BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: CLAIMANT vs. KERN REGIONAL CENTER, Service Agency.	OAH No. 2017050827

DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings, on November 7, 2017, in Bakersfield, California.[1] Claimant was represented by her mother and authorized representative.[2] Kern Regional Center (KRC or Service Agency) was represented by Cherylle Mallinson.

Oral and documentary evidence was received, and argument was heard. The record was closed, and the matter was submitted for decision on November 7, 2017.

ISSUE

Does Claimant have a developmental disability entitling her to receive regional

[1] Claimant's appeal was consolidated for hearing with her sibling's appeal in Case Number 2017070117. Testimony and argument were jointly received for both cases, and documentary evidence was separately submitted for each case.

[2] Claimant's and her family members' names are omitted to protect their privacy.

center services?

EVIDENCE

Documentary: Service Agency Exhibits A - K; Claimant Exhibits 1 - 6.

Testimonial: Claimant's mother.

FACTUAL FINDINGS

1. Claimant is a six-year-old girl. She seeks eligibility for regional center services under the "fifth category" of eligibility.[3]

2. On May 11, 2017, KRC sent a letter and a Notice of Proposed Action to Claimant's mother informing her that KRC had determined Claimant is not eligible for regional center services. Claimant requested a fair hearing.

3. Claimant lives with her mother. Claimant was reportedly exposed, in utero, to cigarettes, alcohol, methamphetamine and marijuana.

4. In October 2015 Claimant underwent a psychoeducational assessment through her school district. Cognitive testing revealed that Claimant's abilities were in the average range.

5(a). In August 2015 and October 2015, Claimant underwent a speech and language evaluation through her school district to determine whether she qualified for special education services. In a Speech and Language Evaluation report, issued October 9, 2015, Licensed Speech and Language Pathologist, Whitney Schieler noted Claimant's history of receiving speech and language services:

> [Claimant] was originally referred for speech/language evaluation in 2013, due to parent concerns regarding speech

[3] For an explanation of "fifth category" eligibility, see Legal Conclusion 5.

and language. At that time, [Claimant] was determined eligible for special education services under the disability category of Speech/Language Impairment. [Claimant] began receiving speech therapy services [at school] for 200 minutes per month beginning on 9/27/2013. At her annual IEP in September 2014, it was recommended that [Claimant] be re-evaluated to consider exiting from speech therapy services, due to meeting all of her goals and mastery of all age appropriate skills. However the assessment was unable to be completed due to inability to transport [Claimant] to the scheduled evaluation dates/times.

(Exhibit H.)

5(b). Regarding Claimant's current abilities, Ms. Schieler noted:

> Currently, [Claimant] uses sentences longer than four words to communicate consistently. She appears to understand most of what is said to her, can retrieve/point to objects upon request, can follow simple directions, and can respond appropriately to wh- questions. [Mother] reports that [Claimant] is a cooperative, sensitive, happy, stubborn girl, who can be easily distracted and impulsive at times. . . . [Mother's] greatest concerns for [Claimant] at this time are that [Claimant] struggles with pragmatic speech and regulating her volume.

(Exhibit H.)

5(c). After the evaluation, Ms. Schieler concluded that Claimant did not require

special education services. She summarized her analysis and recommendation as follows:

> Results of the current speech and language evaluation based upon teacher and parent interview, observations, and a variety of informal and standardized assessment measures suggest that [Claimant] demonstrates receptive and expressive language skills that are within normal limits at this time. In addition, [Claimant's] pragmatic language and social interaction skills were informally assessed and found to be appropriate at this time. Voice and fluency were judged to be within normal limits as well. Lastly, [Claimant's] articulation skills are within normal limits for her age, and are not of concern at this time. [¶]
>
> At this time, it appears that [Claimant] will be successful in general education activities without special education intervention. [¶] . . . [¶]
>
> At this time, it is not recommended that [Claimant] receive speech therapy services on a pull-out basis in the elementary school setting, as she does not exhibit characteristics of a speech or language impairment.

(Exhibit H.)

6(a). On December 18, 2015, Claimant was examined by a physician who documented a history which included the following: "She apparently is doing well in

school. She has no problems with other children in the school and apparently is having no problems whatsoever." (Exhibit G.)

