Behavior Assessment System: Third Edition (ABAS-III), which claimant's grandfather completed, to understand her adaptive functioning. Claimant received a general adaptive composite (GAC) score of 78, placing her in the borderline range.

15. Dr. Najafi also administered an Adaptive Behavior: Street Survival Skills Questionnaire (SSSQ) to determine claimant's adaptive functioning. Claimant's total SSSQ score was 88, placing her adaptive development within the low average range. Claimant displayed moderate to severe deficits in her understanding of tools, health and safety, monetary issues, and measurements. She displayed an average understanding in the areas of basic concepts, functional signs, domestics, public services, and time.

16. Dr. Najafi administered a Childhood Autism Rating Scale: Second Edition/ Standard Version (CARS-2-ST), a screening tool designed to differentiate children with autism from those with other developmental delays. Fifteen different behaviors associated with autism are rated from normal to severely abnormal using a scale from 1 to 4. Those scores are then used to calculate a total CARS-2-ST raw score. Individual scores of 2 or higher and total scores of 30 or higher suggest an increased probability of autism. Claimant's raw total score was 25.5, evidencing minimal to no symptoms of autism. Although she had moderately abnormal responses in regard to emotional response (2.5), adaptation to change (2.5), fear or nervousness (2.5), and level of consistency of intellectual response (3.0), her scores in twelve other testing domains appeared to be within normal limits. Claimant's severity-of-abnormality rating placed her in the range of displaying minimal to no symptoms of ASD.

17. Dr. Najafi described claimant's strengths and challenges relative to

diagnostic criteria for ASD as set forth in the Diagnostic and Statistical Manual of Mental Disorders: Fifth Edition (DSM-5).[3] Her findings as to whether claimant met or failed to meet the criteria are set forth below in parentheses following each criteria description:

> 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.
>
> ([Claimant] evidences a generally flat affect, but is able to engage in normal back and forth conversation. Criteria sub-clinical)
>
> 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

[3] 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.

understanding of and use of gestures; to a lack of facial expression and nonverbal communication.

([Claimant] presents with good eye contact and is able to recognize and interpret others' facial expressions. However, she evidences limited facial expressions. Criteria sub-clinical)

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.

([Claimant] is interested in peer relationships, however, lacks the understanding of the conventions of social interactions. Criteria met.)

(One out of three criteria was met with two criteria being sub-clinical. Current severity: Not applicable as category A was not 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).

(No atypical speech, movements, or play were reported or observed. Criteria not met.)

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).

([Claimant] insists on routines and may [be] rule bound in thought and behavior. She reportedly evidences extreme resistance to change. 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).

(Per report, [claimant] evidences religious perseverations and may read the Bible multiple times throughout the day. She may also recite certain segments of the Bible. She reportedly watches sermons about different vers[e]s on the Internet

repetitively. 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).

(No atypical sensory behavior were reported or observed. Criteria not met.)

(Two out of four criteria were met. Current severity: Not applicable as category A was not met.)

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).

(Not applicable as category A was not met. Criteria not applicable.)

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

(Not applicable as category A was not met. Criteria not applicable.)

E. These disturbances are not better explained by intellectual disability (Intellectual Developmental 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.

(Not applicable as category A was not met. Criteria not applicable.)

18. Dr. Najafi noted that categories A through E must be met, with three criteria from category A and at least two criteria from category B, for a diagnosis of ASD. Because claimant only met one criterion from category A, a diagnosis of ASD was inappropriate. Dr. Najafi further opined that the current symptomology was better explained by an underlying affective disturbance, specifically an anxiety disorder, which would require further evaluation. It also appeared that claimant's symptoms secondary to attention deficit/hyperactivity disorder were significantly impacting her functioning; and her birth history, compounded by a diagnosis of Fetal Alcohol Syndrome, significantly impacted her cognitive functioning, executive functioning, memory, and social/adaptive skills. Dr. Najafi believed a diagnosis of neurocognitive disorder was warranted due to claimant's significant discrepancies within her cognitive profile and borderline adaptive functioning. Dr. Najafi's DSM-5 diagnoses were as follows:

R41.9 Unspecified neurocognitive disorder, secondary to fetal alcohol syndrome

F41.9 Unspecified anxiety disorder

Attention deficit/hyperactivity disorder – per history

Fetal alcohol syndrome (FAS) – per history

19. Dr. Carol Sharp is CVRC's Staff Psychologist, serves on the CVRC Eligibility Team, and has been performing eligibility assessments for CVRC for over 13 years. Dr. Sharp testified that the Eligibility Team reviewed all of the available records and information regarding claimant in making its determination regarding her eligibility for services as a potential CVRC client, as follows.

