

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

GOLDEN GATE REGIONAL CENTER,

Service Agency.

OAH No. 2017031394

DECISION

Administrative Law Judge Michael A. Scarlett, State of California, Office of Administrative Hearings, heard this matter on September 11 and 19, 2017, in San Rafael, California.

Lisa Rosene, Regional Center Services Director, represented Golden Gate Regional Center (GGRC or Service Agency).

Claimant's mother represented claimant who was not present at hearing.¹

The matter was submitted on September 19, 2017.

ISSUE

Is claimant eligible for regional center services based upon a diagnosis of Autism Spectrum Disorder?

¹ Claimant's and his mother's names are redacted to protect their privacy.

FACTUAL FINDINGS

1. Claimant is a 17-year-old male who lives with his mother in Marin County. Spanish is the primary language spoken in the home but claimant is fluent in English. Claimant has been receiving special education services since preschool. He was made eligible for special education in 2003 based on Emotional Disturbance and Speech or Language Impairment. Claimant is currently attending San Marin High School in the 12th grade and receiving special education services under the Specific Learning Disability (SLD) classification. Claimant has a history of mental health conditions, i.e., depression, aggression towards others, Oppositional Defiance Disorder (ODD) and anxiety for which he has received treatment and counseling.

2. On August 8, 2013, Service Agency determined that claimant was not eligible for regional center services after claimant's mother sought services based on claimant's low average Intelligence Quotient (IQ) scores. GGRC determined that claimant's intellectual functioning was in the average range, and noted that he had been diagnosed with ODD and anxiety, with a possible mood disorder. GGRC concluded that claimant had average intellectual functioning and "challenges with impulse control, possible ODD vs conduct disorder, mood disorder vs emerging psychosis." On April 15, 2016, Kaiser Permanente Medical Center Autism Spectrum Disorders Evaluation Center (Kaiser) evaluated claimant and diagnosed him with Autism Spectrum Disorder (ASD). Claimant had never been diagnosed with ASD, either by a regional center or the school district, prior to Kaiser's ASD diagnosis. Based upon this new ASD diagnosis, claimant again sought regional center services. On December 7, 2016, GGRC again determined that claimant was not eligible for regional center services, concluding that the Kaiser ASD diagnosis was not persuasive and did not establish that claimant had ASD.

3. On February 23, 2017, GGRC issued a Notice of Proposed Action (NOPA) notifying claimant that he was denied eligibility for regional center services under the

Lanterman Act because claimant does not have a developmental disability. On February 23, 2017, GGRC also informed claimant by letter that a previous assessment by Service Agency had determined that he did not have a developmental disability and that new information presented, i.e., the Kaiser ASD diagnosis, had been reviewed and the new materials did not establish that claimant had a developmental disability. On March 21, 2017, claimant's mother filed a Fair Hearing Request (FHR) on claimant's behalf. The FHR asserts that claimant was diagnosed with ASD by Kaiser and that claimant needs help to become an independent adult with autism.²

4. On April 28, 2017, an Informal Appeal Meeting was held to discuss claimant's mother's request for a fair hearing. Present at the informal meeting, among others, were claimant; claimant's mother; representatives from the Center for Social Dynamics, who were providing behavioral services to claimant; Dominique Gallagher, LCSW, GGRC Manager, Intake and Assessment; and Sarah Wood, J.D., Ph.D., LL.M., GGRC Staff Psychologist. In an Informal Appeal Meeting Report dated May 4, 2017, Dr. Wood and Gallagher concurred with the February 23, 2017 NOPA denying claimant eligibility for regional center services.

KAISER PSYCHOLOGICAL EVALUATION

5. On April 15, 2016, Samuel Sweet, Ph.D., Licensed Psychologist, and Nicole Colao-Vitolo, Psy.D., Licensed Psychologist, evaluated claimant at Kaiser and provided a psychological evaluation. Drs. Sweet and Colao-Vitolo reviewed claimant's records,

² Claimant has no history of Intellectual Disability (ID), epilepsy, cerebral palsy or evidence to support the Fifth Category basis for eligibility, and he does not assert these developmental disabilities as a basis for eligibility under the Lanterman Developmental Disabilities Act (Lanterman Act).

spent four and one-half hours of clinical time with claimant, interviewed claimant's mother, and administered tests which included, among others, the Autism Diagnostic Observation Schedule, 2nd Edition (ADOS-2), Module #3; the Wechsler Intelligence Scale for Children, 5th Edition (WISC-V); and the Adaptive Behavior Assessment System, 2nd Edition (ABAS-II).