6(b). The physician further noted:

> This child, who was prenatally exposed to alcohol, seems to be quite normal in terms of her physical examination as well as her neurodevelopment are concerned Her brother . . ., who I also saw all [*sic*] on December 18, is clearly more affected than she is. They are dizygotic[4] twins, and it is often the case that dizygotic twins are differently affected by alcohol. Despite the fact that they get the same amount of alcohol, they have different genetic backgrounds, and the alcohol is metabolized differently in the two dizygotic twins, leading to a difference in the effect of the alcohol on the 2 children. This seems to be the case as far as this little girl is concerned.

(Exhibit G.)

7(a). On March 23, 2017, licensed clinical psychologist Michael Musacco, Ph.D., conducted a psychological evaluation of Claimant (6 years, 9 months old at the time) to determine whether she has Autism Spectrum Disorder and to assist KRC in determining Claimant's potential regional center eligibility. Claimant was accompanied by her mother who reported concerns about Claimant's behavioral outbursts which included aggression and noncompliance.

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[4] Dizygotic refers to twins derived from two separate ova and therefore not identical.

7(b). Dr. Musacco noted that Claimant was repeating kindergarten but was not receiving special education services. During the evaluation, Dr. Musacco observed that Claimant displayed impatience and inattention. "She was often out of her chair and she frequently complained that she was bored and she wanted to play with testing toys." (Exhibit E.)

7(c). To address autism concerns, Dr. Musacco began administering the Autism Diagnostic Observation Schedule - Module 2 (ADOS-2), an observational assessment of Autism Spectrum Disorders. Dr. Musacco noted, "I began to administer the ADOS-2, Module 3, however, [Claimant] did not demonstrate typical signs or symptoms of an Autism Spectrum Disorer. She showed quite a bit of language, asking questions and talking back and forth with the examiner easily. She was socially interested and interacted easily . . . Since there was no evidence of Autism Spectrum Disorder, the ADOS-was not fully administered." (Exhibit E.)

7(d). To assess Claimant's cognitive functioning, Dr. Musacco administered the Wechsler Abbreviated Scale of Intelligence – Second Edition (WASI-II). Claimant's verbal IQ was average (standard score 94), her performance IQ was low average (standard score 88), and her full scale IQ was in the low average range (standard score 89).

7(e). To assess Claimant's adaptive functioning, Dr. Musacco administered the Vineland Adaptive Behavior Scales – Second Edition (Vineland-II), with Claimant's mother as the respondent. Claimant's adaptive behavior scores from the Vineland-II ranged from moderately low to low (Communication Domain – 78; Daily Living Skills Domain – 83; Socialization Domain – 75; Motor Skills Domain – 70), and her Adaptive Behavior Composite was moderately low (standard score 73).

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7(f). Dr. Musacco diagnosed Claimant with Other specified Neurocognitive Disorder (Parental Exposure to Drugs and Alcohol, by history) and Attention Deficit Hyperactivity Disorder (ADHD), combined type. Dr. Musacco explained his diagnoses as follows:

> [Claimant] has a history of prenatal exposure to drugs and alcohol. She was born with a positive toxicology screen and she has shown problems with emotional regulation and excessive behaviors throughout her life. I suspect that the biological mother's prenatal use of drugs and alcohol are associated with these difficulties.
>
> The diagnosis of ADHD is offered as the client shows hyperactivity, inattention, and non-stop movement. She has difficulty sitting still, paying attention, and behaving appropriately. As described above, I suspect these behaviors may be related to her prenatal exposure to drugs and alcohol but I offered the diagnosis of ADHD as well.
>
> [Claimant's] other is concerned that her daughter is showing symptoms of Autism Spectrum Disorder. However, [Claimant] did not demonstrate any impairment in her communication skills or social/emotional reciprocity suggestive of this disorder. It does not appear that she possesses a condition which would render her eligible for [KRC] services.

(Exhibit E.)

8. On April 27, 2017, the KRC eligibility committee met and determined that Claimant is not eligible for regional center services because there is "no evidence of intellectual disability, autism, epilepsy, cerebral palsy, or any other qualifying condition/diagnosis," and "there are not 3 substantial handicaps due to [intellectual disability, autism spectrum disorder, cerebral palsy, or epilepsy]." (Exhibit D.)