20. The Eligibility Team noted that in January 2016 Valley Mountain Regional Center in Stockton had transferred its file to CVRC after closing its file because it found that claimant was not developmentally disabled.

21. The Eligibility Team also reviewed a December 2000 psychological report from Clinton Lukeroth, Ed.D., which contained an assessment of claimant's developmental status at age four years and four months old. Dr. Lukeroth examined claimant, whom he found to be friendly and eager to interact with test materials, as well as highly verbal and speaking in complete sentences with adequate articulation. Dr. Lukeroth conducted a DAS Preschool test, which indicated claimant's General Cognitive Ability was in the borderline range. Her scores were in the low average range of verbal functioning and the deficient range for nonverbal activities. Her scores on the Vineland Adaptive Behavior Scales were low average in communication, daily living, and motor skill development. In sum, Dr. Lukeroth opined that despite a global IQ that was

borderline, claimant did not demonstrate evidence of mental retardation (i.e., intellectual disability).

22. The Eligibility Team carefully considered the MCBHSA report submitted by Ms. Espinoza. They noted that Ms. Espinoza did not analyze the DSM-5 criteria for ASD in reaching her diagnosis of ASD. They considered Ms. Espinoza's impressions and conclusions to at times suggest autism, but not in a clinical sense.

23. The Eligibility Team noted that claimant's test scores when she was evaluated by Dr. Najafi to measure intellectual capability were: a full scale IQ score of 79, which is borderline; a verbal comprehension score of 100, which is average; and a perpetual reasoning score of 73, which is borderline. They further noted that per the DSM-5, individuals with ID have scores of approximately two standard deviations or more below the mean, involving a score of 65-75, with an error margin of plus or minus 5. Here, claimant's scores were not low enough to meet the criteria for ID. The team believed Dr. Najafi was correct not to diagnose claimant with ID. They further noted that Dr. Lukeroth made no findings to suggest claimant suffered from ID in his 2000 psychological report.

24. The Eligibility Team considered a 2004 Ceres psychological report which made intellectual assessments for purposes of determining claimant's capabilities, and which found that she scored a performance IQ of 77, a verbal IQ of 100, and a full scale IQ of 87. These scores were not two standard deviations or more below the mean, involving a score of 65-75, with an error margin of plus or minus 5, as set forth in the DSM-5 to establish ID. Here again, as with Dr. Lukeroth's testing, claimant's scores were not low enough to meet the criteria for ID. The Ceres district's report recommended

special education courses, but made no mention of ID, nor did the report set forth findings to support a diagnosis of ASD.[4]

25. The Eligibility Team reviewed a 2004 Ceres psycho-educational assessment as well, noting that her special education designation was Other Health Impaired, "due to the effect of [Fetal Alcohol Syndrome]." The report also stated that claimant demonstrated empathy for others in that she wished "people could have more things and not be poor," and that none of her animals would die. This capacity for empathy is not an indication that claimant is autistic.

26. The Eligibility Team considered a 2007 Golden Valley triennial assessment and noted that claimant's overall intellectual ability was measured to be in the low average range, which is above that of a person with ID. The team further noted that the report made no findings to support a diagnosis of ASD. The team also reviewed a 2010 Golden Valley triennial assessment and noted claimant's testing scores for verbal comprehension (96; average), perceptual reasoning (84; low average), working memory (71; borderline), and processing speed (73; borderline), with a composite full-scale score of 78 (borderline), were too high to be indicative of ID. Golden Valley did not find evidence of ID or ASD, but instead determined claimant eligible for special education services based on "other health impairments," including her medical diagnoses of ADHD paired with Fetal Alcohol Syndrome.