Claimant's scores on the ADOS-2 exceeded the "autism" cutoff on the combined Social Affect and Restricted and Repetitive Behavior domains, and he had "an ADOS-2 Comparison score that indicated the presence of a moderate level of Autism spectrum related symptoms compared with other same-aged children who have ASDs and have similar language level." The ABAS-II, which measures claimant's functional skills for daily living as reported by claimant's mother, rated claimant's overall adaptive/daily living skills in the extremely low range.

Drs. Sweet and Colao-Vitolo also noted claimant's behavioral and psychiatric history, including his symptoms related to depression, becoming easily frustrated, mania, anxiety, dysfunctional eating behaviors, ASD symptoms (impairment in nonverbal behavior, failure to develop age appropriate peer relations and narrow range of interests), oppositional defiant problems, conduct problems (history of aggression towards people, aggression towards animals, use of weapons and fire setting), and impulsivity and poor planning. They also noted that claimant "has a long history of mood and behavioral dyscontrol, including aggression and oppositional behaviors," and that claimant had been psychiatrically hospitalized three times in November 2010, March 2011, and July 2011.

In diagnosing claimant with ASD, Drs. Sweet and Colao-Vitolo applied the American Psychiatric Association's Diagnostic and Statistical Manual, Fifth Edition (DSM-5). Regarding ASD Criterion A1 (Deficits in Social-Emotional Reciprocity) they concluded claimant has "longstanding difficulty initiating social interactions and engaging in

reciprocal conversations.” Regarding Criterion A2 (Deficits in Nonverbal Communication) the evaluation concluded that claimant “does not make socially-regulated eye contact”; he has “difficulty reading nonverbal cues (and subsequently responding to the emotions of others); and “gestures are inconsistent and his affect can be flat.” Regarding Criterion A3 (Deficits in Developing and Maintaining Relationships) the evaluation concluded that claimant does not like socializing with school “friends” outside of school and is avoidant of family gatherings, and has always struggled to adjust his behavior to different contexts.

Regarding Criteria B, Drs. Sweet and Colao-Vitolo determined that claimant had deficits in three of the four diagnostic criteria for restrictive, repetitive patterns of behavior. They found claimant had no deficits for Criterion B1 (Stereotyped Behaviors and Repetitive Interests). However, Drs. Sweet and Colao-Vitolo determined that claimant exhibited deficits for Criterion B2 (Insistence on Sameness, Inflexible Adherence to Routines and Ritualized Patterns of Behavior), noting that he struggled adjusting to changes in his routine, and that he asks the same questions repetitively. They also noted that claimant does not like people touching his things and refuses to share his possessions, and is particular about how his food is plated and does not like foods to touch. With regards to Criterion B3 (Highly Restricted and Fixated Interests), Drs. Sweet and Colao-Vitolo determined that claimant had an unusual preoccupation with electronics. They noted that claimant focused on non-functional or detailed aspects of toys or objects and takes things apart, and carries around a little case that contains electronics, hand wipes, pens, and notepads. Finally, with regards to Criterion B4 (Hyper- or Hypo-reactivity to Sensory Input), they determined that claimant had deficits in this area as manifested by his extremely high pain threshold. They also noted that claimant has sensory preoccupations with regard to texture or touch or aversions to certain textures.

6. Drs. Sweet and Colao-Vitolo ultimately concluded that:

[Claimant] has difficulty responding appropriately in social situations and participating in the give and take of social interactions; he uses limited eye contact, gestures and facial expressions in his interactions with others; and does not have developmentally appropriate peer relationships. [Claimant] also demonstrates hypersensitivity with regard to sounds and food textures, sensory seeking behaviors as well as rigidity and inflexibility with regard to his routines and thought processes. [Claimant] demonstrates insistence on sameness and inflexible adherence to routines. [Claimant] has a fixated interest in technology that is abnormal in intensity. [Claimant] also shows hyper-or hypo-reactivity to sensory input or unusual interest in sensory aspects of environment. Finally, [claimant's] score on the ADOS-2, Module 3 at the present evaluation met the cutoff for "autism."

