BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Matter of:<br><br>Claimant,<br><br>vs.<br><br>FAR NORTHERN REGIONAL CENTER,<br><br>Service Agency. | OAH No. 2017081218 |

# DECISION

This matter was heard before Administrative Law Judge Susan H. Hollingshead, State of California, Office of Administrative Hearings (OAH), on October 13 and November 1, 2017, in Chico, California.

Phyllis J. Raudman, Attorney at Law, represented the Service Agency, Far Northern Regional Center (FNRC).

Claimant represented himself.

Oral and documentary evidence was received. The record was closed and the matter submitted for decision on November 1, 2017.

## ISSUE

Is claimant eligible to receive regional center services and supports based on a qualifying condition of autism pursuant to Welfare and Institutions Code section 4512?[1]

[1]Unless otherwise indicated, all statutory references are to the California Welfare and Institutions Code.

## FACTUAL FINDINGS

1. Claimant is a 33-year-old man who referred himself to FNRC for diagnosis and eligibility determination based on a suspicion of Autism Spectrum Disorder (ASD). He reports being treated for many years for anxiety, depression, social anxiety and OCD and questions whether ASD is the underlying cause of his difficulties. He lives independently on property purchased, with his father, with the intent of building a home. Until the home is built, claimant is living in his truck or a tent on the property.

2. FNRC referred claimant to Clinical Psychologist J. Reid McKellar, Ph.D., for an ASD evaluation. As part of Dr. McKellar's "best practices" evaluation, he conducted observations and interviews, and completed a full records review that included prior psychological and medical testing/records. He also utilized the following testing instruments:

> Autism Diagnostic Observation Schedule 2-Module 4 (ADOS-2) Adaptive Behavior Assessment System-Third Edition (ABAS-III) Wechsler Adult Intelligence Scale-IV (WAIS-IV) DSM-5 Review of Symptoms

3. The Diagnostic and Statistical Manual of Mental Disorders: Fifth Edition (DSM-5) sets forth the standard for diagnosis and classification for this evaluation.

> DSM-5 section 299.00, Autism Spectrum Disorder, states:
>
> The essential features of Autism Spectrum Disorder are persistent impairment in reciprocal social communication and social interaction (Criterion A), and restricted, repetitive patterns of behavior, interests or activities (Criterion B). These symptoms must be present in early childhood and

limit or impair everyday functioning. (Criterion C and D)… The impairments in communication and social interaction specified in Criterion A are pervasive and sustained … Manifestations of the disorder also vary greatly depending on the severity of the autistic condition, developmental level, and chronological age; hence, the term *spectrum*. Autism spectrum disorder encompasses disorders previously referred to as early infantile autism, childhood autism, Kanner's autism, high-functioning autism, atypical autism, pervasive developmental disorder not otherwise specified, childhood disintegrative disorder, and Asperger's disorder.

To diagnose Autism Spectrum Disorder, it must be determined that an individual has persistent deficits in social communication and social interaction across multiple contexts, as manifested by the following, currently or by history:

(1) deficits in social-emotional reciprocity, (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, 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.

4. Dr. McKellar completed his comprehensive assessment of claimant and provided his report dated July 20, 2017. His report included relevant background information that included the following:

> [Claimant] has been treated for Major Depressive Disorder, Generalized Anxiety Disorder and Social Anxiety as an adult. [Claimant] reportedly has a past history of Obsessive Compulsive Disorder. The bulk of [claimant's] treatment has consisted of the use of numerous psychotropic medications. In addition, [claimant] uses Cannabis, which he has reportedly described as temporarily ameliorating symptoms of anxiety.
>
> [Claimant] was diagnosed with Attention Deficit Hyperactivity Disorder in childhood (inattentive type), however he did not receive treatment for the disorder. In addition, [claimant] was assessed for the presence of Learning Disabilities in elementary school due to deficits in attention span and a

seeming inability to reach his considerable academic potential.

Dr. McKellar also noted that claimant "participated in a PC 1368[2] competency evaluation in 2015. As a result of the evaluation, the evaluator opined that [claimant] was competent to stand trial, and the writer suggested the potential presence of Anxiety and a Mood Disorder (based on an interview conducted in the Butte County Jail.)"

