

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH No. 2017071035

DECISION

Ji-Lan Zang, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on September 11, 2017, in Culver City, California.

Lisa Basiri, Fair Hearings Coordinator, represented Westside Regional Center (WRC or Service Agency).

Claimant's mother represented claimant,¹ who was present.

Oral and documentary evidence was received. The record was closed and the matter submitted for decision on September 11, 2017.

ISSUE

Whether claimant is eligible for services and supports from the Service Agency under the Lanterman Developmental Disabilities Services Act (Lanterman Act).

¹ Claimant and his mother are identified by titles to protect their privacy.

EVIDENCE RELIED UPON

Documents. Service Agency's exhibits 1-11; claimant's exhibit A.

Testimony. Thompson Kelly, Ph.D.; claimant's mother; claimant.

FACTUAL FINDINGS

PARTIES AND JURISDICTION

1. Claimant is a 28-year-old male. Claimant's mother asked the Service Agency to determine whether he is eligible for regional center services based on claims of cerebral palsy, intellectual disability, autism, or a disabling condition closely related to intellectual disability or requiring treatment similar to that required for individuals with intellectual disability (commonly known as "the Fifth Category").

2. By a Notice of Proposed Action and letter dated June 5, 2017, the Service Agency notified claimant that he is not eligible for regional center services. The Service Agency's interdisciplinary team had determined that claimant does not meet the eligibility criteria set forth in the Lanterman Act.

3. On July 11, 2017, claimant filed a fair hearing request to appeal the Service Agency's determination regarding his eligibility. This hearing ensued.

CLAIMANT'S BACKGROUND

4. Claimant's parents divorced in 2005. Claimant resides with his father on weekdays and with his mother on weekends.

5. Claimant submitted medical records from his health care provider which shows that he was diagnosed with ataxic cerebral palsy² as a child. However, these records did not provide any indication of the severity of the condition. Currently,

² Ataxic cerebral palsy is a developmental disorder that affects motor function.

claimant suffers from Achilles tendonitis but otherwise is in good health. He does not take any prescription medications.

6. From elementary school through high school, claimant received special education services from his school district. Although his school evaluations prior to 2007 were not submitted at the hearing, the parties do not dispute that since 1998, claimant qualified for special education services based on a "Specific Learning Disability due to auditory processing delays." (Ex. 4, p. 3.)

7. In 2007, claimant exited from special education services. After graduating from high school in the same year, he attended California State University at Long Beach (CSU-LB) and received support and services through the Office of Disabled Student Services. In 2014, claimant graduated from CSU-LB with a degree in theater arts and a minor in recreation management.

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CLAIMANT'S SCHOOL EVALUATION

8. On May 22, 2007, the school psychologist at claimant's high school performed a triennial psycho-educational evaluation of claimant to assess his continued eligibility for special education services. At the time of this evaluation, claimant was 18-years-old. The school psychologist administered a battery of tests, which assessed claimant's cognitive development, perceptual motor skills, auditory processing skills, academic skills, and social/emotional development, and academic achievement. Her findings were summarized in a report dated May 22, 2007.

9. A. The school psychologist reviewed claimant's educational history, which revealed that in high school, claimant earned 248 credits towards graduation with a cumulative GPA of 3.75. She wrote in the report, "[t]o-date, [claimant] has passed his

academic classes with good and fair grades. There are no attendance issues.” (Ex. 9, p. 2.)

B. Under Medical Findings, the school psychologist indicated that claimant has “Mild Cerebral Palsy with right Hemiplegia (right side weakness).” (*Ibid.*)

C. The school psychologist evaluated claimant’s cognitive abilities using the Wechsler Abbreviated Scale of Intelligence (WASI). The WASI is a short test which measures an individual’s intelligence using four subtests: Vocabulary, Block Design, Similarities, and Matrix Reasoning. On the WASI, claimant earned a full scale intellectual quotient (IQ) of 83, classifying his overall intellectual ability as being in the low average to borderline low range. Both his verbal IQ (score of 84) and performance IQ (score of 86) fell within the low average range.