7. Of significance, the Kaiser evaluation notes behaviors that would indicate claimant does not have persistent deficits in social communication and social interaction across multiple contexts. For example, claimant is noted to respond to his name when called; he socializes with classmates and initiates conversations when is he comfortable; he speaks a great deal about his specific interests; and he uses language to express his feelings and can perceive how others are feeling and will offer them comfort if they are upset or hurt. Regarding nonverbal communication, the Kaiser evaluation also notes that claimant uses facial expressions to convey what he is feeling and that he is able to

recognize his mother's nonverbal cues. Finally, regarding social relationships, the Kaiser evaluation notes that claimant can be sarcastic, but struggles to understand other people's humor; that he has shown a capacity to understand how his behavior impacts others; and that claimant has a few friends at school.

GGRC ELIGIBILITY DETERMINATIONS

8. Service Agency determined that claimant does not meet the DSM-5 Criteria for ASD, and was not in agreement with the Kaiser 2016 ASD diagnosis. In an Eligibility Reconsideration dated December 7, 2016, Telford I. Moore, Ph.D., ABPP/ABN, M.P.H., Service Agency psychologist, determined that claimant's problems were primarily emotional and a result of his previously diagnosed psychiatric disorders, including ODD and mood disorder. Dr. Moore primarily relied on claimant's school records in determining that claimant did not have ASD. He noted that claimant's educational records did not contain an ASD diagnosis, but instead showed that claimant had Speech and Language Impairment, Emotional Disturbance, SLD/Auditory Processing Disorder, and SLD. Dr. Moore concluded that Kaiser's ASD evaluation failed to account for claimant's psychiatric disorders in diagnosing ASD, although claimant's records specifically documented his history of psychiatric disorders.

9. At hearing, Dr. Moore credibly testified that in his opinion, claimant suffered from mental health conditions, rather than a developmental disability. He asserted that the Kaiser evaluation completely ignored claimant's history of ODD and mood disorders and concluded that claimant had a developmental disability although there had been no evidence of ASD in claimant's educational records or otherwise. Dr. Moore opined that claimant's diagnosis of ODD at a very early age sufficiently explained the aggressive and maladaptive behaviors claimant's mother had observed and that claimant was currently exhibiting. He stated that the ODD evolved into conduct disorders later in claimant's life, which still persist today and are being mischaracterized

in the Kaiser ASD evaluation as symptoms of ASD. Dr. Moore believed that claimant's scores on the ADOS-2 were influenced by the mischaracterization of claimant's ODD and mood disorder symptoms as symptoms of autism, which may have caused claimant's scores on the ADOS-2 to push above the autism cut-offs. Dr. Moore further opined that impaired language is very evident in a child with autism, but claimant's communication skills and level did not evidence any language impairment.

10. Sarah Wood, GGRC's Staff Psychologist, participated in claimant's April 28, 2017 Informal Appeal Meeting. Dr. Wood also concluded that claimant did not meet the DSM-5 Criteria for ASD and was ineligible for regional center services. Dr. Wood asserted that claimant's records were void of any evidence of autism prior to the Kaiser diagnosis in 2016. She also expressed concern that the Kaiser psychological evaluation failed to take into consideration claimant's history of psychiatric disorders in making the ASD diagnosis. Dr. Wood stressed that diagnoses of ASD are typically made during early childhood and that there is no such diagnosis in claimant's case. In fact, claimant was considered for Early Start Services eligibility by GGRC and was denied eligibility. Although Service Agency did not maintain records of the Early Start Services eligibility determination, Teresa Keys-Ostantowski, M.D., a GGRC pediatrician, credibly testified that she evaluated claimant for Early Start Services and determined that he was ineligible for those services.

11. Dr. Wood also testified that Kaiser's psychological evaluation described a large number of communication skills by claimant that were inconsistent with a diagnosis of ASD. She noted that the evaluation indicated that claimant responded when his name is called; he requested wants or needs verbally and nonverbally; he responded to social overtures; he initiated conversations with people he was comfortable speaking to; he used language and facial expression to convey his feelings; he read nonverbal cues from his mother; and he exhibited intermittent perspective

taking. Dr. Wood did not believe claimant's behaviors met the DSM-5 criteria for persistent deficits in social communication and social interaction, if claimant exhibited these behaviors. Finally, Dr. Wood did not observe symptoms consistent with ASD from claimant during the Informal Appeal Meeting. During the informal meeting, claimant exhibited the capacity for reciprocal social interaction and consistently used nonverbal communicative behaviors (e.g., eye contact, facial expression) throughout the two hour meeting. Although claimant's mother reported that claimant had difficulty developing and maintaining relationships, Dr. Wood noted that claimant listed names of school friends and indicated that he went to a skatepark and played video games with these friends, but that he preferred to stay home and play his favorite video game.