5. Claimant was administered the ADOS-2, which is included in a "best practices" evaluation. Dr. McKellar explained that the ADOS-2 is "a semi-structured, standardized assessment of communication, social interaction, play/imaginative use of materials, and restricted and repetitive behaviors for individuals referred due to possible presence of an Autism Spectrum Disorder." The ADOS is considered by practitioners to be "the gold standard" when assessing for ASD. Claimant's scores were as follows:

Social Affect

Communication

During administration of the ADOS-2, [claimant] did not exhibit use of overly formal or stereotyped speech.

[Claimant] engaged in a numerous to and fro conversations, he followed the writer's conversational leads and he asked relevant questions in response to the writer's self disclosures.

[2] California Penal Code section 1368 provides for a court order determining the question of a defendant's mental competence to stand trial.

[Claimant] utilized multiple gestures during the evaluation process and he effectively integrated non-verbal with verbal communication.

On the communication domain, [claimant] obtained a score of 0.

Reciprocal Social Interaction

[Claimant] exhibited use of appropriate eye contact, and his facial expressions were affectively congruent.

[Claimant] verbalized empathy for others and strong awareness of social emotions. [Claimant] verbalized insight into past and present circumstances, and he was able to reflect on the past in an introspective manner.

[Claimant] engaged in an impressive amount of reciprocal social communication, and his social responses were of good quality. [Claimant] made a number of social overtures of good quality during the evaluation process.

On the social interaction domain, [claimant] obtained a score of 0.

Imagination/Creativity

[Claimant] exhibited creative and imaginative actions during the testing process.

On Imagination/Creativity, [claimant] obtained a score of 0.

Stereotyped Behaviors and Restricted Interests

During administration of the ADOS-2, [claimant] did not exhibit unusual sensory interests, complex mannerisms, repetitive behaviors, compulsions or rituals.

[Claimant] obtained a score of 0 on the stereotyped behaviors and repetitive interests domain.

ADOS-2 Summary

[Claimant's] performance on the ADOS-2 resulted in a score of 0, which is in the sub-clinical range.

6. Dr. McKellar also performed a DSM-5 Review of Symptoms and concluded as follows:

**Persistent deficits in social communication and social interaction across multiple contexts**

**1. Deficits in social-emotional reciprocity**

[Claimant] is capable of engaging in to and fro conversations, and he exhibited some pleasure while interacting during the evaluation process. [Claimant] also exhibited a responsive social smile during the evaluation process, as well as appropriate use of language pragmatics.

[Claimant] does not meet criteria for this item.

**2. Deficits in non-verbal communication behaviors used for social interaction**

During the evaluation, [Claimant] made appropriate eye contact with the writer and he effectively integrated non-verbal with verbal communication.

[Claimant] does not meet criteria for this item.

3. **Deficits in developing, maintaining and understanding relationships**

[Claimant] has a well developed sense of humor, strong awareness of social emotions and an understanding of social mores. [Claimant] struggles with symptoms of social anxiety, yet he has been able to make lasting friendships. [Claimant] has very low self esteem in regards to romantic relationships and an inhibitory fear of rejection.

[Claimant] does not meet full criteria for this item.

In the persistent deficits in social communication and social interactions across multiple contexts, [claimant] does not meet criteria for any of the items.

**Restricted, repetitive patterns of behavior, interests or activities**

1. **Stereotyped or repetitive motor movements, use of objects or speech**

Based on observation, testing and interview data, [claimant] does not meet criteria for this item.

**2. Insistence on sameness, inflexible adherence to routines, or ritualized patters of verbal or non-verbal behavior**

[Claimant] responds best to structure and routine, however he does not exhibit behaviors consistent with this item.

[Claimant] does not meet criteria for this item.

**3. Highly restricted, fixated interests that are abnormal in intensity or focus**

[Claimant] has a variety of interests that are consistent with his education, intelligence and spiritual beliefs.

[Claimant] does not meet criteria for this item.

**4. Hyper or Hyporeactivity to sensory input or unusual interest in sensory aspects of the environment**

[Claimant] is hyper-reactive to sensory input.