D. Claimant was administered the Motor-Free Visual Perception Test Third Edition (MVPT-3). His performance on the MVPT-3 yielded a standard score of 94, indicative of a performance better than or equal to 34 percent of his same-age peers.

E. To assess for his auditory processing skills, the auditory subtests on the Woodcock-Johnson III Test of Cognitive Abilities were also administered to claimant. His overall performance resulted in a score of 78, indicative of a performance better than or equal to seven percent of his grade-level peers.

F. To assess for his academic achievement skills, the school psychologist administered the Woodcock-Johnson III Test of Achievement. Results of this test indicated that claimant demonstrated overall academic skills at the grade equivalent level of 8.9. He demonstrated academic application skills at the grade equivalent level of 7.1. The school psychologist observed that claimant experienced difficulties on this test, as “[h]e misinterpret[ed] figures of speech, [and] misse[d]/overlook[ed] themes and social cues affecting his reading comprehension skills and social interactions.” (Ex. 9, p. 4.)

G. Claimant's social-emotional development was evaluated using the Reynolds Adolescent Adjustment Screening Inventory to identify any emotional or psychological adjustment difficulties. Claimant's responses revealed an overall adjustment total score of 57, which was within the normal range. However, elevated scores were found under the areas of anger control problems and emotional distress, which suggested that "[claimant] may have the tendency to become easily angered, argumentative, contrary, anxious and depressed." (*Id.* at p. 6.)

H. The report did not indicate that claimant exhibited any behavioral problems, either in the classroom or at home.

I. Based on her review of claimant's educational and medical history and the test results obtained during the evaluation, the school psychologist concluded:

Current evaluation results revealed [claimant's] overall intellectual ability falls within the Low Average range. His overall academic achievement skills were found to be within the Average range. No significant processing deficits were revealed. Consequently these results do not indicate a presence of a Specific Learning Disability.

(Ex. 9 p. 5.)

10. Based on this assessment, claimant's Individual Education Program (IEP), dated May 29, 2015, indicated that claimant will be exited from special education services. Instead, a 504 plan³ will be developed. The IEP also indicated that claimant had passed the California High School Exit Exam and will be attending CSU-LB.

³ A 504 plan is a plan developed under section 504 of the Rehabilitation Act of 1973. (29 U.S.C. § 794.) It requires elementary or secondary educational institutions

11. On May 29, 2015, a 504 plan was developed to provide accommodations to claimant. The plan allowed claimant to use calculators for doing math problems and to have additional time for taking tests and quizzes.

SERVICE AGENCY'S PSYCHOSOCIAL ASSESSMENT OF CLAIMANT

12. In January 2017, claimant made a request for a determination of eligibility for regional center services. On January 30, 2017, Rafael Garcia (Garcia), service agency's intake counselor, conducted a psychosocial assessment of claimant. Portions of his report that are relevant to the issues at hand are summarized below.

13. A. Claimant was referred to the Service Agency based on his mother's concerns about his independent living skills. Claimant's mother reported that since his graduation from college, he has not found a job and has no friends. She expressed further concerns that claimant appears depressed and does not act his age.

B. In the domain of mobility, claimant can walk for about five minutes before needing a break to rest for a few minutes. He is not able to run, jump, or climb. He has difficulty getting up from a laying position. He can go up and down stairs using a hand rail, although he performs this task with difficulty. In terms of fine motor skills, he can draw and trace objects, and he can write sentences.

C. In the social domain, Garcia found that "[claimant] makes eye contact. He will show and receive affection with others. Claimant does not easily engage with peers and does not establish and maintain reciprocal relationships with peers his own age. . . . He does not attempt to initiate social contact with unfamiliar people." (Ex. 5, at p. 3.)

to provide reasonable accommodations to students in order to prevent discrimination based on their disability. (*Ibid.*)

D. Regarding claimant's emotional functioning, claimant's mother described her son as "easygoing and rarely resistive." (*Ibid.*) Although claimant does not have tantrums, he is easily frustrated and easily distracted. He likes schedules and routines and becomes upset if there is a change in plans. Claimant is obsessive about handwashing and triple checks to make sure that locks are secured around the house. He does not rock his body, and he does not hand-flap.