9. Claimant's mother testified credibly at the fair hearing and advocated zealously and respectfully on behalf of her child.

10(a). Pointing to numerous studies, copies of which she submitted without objection, Claimant's mother asserted that individuals who are prenatally exposed to alcohol are similar to someone with Intellectual Disability.

10(b). Claimant's mother cited to a 2015 study entitled "Developmental Consequences of Fetal Exposure to Drugs: What We Know and What We Still Must Learn," published by the American College of Neuropsychopharmacology, which stated that Fetal Alcohol Syndrome Disorders (FASDs) "currently represent the leading cause of mental retardation in North America, ahead of Down syndrome and cerebral palsy." (Exhibit 3C, p. 75.) She also pointed to a 2010 article entitled "Adaptive Behavior and Fetal Alcohol Spectrum Disorders," published in the Journal of Psychiatry & Law, which noted, "FASD is a major cause of Mental Retardation,[5] and a sizable subset of people with FASD also qualify for a diagnosis of Mental Retardation. [Additionally], people with

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[5] The Administrative Law Judge takes official notice of the Diagnostic and Statistical Manual of Mental Disorders (DSM) as a generally accepted tool for diagnosing mental and developmental disorders. Prior to May 2013, the fourth edition of the DSM used the term "mental retardation." With the May 2013 publication of an updated edition, the DSM-5, the term mental retardation has been replaced with the diagnostic term "Intellectual Disability."

FASD and related neurodevelopmental disorders, even with full-scale IQs in the 80's or 90's, function in the world (especially in the social realm) as if they have Mental Retardation, and are often seen by others as having Mental Retardation." (Exhibit 3F, p. 431.)

10(c). Claimant's mother further noted that a person prenatally exposed to alcohol can present as someone who understands the world around them but is actually suffering from memory, judgment and language deficits. Claimant's mother also pointed to an article entitled, "FASD: A guide for mental health professionals," written by Jerrod Brown, the treatment director for Pathways Counseling Center which provides services for individuals suffering from mental illness and addiction. That article noted that "prenatal alcohol exposure can result in a host of issues related to cognitive functioning (e.g., impulse control, attention, executive functioning), social functioning (e.g., communication skills, recognition of social cues), and adaptive functioning (e.g., problem-solving, ability to adapt to new situations)." (Exhibit 3A.) Additionally, individuals with FASD often have comorbid psychiatric conditions, of which ADHD is the most prevalent. Claimant's mother pointed to a publication by the National Institute on Alcohol Abuse and Alcoholism entitled "Teratogenic Effects of Alcohol on Brain and Behavior," which noted: "Children prenatally exposed to alcohol can suffer from serious cognitive deficits and behavioral problems. . . . [¶] . . . [¶] Children with heavy prenatal alcohol exposure (both with and without [Fetal Alcohol Syndrome Disorder (FASD)]) have demonstrated impairments on executive functioning tasks . . . unrelated to their overall intellectual levels." (Exhibit 3T.) Adaptive skills deficits are also reported in individuals with FASD. (Exhibit 3W, p. 73.) Claimant's mother also pointed to a publication entitled "Understanding Fetal Alcohol Spectrum Disorders (FASD): A Comprehensive Guide for Pre-K – 8 Educators," which indicated that memory difficulties are common with FASD students, and skills learned one day are forgotten the next day,

only to be recalled at another time in the future. This is compounded by the attention difficulties which many students with FASD display. (Exhibit 3B.) In a 2009 abstract entitled, "The Relation between Theory of Mind and Executive Functions in Children with Fetal Alcohol Spectrum Disorders," published in the Canada Journal of Clinical Pharmacology, it was noted that "social deficits among children with FASD may become more pronounced with age." (Exhibit 3J.)

10(d). Although the Service Agency did not object to the admission of the articles as evidence, they constitute hearsay and are afforded virtually no evidentiary weight to establish the assertions contained therein. While the articles were informative on the effects of prenatal alcohol exposure and the general characteristics which may result from that exposure, the articles did not establish that all persons prenatally exposed to alcohol display all of the possible listed deficits. Additionally, the articles did not establish that Claimant necessarily suffers from any of the possible deficits which may afflict a person prenatally exposed to alcohol.