[Claimant] meets criteria for this item.

In the restricted, repetitive patterns of behavior, interests or activities domain, [claimant] meets criteria for one of the items.

In summary, the DSM-5 review of the diagnostic criteria for Autism Spectrum Disorder indicates that [claimant] does not meet diagnostic criteria for Autism Spectrum Disorder.

7. Dr. McKellar also administered the ABAS-III. He described the ABAS-II as "an individually administered, norm-referenced assessment of adaptive behavior. The ABAS-III is compatible with the American Association on Intellectual Disabilities and the DSM-5." The test is administered as a questionnaire, measuring adaptive skills in nine areas as reported by claimant.

The following scores were obtained on this measure, completed by [claimant.]

| | Raw Score | Scaled Score | Qualitative Range |
|---|---|---|---|
| **Communication** | **67** | **8** | **Average** |
| **Community Use** | **66** | **9** | **Average** |
| **Functional Academics** | **70** | **10** | **Average** |
| **Home Living** | **62** | **8** | **Average** |
| **Health and Safety** | **58** | **10** | **Average** |
| **Leisure** | **48** | **6** | **Below Average** |
| **Self Care** | **72** | **8** | **Average** |
| **Self Direction** | **67** | **9** | **Average** |
| **Social** | **67** | **8** | **Average** |

**Composite Score Conversions**

| | Composite Score | Percentile Rank |
|---|---|---|
| **General Adaptive Composite** | **85** | **16** |
| **Conceptual** | **92** | **30** |
| **Social** | **83** | **13** |
| **Practical** | **83** | **13** |

The obtained adaptive behavior profile indicates that [claimant] "rated his adaptive behaviors as generally falling in the low average range across domains."

8. Dr. McKellar also administered the WAIS-IV, "an individually administered clinical instrument designed to assess the cognitive capacity of adults and adolescents between the ages of 16 years and 90 years, 11 months." The following scores were

reported:

| | Standard Score | Percentile | 95% confidence interval |
|---|---|---|---|
| **Verbal Comprehension** | **122** | **93** | **1[1]5-127** |
| **Perceptual Reasoning** | **111** | **77** | **104-117** |
| **Working Memory** | **100** | **50** | **93-107** |
| **Processing Speed** | **92** | **30** | **84-101** |
| **Full Scale** | **110** | **75** | **106-114** |

Dr. McKellar concluded:

> [Claimant's] full scale I.Q. suggests intellectual potential in the high average range. However, [claimant's] verbal skills are in the well above average range, yet his working memory and processing speed scores represent relative weaknesses (low average to average).
>
> Interestingly, the obtained cognitive profile is consistent with [claimant's] self-reported history of Attention Deficit Hyperactivity Disorder-inattentive presentation.

9. Dr. McKellar concluded his report as follows:

> **DSM-5 Diagnoses:**
>
> **314.01 Attention Deficit Hyperactivity Disorder predominately inattentive presentation**
>
> **300.00 Unspecified Anxiety Disorder**
>
> **Recommendations:**

> The information contained in this report will be reviewed by the Far Northern Regional Center Eligibility committee which is responsible for making decisions regarding eligibility for services.

1. [Claimant] may benefit from treatment with St[r]aterra to help ameliorate deficits in attention span and a predisposition for depression.
2. [Claimant] is likely to benefit from assertiveness training with a licensed therapist. [Claimant] may benefit from cognitive therapy to address his low self-esteem.

10. Claimant saw psychiatrist, Robert C. Bransfield, M.D., D.L.F.A.P.A, while residing in New Jersey. Dr. Bransfield offered the following information by letter dated January 11, 2011:

> Please be advised that [claimant] was initially seen on 4/2/09. His primary diagnosis was Social Anxiety Disorder. There was also some secondary depression associated with this. During the session, he reported marijuana use since the age of 17 and it was his opinion this provided "relief from anxiety symptoms and to deal with social anxiety." There are some reports in the medical literature that supports this position. He had difficulty tolerating the Zoloft that I prescribed for him.