E. In the communication domain, claimant speaks in full sentences that are clear and understandable. He is able to relay a simple story and engage in ongoing simple conversation. He does not exhibit echolalia. However, claimant has difficulty with comprehension and attention. He frequently forgets something that was just said to him.

F. In terms of independent living skills, claimant is able to do most self-care tasks but needs extra time to complete them. He is able to complete personal hygiene tasks independently, including toileting, washing his hands and face, brushing his teeth, and bathing. Claimant is able to dress himself, although he takes a long time to do so. With some difficulty, he is able to manipulate buttons and zippers and tie his shoelaces. He eats with a spoon and fork and drinks from an open cup without spilling. He makes simple purchases and can count money. He has not managed and budgeted his money. He is able to order food in public. He is able to use a phone to make phone calls. Claimant obtained his driver's license in 2007, but he only drives familiar routes. He can make simple cold snacks for himself and do simple cooking on the stove with supervision.

SERVICE AGENCY'S EVALUATION OF CLAIMANT

14. Garcia referred claimant to Jessica Quevedo, Psy.D., for a psychological evaluation to determine his eligibility for WRC's services. Dr. Quevedo reviewed claimant's prior evaluations, interviewed claimant's mother, and administered

standardized tests to complete her evaluation. She set forth her findings in a psychological evaluation report dated February 16, 2017.

15. In her record review, Dr. Quevedo noted that when claimant was tested by his school psychologist at the age of four, he had an IQ of 80 on the Leiter International Performance Scale. When claimant was six-years-old, he earned a composite IQ of 73 on the Standard-Binet Intelligence scale. As described above in Factual Finding 9C, when claimant was tested by the school psychologist again on the WASI at age 18, he obtained a full scale IQ of 83.

16. Dr. Quevedo administered a battery of standardized tests to claimant. She made the following behavioral observation during the testing:

[Claimant] was polite throughout the session and was able to engage in appropriate conversations; he was very talkative.

He was noted to make an appropriate use of tone and inflection when making statements or asking questions.

[Claimant] exhibited appropriate eye contact and a full range of facial expressions throughout the session.

(Ex. 4, p. 5.)

17. During his interview with Dr. Quevedo, claimant admitted to being depressed, but denied having any homicidal or suicidal ideations. He reported that following his parent's divorce, he secluded himself for three years and refused to go to therapy. Claimant stated to Dr. Quevedo, "There were changes when I was around 13 or 14. Before that I was a social and happy boy. I always wanted to be with friends and my cousins." (*Ibid.*)

18. A. In standardized tests, Quevedo administered the Wechsler Adult Intelligence Scale IV (WAIS-IV). Claimant's overall performance on the WAIS-IV yielded a full scale IQ of 79, which suggests a general level of intellectual ability in the borderline

range. There were significant discrepancies among claimant's scores on the WAIS-IV subtests. Specifically, claimant's scores on the verbal comprehension and the processing speed subtests were 78 and 76, respectively, both of which fell within the borderline range. However, his perceptual reasoning subtest score was 94, which is in the average range.

B. Claimant's academic skills were assessed using the Wide Range Achievement Test-4 (WRAT-4), which is a test measuring basic skills in reading, spelling, and mathematical calculations. On the reading test, he performed at a 9.2 grade-level equivalency, which is in the low average range of abilities. On the arithmetic test, he performed at a 5.6 grade-level equivalency, which is in the borderline range of abilities.

C. With claimant and his mother serving as informants, Dr. Quevedo administered the Vineland Adaptive Behavior Scales-Second Edition (VABS-2) to evaluate claimant's adaptive functioning. In the domain of communication, claimant earned a score of 29, which is within the severely delayed range of abilities. Specifically, with regards to receptive language skills, he performed at the age equivalent of two years and eleven months. With regards to expressive skills, he performed at the age equivalent of six years and seven months. In daily living skills, claimant's score of 63 fell within the mildly delayed range. In socialization, claimant's score was 77, which is within the borderline range of abilities. However, Dr. Quevedo emphasized in her report that claimant's scores on the VABS-2 may not be an accurate reflection of claimant's abilities. She wrote:

Scores however are thought to be an under estimate of his abilities as there is a noted discrepancy between reported and observed abilities and also impacted by his limited attention. For example, it was reported that [claimant] has difficulty following instructions and things

have to be explained to him more than once to which [claimant] stated that he can be forgetful and often wonders if he's doing things correctly. Scores may also be suppressed by his feelings of depression, "I tend to be upset, I wake up depressed. I don't have a job! I need to set goals . . . I can sit in my room and just think and think about what has happened."