11. Claimant's mother asserted that Claimant functions like a person with Intellectual Disability and that the assessments to which Claimant submitted were not designed to make that determination. Addressing Claimant's deficits, her mother noted that Claimant must be told how to dress appropriately for the weather or how to bathe without making the water too hot. She cannot be left unattended because she places herself in danger, engaging in behavior like climbing onto counters or playing with knives. Even if she is instructed repeatedly, she does not understand. Although Claimant interacts with other children, her mother observed that the interactions are superficial and not reciprocal. She acknowledged that perhaps Claimant is not yet displaying "big enough deficits."

12. Claimant's mother noted that Claimant is in first grade, but is supposed to be in second grade. According to Claimant's mother, Claimant is currently being taught

concrete concepts at school, but topics will eventually become more abstract, and Claimant's mother anticipates that Claimant will begin to fall behind. Based on her research, Claimant's mother understands that "as the gap grows and they struggle more," children develop "secondary disabilities" such as depression or anxiety. Claimant's mother stressed that early intervention can prevent secondary disabilities and that parents of children prenatally exposed to alcohol "need help."

13. Claimant provided no evidence that any licensed clinician had diagnosed her with either Autism Spectrum Disorder or Intellectual Disability. She also provided no expert testimony to establish that she suffers from a condition similar to Intellectual Disability or requiring treatment similar to that required for individuals with Intellectual Disability.

LEGAL CONCLUSIONS

1. Claimant did not establish that she suffers from a developmental disability (Autism Spectrum Disorder, Intellectual Disability, or "fifth category") which would entitle her to regional center services under the Lanterman Act. (Factual Findings 1 through 13; Legal Conclusions 2 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. A claimant seeking to establish eligibility for government benefits or services has the burden of proving by a preponderance of the evidence that she has met the criteria for eligibility. (*Lindsay v. San Diego Retirement Bd*. (1964) 231 Cal.App.2d 156, 161[disability benefits]; *Greatorex v. Board of Admin*. (1979) 91 Cal.App.3d 54, 57 [retirement benefits]; Evid. Code, § 500.) Where a claimant seeks to establish eligibility for regional center services, the burden is on the appealing claimant to demonstrate by a preponderance of evidence that the Service Agency's decision is incorrect and that the appealing claimant meets the

eligibility criteria. 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. Welfare and Institutions Code section 4512, subdivision (a), defines "developmental disability" as:

> a disability that originates before an individual attains 18 years of age; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for that individual. . . . [T]his term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include 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 qualifying 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*)(1):

> "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:

(A) Self-care.

(B) Receptive and expressive language.

(C) Learning.

(D) Mobility.

(E) Self-direction.

(F) Capacity for independent living.

(G) 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.

5(a). In addition to proving that she suffers from 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, epilepsy, autism, and cerebral palsy. 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 intellectual disability." (Welf. & Inst. Code, § 4512.)

5(b). Whereas the first four categories of eligibility are very specific, the disabling conditions under this residual fifth category are intentionally broad to encompass unspecified conditions and disorders. However, this broad language is not intended to be a catchall, requiring unlimited access for all persons with some form of learning or behavioral disability. There are many persons with sub-average functioning and impaired adaptive behavior; under the Lanterman Act, the Service Agency does not have a duty to serve all of them.

5(c). The Legislature requires that the qualifying condition be "closely related" to intellectual disability (Welf. & Inst. Code, § 4512) or "require treatment similar to that required" for individuals with intellectual disability (Welf. & Inst. Code, § 4512.) The definitive characteristics of intellectual disability include a significant degree of cognitive and adaptive deficits. Thus, to be "closely related" to intellectual disability, there must be a manifestation of cognitive and/or adaptive deficits which render that individual's disability like that of a person with intellectual disability. However, this does not require strict replication of all of the cognitive and adaptive criteria typically utilized when establishing eligibility due to intellectual disability (e.g., reliance on I.Q. scores). If this were so, the fifth category would be redundant. Eligibility under this category requires an analysis of the quality of a claimant's cognitive and adaptive functioning and a determination of whether the effect on her performance renders her like a person with intellectual disability. Furthermore, determining whether a claimant's condition "requires treatment similar to that required" for persons with intellectual disability is not a simple exercise of enumerating the services provided and finding that a claimant would benefit from them. Many people could benefit from the types of services offered by regional

centers (e.g., counseling, vocational training, living skills training, speech therapy, or occupational therapy). The criterion is not whether someone would benefit. Rather, it is whether someone's condition *requires* such treatment.