11. Medical records form Frank H. Lucido, M.D., included findings of "Chronic Anxiety and RAD [Reactive Attachment Disorder]."

12. Claimant reported that in 3rd or 4th grade, teachers recommended he be tested for learning disabilities. Claimant graduated from high school, received an

Associates Degree in Business and Liberal Arts from Middlesex County College, and a Bachelors Degree in Political Science and Philosophy from Rutgers University. He was working on a Masters Degree at California State University, Chico, but had to suspend study for financial reasons.

Records provided from New Jersey's Metuchen High School show that claimant graduated with a diploma on June 19, 2003. There was no evidence that he was ever identified as a student with Autism.

13. Clinical Psychologist Mark L. Streets, Ph.D., saw claimant "for a competency to stand trial evaluation pursuant to section 1368 of the California penal code as ordered by the Butte County Superior Court." Claimant was evaluated at the Butte County jail on June 22, 2015. Dr. Streets wrote that claimant appeared "competent to rationally cooperate with his attorney; he also appeared to be competent to testify on his behalf." He concluded as follows:

> Conclusions: Based on the results of this evaluation, it is my professional opinion that [claimant] is competent to stand trial at this time. He was able to demonstrate an adequate to good understanding of legal proceedings and to demonstrate the ability to rationally assist his attorney sufficiently in order to develop and maintain a legal strategy in defense of his charges. Based on the information obtained in this evaluation, [claimant] was diagnosed with Mood Disorder NOS (DSM-IV 296.90), Anxiety Disorder NOS (DSM-IV 300.00) and Cannabis Abuse (DSM-IV 305.20). In regards to psychotropic medications, he was not demonstrating symptoms that would warrant the use of antipsychotic medications.

14. The FNRC Eligibility Team determined that claimant did not meet the eligibility criteria for regional center services. As a result of that determination, a Notice of Proposed Action (NOPA) was issued on July 26, 2017, informing claimant that FNRC determined he was not eligible for regional center services. The NOPA stated:

> Reason for action:
>
> [Claimant] does not have intellectual disability and shows no evidence of epilepsy, cerebral palsy, autism, or a disabling condition found to be closely related to intellectual disability or to require treatment similar to that required for individuals with intellectual disability. Psychological records show evidence of Attention Deficit Hyperactivity Disorder-Inattentive Type, Unspecified Anxiety Disorder, Mood Disorder-NOS, Cann[a]bis Abuse, and Social Anxiety Disorder but they are not qualifying conditions for regional center services. Eligibility Review (multi-disciplinary team) determined [claimant] was not eligible for FNRC services based on medical dated 12/17/09-01/11/11 by Dr. Robert Bransfield. Medical dated 10/13/10-08/24/15 by Frank Lucido. Psychological dated 07/20/17 By J. Reid McKellar, Ph.D. Psychological dated 06/22/15 by Marks Streets, Ph.D. Intake summary/medical history dated 7/14/17 by Micki Rodstrom, IS. Educational Records (transcripts) dated 06/19/03 by Metuchen High School, New Jersey.

15. Claimant filed a Fair Hearing Request dated June 8, 2015, disputing his ineligibility for regional center services. The reason for requesting a fair hearing was:

> I believe the diagnostic process overlooked evidence of my autism in the reviewed medical records, and as described by me. Also I believe insufficient evidence was acquired & considered as relevant history & background to make a conclusive denial of diagnosis of autism. I also believe that certain evidence of my in fact autism was attributed to other conditions rather than being recognized as stemming from & subsequent to autism.

16. Robert Boyle, Ph.D., is an FNRC Staff Psychologist. In that role, he is part of the multi-disciplinary team and participates on the Eligibility Review Committee. Dr. Boyle testified that claimant had not been evaluated for an ASD and FNRC decided that claimant would be referred to FNRC vendor Dr. McKellar for a best practices evaluation.

Dr. McKellar completed his evaluation and concluded that claimant's ADOS scores and DSM-5 Review of Symptoms did not support a diagnosis of autism. Dr. Boyle testified that claimant presented with a variety of symptoms that have continued to impact him. Records indicate psychological struggles but none of claimant's diagnoses are eligible conditions for regional center services and supports pursuant to the Lanterman Act.