CLAIMANT'S EDUCATIONAL RECORDS

12. Claimant's educational records also do not comport with the Kaiser ASD diagnosis. Claimant has been eligible for special education services primarily under the classifications of Emotional Disturbance and SLD. On September 6, 2017, Arezu Iranipour, School Psychologist for the Novato Unified School District, performed a Psycho-Educational Assessment for claimant. Dr. Iranipour reviewed claimant's educational records and the Kaiser ASD diagnosis and independently evaluated claimant for autism. He noted that previous testing of claimant's cognitive functioning indicated that claimant was performing within the low average to average range overall. Dr. Iranipour concluded that claimant was not eligible for special education under the classification of "Characteristics of Autism." He specifically noted that the symptoms outlined in the Kaiser evaluation do not present themselves within the school to a significant degree that would warrant eligibility under Characteristics of Autism.

13. Dr. Iranipour notes that claimant was observed to engage in reciprocal social interaction, including reciprocal conversations, good use of eye contact and hand gestures, and ability to engage in humor. In terms of communication, claimant was able

to speak with ease when speaking with a familiar adult (Mr. Lamont) and he warmed up to speaking with Dr. Iranipour, who was an unfamiliar adult. Claimant discussed friendships with Dr. Iranipour, his job, and future planning, and was engaging in appropriate peer interactions and conversations. Dr. Iranipour indicated that claimant did not engage in any restricted or repetitive behaviors and his teachers had not reported any such behaviors. Finally, Dr. Iranipour indicated that the Behavior Assessment System for Children, Third Edition (BASC-3), which he administered to claimant, claimant's mother, and teacher indicated significant discrepancies in claimant's behaviors at home and at school. The BASC-3 showed that claimant's behaviors associated with ASD were more prevalent at home than at school.

14. Claimant's Individualized Education Programs (IEPs) also consistently indicated that claimant performed in the average to low average range academically, and that he interacted socially with staff and peers in the school environment. Claimant's April 7, 2017 IEP indicated that he was able to communicate his wants and needs to staff and peers, and that he had a strong curiosity, and will often ask a "quick question" which may or may not be related to the topic at hand. The IEP notes that claimant mostly acts appropriately in class, but he likes being considered a "class clown." Claimant's teachers described him as being "creative" and "excellent" at seeking help when needed. His class participation is described as being excellent. The IEP noted that claimant engaged in athletic activities with his peers and that he worked at "In n Out" in his spare time. Claimant's June 8, 2017 IEP indicated that although claimant was a slow learner and struggled in some classes, he made good effort and worked hard. He asked questions in class and was noted to appropriately socialize before class.

Claimant's May 17, 2016 IEP indicated that claimant's mother reported that he was reluctant to go out into the community and that he did not have any friends. Claimant, however, indicated that he did not like leaving home because he wanted to

stay home and play video games. Claimant's teachers indicated that his reading and participation in class had improved. Claimant was described as being very artistic and ambitious by his art teacher, and the teacher noted that he was talkative with other classmates, and that he does fine working with his peers in groups. Claimant's April 18, 2016 IEP indicates that claimant is "very well-liked and outgoing," and that he is interested in electronics, video games, and fixing and riding scooters. His teachers report that claimant is "always happy to be in class and usually puts in good effort." Again claimant is said to be "excellent in seeking help when needed." Of particular note, the IEP indicates that claimant engages in athletic activities with his peers without difficulty, and that he had been working at the mall at an electronics kiosk in his spare time.

15. Finally, on September 6, 2017, a Speech and Language Assessment was performed by the school district's Speech-Language Pathologist, Tiana McDowell. In describing claimant's strengths, the assessment indicates that claimant is a polite young man who enjoys video games. McDowell states that claimant "enjoys sharing his passion for his interests," and that claimant "has a sense of humor that allows him to make funny and unique comments." Claimant is noted to make appropriate eye contact during the assessment and McDowell indicated that claimant was "able to joke around and talk about his life." Claimant and McDowell connected regarding a video game they both knew, and claimant became "noticeably excited" when discussing the video game. Claimant also expressed concern that playing video games at home had increased his mother's electric bill and that he was working to help his mother pay the bill and to pay for his video game gear.