(Bold in the original)(Ex. 4, p. 10.)

D. Dr. Quevedo also administered the Autism Diagnostic Observation Schedule, Module 4 (ADOS-4) to assess for the presence of autism spectrum disorder. Although she did not provide any scores, she detailed her clinical observations in each of the domains on the ADOS-4. In the area of communication, claimant communicated effectively and spoke with appropriate varying intonation. He did not echo his examiner or use repetitive language. During the test, he was able to offer some appropriate information about his own experiences and interactions with others. In the domain of reciprocal social interaction, claimant was able to engage in appropriate eye contact. He exhibited a range of facial expressions and made comments which referenced an understanding of other people's emotions. In the area of imagination, claimant was able to recount a story using his imagination. He found humor in a story and was able to elaborate on the emotions depicted in it. In the area of stereotyped and repetitive behaviors, claimant did not demonstrate any unusual or restricted interests, self-injurious behaviors, or compulsions.

19. Dr. Quevedo used the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) to reach her diagnosis. Under the DSM-5, section 299.00, to diagnose autism spectrum disorder, it must be determined that an individual has persistent deficits in social communication and social interaction (Criterion A) across

multiple contexts, as manifested by the following, currently or by history: (1) deficits in social-emotional reciprocity, (2) deficits in nonverbal communication behaviors used for social interaction, and (3) deficits in developing, maintaining, and understanding relationships. The individual must also have restricted, repetitive patterns of behavior, interests, or activities (Criterion B), as manifested by at least two of the following, currently or by history: (1) stereotyped or repetitive motor movement, 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/or (4) hyper- or hypo-reactivity to sensory input or unusual interest in sensory aspects of the environment. In addition, symptoms must be present in the early developmental period and must cause clinically significant impairment in social, occupational, or other important areas of current functioning (Criteria C and D). Finally, these symptoms cannot be better explained by intellectual disability or global developmental delay (Criterion E).

20. Using the criteria under the DSM-5, Dr. Quevedo concluded that claimant does not present with the characteristics of an autism spectrum disorder. She specifically found that claimant's behavior met only Criterion B, sub-criterion (2), insistence on sameness, inflexible adherence to routines, based on his repeated handwashing and insistence on checking that all locks are secured. All other DSM-5 criteria for autism spectrum disorder were not met. (Ex. 4, p. 8.)

21. Dr. Quevedo diagnosed claimant with specific learning disorder, with impairment in mathematics. She did not diagnose him with intellectual disability. She made no recommendations in her report.

TESTIMONY OF THOMPSON KELLY, PH.D.

22. Thompson Kelly, Ph.D. is the Chief Psychologist at the Service Agency. He has been a licensed psychologist for the past 16 years.

23. As the chief psychologist at the Service Agency, Dr. Kelly is a member of the interdisciplinary team which determined on May 22, 2017, that claimant was not eligible for regional center services. On a Diagnostic/Eligibility Sheet dated the same date, Dr. Kelly wrote, "Mild CP [cerebral palsy], but not to the extent for substantial impairment." (Ex. 6.) As follow-up recommendations for claimant, Dr. Kelly wrote, "Refer to mental health counseling. Refer to Dept. of Rehab [Department of Rehabilitation]." (*Ibid.*) The Diagnostic/Eligibility Sheet was also signed by Dr. Ari Zeldin, M.D., the physician on the interdisciplinary team.