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; 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 either with a psychiatric disorder, a physical disorder, or a learning disability could still be eligible for services. However, someone whose conditions originate only from the excluded categories (psychiatric disorder, physical disorder, or learning disability, alone or in some combination) and who does not have a qualifying developmental disability would not be eligible.

7. The Lanterman Act and its implementing regulations contain no definition of the qualifying developmental disability of "intellectual disability." Consequently, when determining eligibility for services and supports on the basis of intellectual disability, that qualifying disability has been defined as congruent to the DSM-5 diagnostic definition of Intellectual Disability.

8. The DSM-5 describes Intellectual Disability as follows:

> Intellectual disability . . . is a disorder with onset during the developmental period that includes both intellectual and adaptive functioning deficits in conceptual, social and practical domains. The following three criteria must be met:

A. Deficits in intellectual functions, such as reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience, confirmed by both clinical assessment and individualized, standardized intelligence testing.

B. Deficits in adaptive functioning that result in failure to meet developmental and socio-cultural standards for personal independence and social responsibility. Without ongoing support, the adaptive deficits limit functioning in one or more activities of daily life, such as communication, social participation, and independent living, across multiple environments, such as home, school, work, and community.

C. Onset of intellectual and adaptive deficits during the developmental period.

(DSM-5, p. 33.)

9. The DSM-5 notes the need for assessment of both cognitive capacity and adaptive functioning. The DSM-5 also notes that the severity of intellectual disability is determined by adaptive functioning rather than IQ score. (*Id*. at 37.)

10(a). Claimant does not meet the criteria under the DSM-5 for a diagnosis of Intellectual Disability. A diagnosis of Intellectual Disability should not be assumed solely due to a particular genetic or medical condition such as prenatal exposure to alcohol. To meet the criteria for a DSM-5 diagnosis of Intellectual Disability, a person must have deficits in intellectual functioning (demonstrated through clinical assessment and standardized testing), and deficits in adaptive functioning. Claimant's cognitive functioning has been determined to be generally in the low average range. Additionally, although Claimant has adaptive deficits, there was insufficient evidence that her moderately low adaptive deficits (typically in the 70s on the Vineland-2) were severe enough to qualify her for a diagnosis of Intellectual Disability. Consequently, the preponderance of the evidence did not demonstrate that Claimant qualifies for regional

center services under the category of intellectual disability.

10(b). Claimant has also failed to establish that she currently demonstrates deficits in cognitive and adaptive functioning to such a degree and in such a manner that she presents as a person suffering from a condition similar to Intellectual Disability. Claimant's mother acknowledged that Claimant is not yet displaying "big enough deficits" at this time. Moreover, there was insufficient evidence to establish that Claimant currently requires treatment similar to that required for individuals with Intellectual Disability. Based on the foregoing, Claimant does not fall under the fifth category of eligibility at this time.

11. As with intellectual disability, the Lanterman Act and its implementing regulations contain no definition of the qualifying developmental disability of "autism." Consequently, when determining eligibility for services and supports on the basis of autism, that qualifying disability has been defined as congruent to the DSM-5 definition of "Autism Spectrum Disorder."

12. The DSM-5, 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 hyporeactivity 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-5, at pp. 50-51.)

13. Claimant does not meet the criteria under the DSM-5 for a diagnosis of Autism Spectrum Disorder. After conducting psychological testing, Dr. Musacco found that Claimant did not meet the criteria for a DSM-5 diagnosis of Autism Spectrum Disorder. The evidence did not establish that Claimant has ever been diagnosed with Autism Spectrum Disorder by a qualified psychologist. Based on the psychological testing and application of the DSM-5 criteria, Claimant does not meet the requisite clinical criteria to diagnose her with Autism Spectrum Disorder. Consequently, Claimant has not established that she is eligible for regional center services under the diagnosis of autism.

14. The preponderance of the evidence did not establish that Claimant is eligible to receive regional center services at this time.

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ORDER

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

DATED:

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JULIE CABOS-OWEN

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.