17. Pursuant to the Lanterman Act, Welfare and Institutions Code section 4500 et seq., regional centers accept responsibility for persons with developmental disabilities. Welfare and Institutions Code section 4512 defines developmental disability 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[3] or to require treatment similar to that required for individuals with an intellectual disability [commonly known as the "fifth category"], but shall not include other handicapping conditions that are solely physical in nature.

18. California Code of Regulations, title 17, section 54000, further defines the term "developmental disability" as follows:

(a) "Developmental Disability" means a disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation.

(b) The Development Disability shall:

(1) Originate before age eighteen;

(2) Be likely to continue indefinitely;

(3) Constitute a substantial disability for the individual as defined in the article.

[3] Effective January 1, 2014, the Lanterman Act replaced the term "mental retardation" with "intellectual disability." California Code of Regulations, title 17, continues to use the term "mental retardation." The terms are used interchangeably throughout.

(c) Developmental Disability shall not include handicapping conditions that are:

(1) Solely psychiatric disorders where there is 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.

(2) Solely learning disabilities. A learning disability is a condition which manifests as a significant discrepancy between estimated cognitive potential and actual level of educational performance and which is not a result of generalized mental retardation, educational or psycho-social deprivation, psychiatric disorder, or sensory loss.

(3) Solely physical in nature. These conditions include congenital anomalies or conditions acquired through disease, accident, or faulty development which are not associated with a neurological impairment that results in a need for treatment similar to that required for mental retardation.

19. Welfare and Institutions Code section 4512, subdivision (l), defines "substantial disability" as:

(l) The existence of significant functional limitation in three or more of the following areas of major life activity, as

determined by a regional center, and as appropriate to the age of the person:

(1) Self-care.

(2) Receptive and expressive language.

(3) Learning.

(4) Mobility.

(5) Self-direction.

(6) Capacity for independent living.

(7) Economic self-sufficiency.

20. California Code of Regulations, title 17, section 54001, provides:

(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 functional limitation, 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:

(1) Receptive and expressive language.

(2) Learning.

(3) Self-care.

(4) Mobility.

(5) Self-direction.

(6) Capacity for independent living.

(7) Economic self-sufficiency.

21. Dr. Boyle concluded that while claimant has concerns, his symptoms are most likely associated with his Anxiety Disorder, ADHD, Mood Disorder and psychiatric issues. He stated that even if there was some missing evidence of autism prior to age 18, it is not evidenced now. "Claimant's adaptive functioning as he reported on the ABAS-III shows he does not meet the requirement of a 'substantial disability,' the third level of eligibility for regional center services."

22. Claimant called Dr. McKellar to testify regarding his report. He voiced frustration with Dr. McKellar's report and stated his belief that Dr. McKellar did not consider all the evidence. He also believed that Dr. McKellar had a responsibility to gather additional information if he did not have enough to find claimant eligible. Claimant was particularly upset that Dr. McKellar did not contact his parents in New Jersey to obtain additional information regarding the claimant prior to age 18. He also testified that he "wished Dr. McKellar had sent him the DSM-5 criteria so he could have come to the evaluation with detailed notes prepared."

23. Dr. McKellar testified that he was "very confident in the evaluation results." He spent considerable time at hearing explaining all the examples of why claimant does not present as in individual with ASD. He told claimant "the way you presented is not at all

like what I observe in individuals with ASD." He explained, "At the heart of autism is the ability to communicate. The core is not so much what they [individuals with an ASD] do but what they don't do. Dr. McKellar explained, for example, that claimant showed empathy, humor, understood sarcasm and had strong vocabulary/language skills. Claimant used social reciprocity, intonation and appropriate hand and facial gestures. He was open and expressive.

Dr. McKellar testified that claimant was intense about his interests, which was consistent with his level of intelligence, but was able to maintain a conversation outside his interests. Dr. McKellar stated that claimant "endorsed every symptom of ADHD when interviewed." He also believed that claimant had "issues with authority figures or when he thought he was being mistreated, and insecurity, which do not have anything to do with the presence of ASD."