24. At the hearing, Dr. Kelly found that based on his review of the records in this case, claimant does not have intellectual disability. Dr. Kelly noted that while an IQ score of 73 was obtained when claimant was tested at the age of six, the full scale IQ of 79 obtained by Dr. Quevedo was more consistent with prior testing, which demonstrated that claimant's IQ was in the low 80's. Dr. Kelly opined that claimant's IQ score is not indicative of intellectual disability. A score that is two standard deviations below the mean, that is, a score of 70 or lower, is usually reflective of the presence of intellectual disability. Furthermore, Dr. Kelly noted that claimant's scores on the WAIS-IV exhibited "inter-subtest scatter." For example, his perceptual reasoning subtest score of 94 (average range) was significantly higher than his score of 78 (borderline range) on the verbal comprehension subtest. For an individual with intellectual disability, significant delays would be expected across all subtests. According to Dr. Kelly, this inter-subtest scatter is indicative of a verbal learning disability or a speech or language disorder, rather than intellectual disability.

25. Moreover, Dr. Kelly opined that claimant does not have autism spectrum disorder. Dr. Kelly relied on Dr. Quevedo's findings to reach this opinion. In particular, he emphasized that under the DSM-5 definition of autism spectrum disorder, claimant did not meet any of the sub-criteria under Criterion A, and only met one of the four sub-

criteria under Criterion B. He noted Dr. Quevedo's observations on the ADOS-4 that claimant used appropriate language and nonverbal gestures to communicate, was able to use his imagination to tell a story, showed reciprocity in his conversations with the examiner, and exhibited a lack of stereotyped and repetitive behavior. These observations do not indicate the presence of autism spectrum disorder.

26. Dr. Kelly testified that the interdisciplinary team had considered claimant's cerebral palsy when it denied his eligibility for regional center services. Dr. Zeldin had reviewed the medical records and he signed the Diagnostic/Eligibility sheet which stated that claimant's cerebral palsy was not to the extent for substantial impairment.

27. Claimant's eligibility under the Fifth Category was also considered. However, based on claimant's academic record and scoring profile on the standardized test of cognitive abilities, the interdisciplinary team did not believe that he fell within the Fifth Category.

28. In sum, Dr. Kelly opined that claimant was substantially disabled in the areas of capacity for independent living and economic self-sufficiency. Nevertheless, he believed that claimant's deficits in these areas are best explained by a mental health condition and is not attributable to a developmental disability.

TESTIMONY OF CLAIMANT'S MOTHER

29. Claimant's mother testified at the hearing regarding her observations and concerns of claimant's behavior. She expressed concerns about claimant's communication skills. She testified that claimant is incoherent and carries out conversations in a manner that "bothers" people and drives them away. Although claimant is capable of doing chores, his mother must prompt him to stay on task. For example, when he toasts bread, claimant often forgets it in the toaster and burns it. Claimant's mother, however, described her son as "very intelligent" when performing other tasks, such as organizing files.

30. Claimant's mother believes that her son is substantially disabled in the area of learning because she must give him instructions multiple times before he is able to learn a task. Claimant's mother also believes that her son suffers significant limitations in the area of economic self-sufficiency. She has helped him to apply for jobs, but he has not been able to obtain any since his graduation from college in 2013. Claimant's mother would like to obtain services from the regional center to help with her son's social skills so that he can obtain gainful employment.

CLAIMANT'S TESTIMONY

31. Claimant testified at the hearing in a respectful and pleasant manner. He stated that he applied for jobs from 2014 to late 2015. He estimated that he applied for two jobs per month during that time period, sometimes completing job applications on his own and sometimes with the assistance of an employment agency. Most of the jobs that he applied for were related to theater arts and the film industry, but he was unable to obtain any position. Since late 2015, claimant has not applied for any jobs.

32. Claimant described his typical day as waking up, stretching for 15 to 20 minutes due to his Achilles tendonitis, spending approximately two to four hours on the computer, eating meals, spending time with his father or mother, and going to sleep. He spends his leisure time watching television or movies. Claimant does some graphic designs on his computer. As for his employment prospects, he believes that he is capable of doing any "basic" online job.

LEGAL CONCLUSIONS

BURDEN AND STANDARD OF PROOF

1. Because claimant is the party asserting a claim, he bears the burden of proving, by a preponderance of the evidence, that he is eligible for government benefits or services. (See Evid. Code, §§ 115 and 500.) He has not met this burden.

2. Claimant did not establish that he suffers from a developmental disability entitling him to receive regional center services, as set forth in Factual Findings 4 through 32, and Legal Conclusions 2 through 16.