OTHER EVIDENCE

16. Claimant's mother testified that since claimant was three or four years old, he would not speak, he was sensitive to showers, and he would not allow her to kiss or

hug him. She had difficulty placing claimant in daycare and pre-schools because of his aggressive behaviors and the fact that he would always run away. She stated that claimant started fires three times in school which resulted in her moving claimant to a nonpublic school where he could have a 1:1 aide. Claimant also abused or hurt animals when he was three or four years old. Claimant's mother testified that claimant still sleeps in bed with her and she is still concerned that he plays with fire and will run away. Since claimant started high school at San Marin High School, however, Claimant's mother stated his behaviors have improved significantly.

17. Claimant's mother is most concerned because claimant has no friends and refuses to engage in activities with other people outside of the family home. She is concerned that claimant wants to stay at home all of the time and will only leave when she insists that he goes to family or friends' homes with her. Even then, claimant's mother states that claimant will repeatedly demand to return home and he will not engage in conversation with anyone while he is on such outings.

18. Claimant's mother testified that claimant is interested in video games, riding scooters, making jewelry, and lately has become interested in playing golf. She stated that he is currently employed at "In-N-Out Burgers" and works as a cashier taking customers' orders. Claimant has been employed in this capacity for approximately one year.

19. Claimant is currently receiving Applied Behavioral Analysis (ABA) services from Center for Social Dynamics, Inc. (CDS). Claimant was referred to CDS by Kaiser based upon his diagnosis of ASD in April 2016. Gilbert Meija, claimant's behavior therapist at CDS, and Hannah Franz, the CDS Clinical Director, both testified regarding the services claimant was receiving at CDS. Franz testified CDS did not assess claimant to determine whether he had ASD, and she is not qualified to diagnose a developmental disability. Meija testified that he believed claimant had ASD, but Meija was also clearly

not qualified to render an opinion on this subject. Essentially Meija and Franz testified regarding their observations of claimant while providing ABA services. They both testified that claimant had deficits in his ability to communicate and interact socially with peers, and that he was having difficulty meeting his ABA goals in the CDS program. Franz observed that claimant appeared to be more communicative and socially active at school than at home. However, she opined that this discrepancy existed because claimant really worked hard to succeed in the structured school environment, and that when he came home, claimant had a tendency to “decompose,” which probably explained why his behaviors were so different at home with his mother. Franz also believed that claimant was able to be successful in his employment due to the structure that existed at work.

20. Finally, Lorena Santos, a close family friend of claimant’s mother, testified that she has observed claimant since he was an infant. She stated that claimant has always had problems communicating with others, and that claimant does not have any friends. Santos corroborated claimant’s mother testimony that claimant does not socialize with peers, and mostly stays home and plays on his video games. She stated claimant never wants to leave home, and when he does go on outings, he becomes agitated and wants to return home as soon as possible.

LEGAL CONCLUSIONS

1. The Lanterman Act governs this case (Welfare and Institution Code, section 4500 et seq.)³ and provides that the State of California “accepts responsibility for persons with developmental disabilities and an obligation to them which it must

³ All further statutory references shall be to the Welfare and Institutions Codes unless otherwise specified.

discharge.” (§ 4501.) Where, as here, claimant seeks to establish eligibility for services under the Lanterman Act, the burden of proof rest with the claimant. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) Claimant must establish by a preponderance of evidence that he has a qualifying “developmental disability” and that Service Agency inappropriately determined that claimant was not eligible for regional center services.

2. “In determining if an individual meets the definition of developmental disability contained in subdivision (a) of Section 4512, the regional center may consider evaluations and tests, including, but not limited to, intelligence tests, adaptive functioning tests, neurological and neuropsychological tests, diagnostic tests performed by a physician, psychiatric tests, and other tests or evaluations that have been performed by, and are available from, other sources.” (§ 4512, subd. (b).) However, “the Lanterman Act and implementing regulations clearly defer to the expertise of the DDS (California Department of Developmental Services) and RC (regional center) professionals’ determination as to whether an individual is developmentally disabled.” (*Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, 1127.)

3. Section 4512, subdivision (a), provides that a “developmental disability” is a disability that originates before the age of 18 years, continues indefinitely and constitutes a substantial disability. A developmental disability includes intellectual disability, cerebral palsy, epilepsy, and autism, and also disabling conditions that are closely related to intellectual disability or require treatment similar to that required for intellectual disability, but does not include handicapping conditions that are solely physical in nature. (§ 4512, subd. (a).) “Substantial disability” means the “existence of significant functional limitations” in three or more of the following areas of major life activity: (1) self-care; (2) receptive and expressive language; (3) learning; (4) mobility; (5)

self-direction; (6) capacity for independent living; and (7) economic self-sufficiency. (§ 4512, subd. (l)(1); Cal. Code Regs., tit. 17, § 54001, subd. (a).)