Dr. McKellar stated that when he asked claimant if there were any others to interview, ideally a family member, claimant denied the opportunity for any interviews. He stated that failing to interview claimant's parents did not affect the outcome of the evaluation. "I was just being thorough, not that I had any question regarding ASD."

Dr. McKellar's testimony that claimant is not an individual with ASD was persuasive.

24. Claimant called Braddon Hatch, Esquire, his previous court appointed attorney in an unrelated matter, to testify regarding claimant's demeanor in that action. Claimant believed that Mr. Hatch's description would demonstrate that he has symptoms of ASD, and he waived the attorney-client privilege for his testimony.

Mr. Hatch testified that claimant "communicated quite clearly and was logical" but would "focus on ancillary, unrelated issues" which Mr. Hatch said was "highly frustrating and interfered with his representation and what should have been important." He described claimant as being somewhat relentless, constantly emailing him with issues and concerns with his representation. He estimated that he spent approximately 150 percent

more time than normal on claimant's appeal due to the extra time responding to all the requests. Mr. Hatch testified that claimant would seem to perseverate on his opinions and would disconnect from what he was being told. When claimant suggested that it was a misunderstanding, Mr. Hatch responded, "No, it was not a misunderstanding, just a disagreement."

25. Claimant also called FNRC Intake Specialist, Micki Rodstrom, and FNRC Intake Case Management Supervisor Robin Larson.

Ms. Rodstrom testified to the intake process where she completed an interview of claimant and obtained background information, records, and reviewed the intake questionnaire completed by claimant. The information was compiled into a FNRC Social Assessment, dated May 2, 2017, which she completed and forwarded to the Eligibility Review Committee. The Eligibility Review occurred on July 26, 2017 resulting in the determination that claimant was not eligible for services.

Claimant was concerned that his completed questionnaire was not maintained by the agency. Ms. Rodstrom explained that the information was compiled in the Social Assessment. Claimant also opined that Ms. Rodstrom was responsible for obtaining information necessary to find him eligible for regional center services. She explained that all available evidence was considered and he did not qualify as an individual with ASD.

Ms. Larson supported Ms. Rodstrom's testimony. She also reminded claimant that they had participated in an informal meeting at FNRC to discuss the eligibility determination. Eligibility criteria were discussed and the participants reviewed Dr. McKellar's findings. A letter summarizing that meeting, dated September 29, 2017, written by Ms. Larson and signed by FNRC Executive Director, Laura Larson[4], offered some of the following insights:

[4] Robin Larson and Laura Larson are unrelated.

During the meeting you went line by line over Dr. McKellar's report explaining items that you felt were discrepancies. You presented that you were unhappy with Dr. McKellar's report because you felt that he did not take into consideration all the information that you presented and that he did not contact your parents to seek information prior to age 18. Ms. Larson informed you if there is no current eligible condition identified, there is no need to obtain information prior to age 18. However, the eligibility review team did review some records prior to age 18, none of which mentioned that you may have ASD or other eligible condition.

You were further concerned that Dr. McKellar controlled the pace of the evaluation. You stated, "I wish that Dr. McKellar had sent me the DSM criteria so that I could have come with detailed notes prepared." Dr. Boyle explained the relevance of standardized testing and that there is a protocol to follow when administering psychological evaluations.

Finally, you stated that you are actually not seeking services from the regional center, but hoped to gain insight into yourself and obtain information about your functioning that you could use in your legal defense to be granted more time to prepare and present your case in the Butte County Court system.

Ms. Larson informed you that even if you had been diagnosed with an eligible condition, according to the

> Adaptive Behavior Assessment System (ABAS-III) that you completed on your own adaptive functioning indicates that you do not have 3 substantial handicapping conditions which is the third level of eligibility for regional center services.

26. Claimant testified to the difficulties he has had during his life. Specifically, his anxiety manifested preparing for this hearing and other outstanding legal matters. During hearing he would inhale from a vial, that he described as peppermint, to help ease his tension. He also reported cannabis use since age 17 noting that it "helps with anxiety and focus when I'm stressed out." On the second day of hearing, which was primarily devoted to his continued testimony, claimant failed to appear. When contacted by phone, he explained that he kept intending to attend but was overwhelmed by anxiety. With no objection from FNRC, claimant participated in the second day of hearing telephonically.