APPLICABLE LAW

3. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 et seq.) Eligibility for regional center services is limited to those persons meeting the criteria for one of the five categories of developmental disabilities set forth in Welfare and Institutions Code section 4512, subdivision (a), as follows:

“Developmental disability” means a disability that originates before an individual attains age 18 years, 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 intellectual disability [“Fifth Category”], but shall not include other handicapping conditions that are solely physical in nature.

4. The qualifying condition(s) must also cause a substantial disability. (Welf. & Inst. Code, § 4512, subd. (a); Cal. Code Regs., tit. 17, § 54000, subd. (b)(3).) A “substantial disability” is defined by California Code of Regulations, title 17, section 54001, subdivision (a), as:

(1) A condition which results in major impairment of cognitive and/or social functioning, representing sufficient impairment to require interdisciplinary

- planning and coordination of special or generic services to assist the individual in achieving maximum potential; and
- (2) The existence of significant functional limitations, as determined by the regional center, in three or more of the following areas of major life activity, as appropriate to the person's age:
- (A) Receptive and expressive language
 - (B) Learning;
 - (C) Self-care;
 - (D) Mobility;
 - (E) Self-direction;
 - (F) Capacity for independent living;
 - (G) Economic self-sufficiency.⁴

CLAIMANT IS NOT SUBSTANTIALLY DISABLED

5. The evidence in this case did not establish that claimant suffers significant functional limitations in three or more areas of major life activity. Analyses regarding substantial disability in each of the areas of major life activity are discussed in detail as follows:

A. *Receptive and expressive language.* Claimant's performance on the VASB-2 demonstrates that he is severely delayed in receptive and expressive language skills. However, Dr. Quevedo limited the value of these findings by stating that scores are thought to be an under estimate of his abilities. There are additional indications in the

⁴ Welfare and Institutions Code section 4512, subdivision (j), defines "substantial disability" similar to that of California Code of Regulations, title 17, section 54001, subdivision (a)(2).

record, from claimant's school evaluation and the Service Agency's psychosocial assessment, that claimant may have problems with reading comprehension and attention, but there was no evidence to suggest that these issues are related to receptive and expressive language. Therefore, claimant does not suffer significant functional limitations in this area.

B. *Learning.* Although claimant's mother testified that claimant must be instructed multiple times before learning a task, claimant's educational history reflects that he earned fair to good grades in high school. After completing high school, he successfully graduated from college. Given this academic record, claimant does not suffer significant functional limitations in learning.

C. *Self-care.* While he may need additional time to complete self-care tasks, claimant toilets, showers, dresses by himself. There are no reported problems with his personal hygiene. He does daily stretches and exercises to address problems with his Achilles tendon. Therefore, claimant does not suffer significant functional limitations in self-care.

D. *Mobility.* No evidence was presented that claimant has significant functional limitations in mobility.

E. *Self-direction.* The record did not establish that claimant has any behavioral issues or engages in any self-injurious behavior.

F. *Capacity for independent living.* Dr. Kelly opined that claimant has significant functional limitations in his capacity for independent living. Claimant cannot cook at the stove without supervision. He can only make simple purchases and does not budget or manage his money. Given that claimant is 28-years old, claimant suffers significant functional limitations in his capacity for independent living.

G. *Economic self-sufficiency.* Although Dr. Kelly opined that claimant has significant functional limitations in the area of economic self-sufficiency, claimant is a

college graduate and therefore has the educational qualifications to obtain a job. Claimant's testimony established that he has not looked for a job in almost two years. When he was actively looking for a job, he searched for jobs mostly in the film industry and in theater arts, two highly competitive fields. Therefore, it was not established that claimant suffers significant functional limitations in economic self-sufficiency.

CLAIMANT IS NOT ELIGIBLE BASED ON A CLAIM OF CEREBRAL PALSY

6. It is undisputed that claimant was diagnosed with cerebral palsy as a child. Notwithstanding this diagnosis, a physician on the interdisciplinary team, Dr. Zeldin, determined that claimant was not eligible for regional center services. The evidence in this case also demonstrates that claimant's cerebral palsy is relatively mild and has not caused significant functional limitations in three or more areas of major life activity as appropriate to his age.