4. California Code of Regulations, title 17, section 54000 defines “developmental disability” consistent with section 4512, subdivision (a), and requires that the disability originates before age 18, continues indefinitely and constitutes a substantial disability. Section 54000, subdivision (c), further provides that handicapping conditions that consist solely of psychiatric disorders, learning disabilities, or physical conditions do not qualify as developmental disabilities. Solely “psychiatric disorders” are defined as “impaired intellectual or social functioning which originated as a result of the psychiatric disorder or treatment given for such a disorder. Such psychiatric disorders include psycho-social deprivation and/or psychosis, severe neurosis or personality disorders even where social and intellectual functioning have become seriously impaired as an integral manifestation of the disorder.” (Cal. Code Regs., tit. 17, § 54000, subd. (c)(1).)

5. The DSM-5 Diagnostic Criteria for ASD require that there be persistent deficits in social communication and social interaction across multiple contexts as manifested by (Criteria A): (1) deficits in social-emotional reciprocity; (2) deficits in nonverbal communicative behaviors used for social interaction; and (3) deficits in developing, maintaining, and understanding relationships. There must also be restricted, repetitive patterns of behavior, interests, or activities, as manifested by at least two of the following (Criteria B): (1) stereotyped or repetitive motor movements, use of objects, or speech; (2) insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior; (3) highly restricted, fixated interests that are abnormal in intensity or focus; and (4) hyper- or hypo-reactivity to sensory input or unusual interest in sensory aspects of the environment. (DSM-5 at p. 50.)

6. The DSM-5 also provides that the ASD symptoms must be present in the early development period (typically during first two years of life), cause clinically significant impairment in social, occupational, or other important areas of current functioning, and the disturbances are not better explained by intellectual disability or global developmental delay. (DSM-5 at p. 50.)

ELIGIBILITY DETERMINATION

7. Claimant failed to establish by a preponderance of the evidence that he has a qualifying developmental disability under the Lanterman Act. Specifically, the evidence did not establish that claimant has ASD. Kaiser diagnosed claimant with ASD in April 2016, but this diagnosis was not supported by persuasive evidence. The Kaiser diagnosis occurred when claimant was 15 years old, and it was the first and only indication in claimant's records that he suffers from a developmental disability. Typically a diagnosis of autism occurs early in the child development years, and symptoms of the developmental disability are evident in some form. However, in this case, evidence showed that claimant applied for and was denied Early Start Services by Service Agency, which suggested that he did not have symptoms associated with autism during his early development years. Claimant's education records are also void of any evidence of, or diagnosis of autism or ASD, and in September 2016, the school district specifically rejected the Kaiser ASD diagnosis. (Factual Findings 12 through 15.) Claimant's educational records showed that he suffered from ODD and mood disorders as a child, and that he qualified for special education under the classifications of Emotional Disturbance and SLD.

8. Dr. Moore determined that claimant did not have ASD and that his symptoms and behaviors were caused by psychiatric disorders. (Factual Findings 8 and 9.) Drs. Moore and Wood persuasively testified that claimant's behaviors and symptoms are more accurately attributed to his emotional and psychiatric disorders and not ASD.

(Factual Findings 8 through 11.) They both credibly opined that claimant did not have persistent deficits in social communication and social interaction across multiple contexts, noting that claimant's educational records indicated communication and social behaviors to the contrary. Observations by both Drs. Moore and Wood, and claimant's educational records, supported Drs. Moore's and Wood's opinions. To the contrary, Kaiser's psychological evaluation documented behaviors by claimant that contradicted their own findings that claimant had deficits in this area. Drs. Moore's and Wood's opinions that claimant does not have ASD is credited over the Kaiser psychological evaluation by Drs. Sweet and Colao-Vitolo, who did not testify in this proceeding.

9. The evidence established that claimant exhibited maladaptive behaviors and symptoms that resulted from his mental health conditions, and not ASD or a developmental disability. Claimant's mother expressed sincere concern regarding claimant's behaviors and the need for support to address these problems. However, solely psychiatric disorders do not qualify as developmental disabilities under the Lanterman Act. (Cal. Code Regs., tit. 17, § 54000, subd. (c)(1).)

ORDER

Claimant's appeal of GGRC's denial of eligibility is denied.

DATED: October 4, 2017

MICHAEL A. SCARLETT

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision pursuant to Welfare and Institutions Code section 4712.5, subdivision (a). Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.