27. The Eligibility Team reviewed the most recent triennial assessment Golden Valley prepared in April of 2015, noting that although Golden Valley determined claimant to be eligible for special education services due to "intellectual disability," the findings it used to make this determination were not akin to the criteria for ID found in

---

[4] Dr. Sharp testified that in her experience, school districts typically assess whether a student may be autistic when substantial symptoms indicate that possibility.

the DSM-5. In particular, claimant's academics were measured to be in the low to average range, her overall reading was in the average range, her attention and concentration were in the low range, and her broad written language was in the low average range. Despite findings that claimant was in the extremely low range in visual memory and visual processing, as well as in math, the team did not consider these scores to be indicative of ID. Persons suffering from ID tend to have flat scores closely clustered together in terms of achievement level, and here, claimant shows a broad range of scores. The team further noted that at the time claimant was tested, she was 18 years and 8 months old. This causes an issue regarding eligibility, because pursuant to California Code of Regulations, title 17, section 54000, subdivision (b)(1), any developmental disability claimant suffers from must have originated before she reached the age of 18 to qualify for services. Dr. Sharp noted that in claimant's case, even if one were to assume the April 2015 triennial assessment established a disability, there is no evidence that claimant suffered from, or was diagnosed with, either ASD or ID prior to age 18; thus, the April 2015 report cannot establish a disability.

28. Dr. Sharp noted the reports that claimant believes a talking raven speaks to her. This type of delusion is in the nature of psychosis. Such visions of things that are not there are atypical of an autistic person and are not a feature, or indicator, of ASD.

29. The Eligibility Team considered claimant's eligibility for ID and/or ASD based on all of the above-stated evidence. Using the criteria from the DSM-V and in the Lanterman Act, they found that despite her learning and behavioral challenges, she does not meet eligibility criteria for either disability. Furthermore, she did not meet any of the six possible areas of "substantial disability" under the Lanterman Act and Title 17 regulations, whereas a minimum of three areas of substantial disability must be established for claimant to be eligible for regional center services.

DISCUSSION

30. Golden Valley's lone diagnosis of ID in April 2015 was not the result of an analysis of the criteria set forth in the DSM-5 for establishing a diagnosis of ID, nor did the April 2015 assessment establish that claimant suffered from ID prior to turning 18 years old. Notably, several assessments performed by Golden Valley and other professionals before claimant turned 18 failed to show that claimant suffered from ID. Ms. Espinoza, who plainly knew claimant well and acted as her advocate at the hearing, offered a similar- if less formalized- assessment, describing claimant as having "[m]ild intellectual disabilities," and being "mildly delayed."

31. Ms. Espinoza's recent diagnosis of ASD did not follow the DSM-5 criteria for establishing such a diagnosis. Ms. Espinoza did not rely on any testing or empirical data in reaching her diagnosis, and she did not appear to follow any set regimen for making her determinations. Similarly, although witnesses close to claimant testified credibly that they had observed claimant exhibiting certain autistic-like behaviors, this anecdotal evidence was not coupled with any testing, data, observations or analyses from expert assessors. Dr. Najafi provided the only comprehensive analysis, assessment and report on the issue of ASD, and she convincingly reached the conclusion that claimant did not meet the DSM-5 criteria for establishing an ASD diagnosis. At the hearing, claimant did not refute any of Dr. Najafi's findings.

32. The evidence did not establish that claimant 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 her for regional center services. This result underscores claimant's ineligibility for regional center services under the diagnoses of Intellectual Disability or Autism Spectrum Disorder.

33. The totality of the evidence failed to establish that claimant suffers from ID or ASD, or that she suffers from any area of substantial disability identified in the Lanterman Act and Title 17 regulations.

LEGAL CONCLUSIONS

1. Claimant did not establish that she suffers from a developmental disability (Intellectual Disability; Autism Spectrum Disorder) which would entitle her to regional center services under the Lanterman Developmental Disability Services Act (Lanterman Act). (Factual Findings 3 through 9.)

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 her 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 her 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. To prove the existence of a developmental disability within the meaning of Welfare and Institutions Code section 4512, a claimant must show that she 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.

5. 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.

6. The totality of the evidence did not establish that claimant suffers from an area of substantial disability in any specific category. No areas of significant functional limitation within the definitions set forth above were supported by the evidence.

7. In addition to proving a "substantial disability," a claimant must show that her 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.)

8. 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.

9. Claimant maintains that she is eligible for regional center services under a diagnosis of either Intellectual Disability or Autism Spectrum Disorder, or both. Neither of these diagnoses was established by the totality of the evidence. Therefore, a

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

ORDER

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

DATED: March 29, 2017

_____

JOHN E. DeCURE

Administrative Law Judge

Office of Administrative Hearings

NOTICE

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