CLAIMANT IS NOT ELIGIBLE BASED ON A CLAIM OF AUTISM

7. Nothing in claimant's educational history suggests that autism spectrum disorder was suspected by claimant's school. In fact, claimant qualified for special education services based on a specific learning disability.

8. Dr. Quevedo assessed claimant for autism spectrum disorder using the ADOS-4. She did not find any indicators of autism in the domains of communication, reciprocal interaction, imagination, and stereotyped and repetitive behaviors. Applying the DSM-5 criteria for autism spectrum disorder, Dr. Quevedo opined that claimant's condition did not meet any of the sub-criteria under Criterion A, and only one of the sub-criteria (insistence on sameness, inflexible adherence to routines) under Criterion B. Thus, she concluded that claimant does not have autism spectrum disorder. Dr. Kelly agreed with this conclusion. Dr. Kelly and Dr. Quevedo's opinions are uncontroverted

and consistent with the evidence in this case. Consequently, the weight of the evidence does not support the conclusion that claimant has autism spectrum disorder.

CLAIMANT IS NOT ELIGIBLE BASED ON A CLAIM OF INTELLECTUAL DISABILITY

9. 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.)

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

11. Consistent with prior testing, claimant's full scale IQ on the WAIS-IV, as administered by Dr. Quevedo, was 79. Although Dr. Quevedo did not extensively discuss the issue of intellectual disability in her evaluation, she did not diagnose claimant with

this condition. As Dr. Kelly explained in his testimony, a score that is two standard deviations below the mean is usually indicative of intellectual disability. Claimant's full IQ score has historically tested higher than this range. Additionally, given that he suffers significant functional limitations only in the area of capacity for independent living, claimant's adaptive functioning does not seem to be considerably impacted by his cognitive deficits. Furthermore, the significant discrepancy that exists between claimant's scores on the subtests of the WAIS-IV is strongly indicative of a verbal learning disability or a speech and language disorder, rather than intellectual disability. Dr. Kelly's opinion on this issue is persuasive.

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CLAIMANT IS NOT ELIGIBLE UNDER THE FIFTH CATEGORY

12. In addressing eligibility under the Fifth Category, the Appellate Court in *Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, 1129, stated in part:

The fifth category condition must be very similar to mental retardation [now, intellectual disability⁵], with many of the same, or close to the same, factors required in classifying a person as mentally retarded. Furthermore, the various additional factors required in designating an individual developmentally disabled and substantially handicapped must apply as well.

⁵ The DSM-5 changed the diagnosis of mental retardation to intellectual disability.

13. 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 his performance renders him like a person with mental retardation/intellectual disability.

14. Furthermore, determining whether a claimant’s condition “requires treatment similar to that required” for persons with intellectual disability/mentally retardation is not a simple exercise of enumerating the services provided and finding that a claimant would benefit from them. Many people, including those who do not suffer from intellectual disability, or any developmental disability, 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 from the provision of *services*, but whether that person’s condition requires *treatment*, which has a narrower meaning under the Lanterman Act than *services*. (*Ronald F. v. Dept. of Developmental Services*, (2017) 8 Cal.App.5th 94, 98.)

15. Claimant’s mother expressed concerns mostly related to her son’s social skills and did not attribute her son’s deficits to cognitive problems. Claimant has not established that he demonstrates deficits in cognitive and adaptive functioning to such a degree and in such a manner that he presents as a person suffering from a condition similar to intellectual disability. There was also no evidence that claimant requires treatment targeted at improving or alleviating a developmental disability similar to

intellectual disability. Under these circumstances, claimant does not fall under the Fifth Category.

16. In sum, claimant's eligibility for regional center services under any category fails at the threshold because he is not substantially disabled and suffers significant functional limitations in only one area of major life activity. While claimant clearly faces challenges, he does not have a developmental disability under the Lanterman Act. Thus, he is not eligible for regional center services.

ORDER

Claimant's appeal from the Westside Regional Center's denial of eligibility for services is DENIED. Claimant is not eligible to receive regional center services under the Lanterman Act at this time.

DATE:

JI-LAN ZANG

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.