Claimant testified that he felt like a lot of evidence of autism was not considered by FNRC or Dr. McKellar so he "filed for hearing to give more information about himself." He expressed concerns and discrepancies with the testing done by Dr. McKellar. He stated that he has always felt "different," believed he had symptoms similar to an individual with ASD and desired to be evaluated. He felt Dr. McKellar did not spend much time on his childhood, and disagreed that he had not been willing to have his parents give their input. He stated that he had taken Zoloft and Xanax for approximately six months, and then discontinued use.

Claimant testified that he is working on one civil case and has two criminal cases on appeal. He is representing himself after the court relieved the public defender. He explained that he has actually been out of work for several years due to "so much stress defending cases." He is concerned with "making sure all things are addressed."

He explained that he has always had social difficulties, especially in romantic/dating

situations, even though he has had friends. He described being connected with boy scouts as a child because he enjoys the outdoors, not specifically because he liked the boy scouts. He said Dr. McKellar never asked him "What are your major problems?" Claimant described feeling like no one "looked hard enough at autism and tried to learn more about him." He agreed with the ADHD diagnosis but opined that those symptoms could also be explained by autism.

Claimant took issue with the ABAS-III stating displeasure with the fact that the "questions were multiple choice with no room to explain details."

Claimant stressed that he did not know about "the DSM-5 and the full criteria for autism" prior to his evaluation. He wanted to "be asked if he had any of those things" and believes the criteria "is my life story." He felt that he was not given the opportunity to be heard.

Claimant went line by line through the DSM-5 Diagnostic Criteria for Autism Spectrum Disorder and explained why he believes he exhibits every symptom. He described that "symptoms flair up the most with anxiety." He continued to reiterate information in an apparent attempt to make certain he got his point across. He appeared anxious when he was not agreed with.

DISCUSSION

27. When all the evidence is considered, claimant did not establish that he qualifies for services from FNRC under the Lanterman Act. Dr. McKellar's conclusions, based on a comprehensive "best practices" evaluation, were persuasive. Although claimant exhibited one symptom associated with autism, the evidence was insufficient to establish that he has an Autism Spectrum Disorder. Claimant does not have a persistent impairment in reciprocal social communication and social interaction, or the restricted, repetitive patterns of behavior, interests, or activities necessary for a diagnosis of Autism Spectrum Disorder. While claimant has many challenges and exhibits a wide array of symptoms, his

challenges and symptoms appear to result from his mental health issues and do not constitute a developmental disability under the Lanterman Act. Consequently, claimant's request for services and supports from FNRC under the Lanterman Act must be denied.

## LEGAL CONCLUSIONS

1. Eligibility for regional center services is limited to those persons meeting the eligibility criteria for one of the five categories of developmental disabilities set forth in section 4512 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 [commonly known as the "fifth category"], but shall not include other handicapping conditions that consist solely physical in nature.

Handicapping conditions that consist solely of psychiatric disorders, learning disabilities or physical conditions do not qualify as developmental disabilities under the Lanterman Act.

2. Claimant bears the burden of establishing that he meets the eligibility requirements for services under the Lanterman Act.[5] He has not met that burden. The

[5] California Evidence Code section 500 states that "[e]xcept as otherwise provided

evidence presented did not prove that claimant is substantially disabled by a qualifying condition that is expected to continue indefinitely. He did not meet the diagnostic criteria for an ASD and there was no evidence to show that he has epilepsy, cerebral palsy, intellectual disability, or a disabling condition found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability. Accordingly, claimant does not have a developmental disability as defined by the Lanterman Act. Consequently, he is not eligible for regional center services.

## ORDER

Claimant's appeal from the Far Northern Regional Center's denial of eligibility for services is denied. Claimant is not eligible for regional center services under the Lanterman Act.

DATED: November 15, 2017

SUSAN H. HOLLINGSHEAD
Administrative Law Judge
Office of Administrative Hearings

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by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting."

NOTICE

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