

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH No. 2017100528

DECISION

This matter was heard by Erlinda G. Shrenger, Administrative Law Judge (ALJ) with the Office of Administrative Hearings, on November 28, 2017, in Culver City. Claimant was represented by his father, and his mother was present for part of the hearing.¹ Westside Regional Center (WRC or Service Agency) was represented by Lisa Basiri, Fair Hearing Coordinator.

Oral and documentary evidence was received, and argument was heard. The record was closed, and the matter was submitted for decision on November 28, 2017.

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

ISSUE

Is Claimant eligible for services under the category of autism pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act)?

EVIDENCE

Documentary: WRC's exhibits 1-8; Claimant's exhibits A-H.

Testimonial: Thompson Kelly, Ph.D.; Lisa Basiri; and Claimant's father.

FACTUAL FINDINGS

PARTIES AND JURISDICTION

1. Claimant is a 10-year-old boy who lives at home with his parents and younger sister (age 7). He seeks eligibility for regional center services on the basis of autism.

2. On February 7, 2017, WRC sent a letter and a Notice of Proposed Action to Claimant and his parents informing them of its determination that Claimant is not eligible for regional center services. The letter explained that, although Claimant was given a diagnosis of autism by WRC's psychology consultant, Kaely Shilakes, Psy.D., "the eligibility team did not find three areas of substantial handicap due to autism." (Exh. 2.)

3. On February 13, 2017, Claimant's parents filed a fair hearing request on their son's behalf which appealed the eligibility denial and requested a hearing. The fair hearing request included an attachment in which Claimant's parents contended that Claimant's autism substantially impacted his functioning in the areas of self-care, receptive and expressive language, learning and self-direction.

CLAIMANT'S BACKGROUND

4. Claimant's father testified credibly that Claimant has been requested to leave many schools he has attended over the years. The first time Claimant was asked to leave a school was when he was two and one-half years old. In November 2011, when Claimant was four years old, his teacher reported that Claimant had difficulty focusing on tasks and he did not interact with others; the teacher suggested that Claimant might be happier in a class with older children. Claimant's parents placed Claimant at another school, but he continued to have the same types of problems, such as wandering around the schoolyard but not playing with other children, and screaming or becoming aggressive when he did not want to do the in-class assignment. In March 2012, after only four months at the school, Claimant was not allowed to attend the school unless he had a shadow aide. After Claimant's parents hired a shadow aide, Claimant was still expelled and his parents kept him at home for the remainder of the school year. Claimant's behavioral problems continued during the following 2012-2013 school year, including his inability to interact with others and his disruptive behaviors. In the fall of 2012, Claimant began taking medications to address his rigidity and problematic behaviors.

5. (A) Claimant was first diagnosed with Autism Spectrum Disorder in July 2013, when he was five years old. Claimant was admitted to the ABC Partial Hospitalization Program at the Resnick Neuropsychiatric Institute and Hospital at UCLA for further psychiatric evaluation and treatment of behavioral outbursts, mood lability, and his tendency to perseverate on circumscribed topics. A psychological evaluation was completed during this July 2013 hospitalization to assist in clarifying Claimant's diagnosis and treatment plan. The findings and conclusions of the July 2013 evaluation are set forth in a written Psychological Evaluation Report. (Exh. 7.)

(B) The July 2013 evaluation was based on the results of assessment tools including, but not limited to, the Autism Diagnostic Observation Schedule, Second Edition, Module 3 (ADOS-2), the Social Communication Questionnaire, and the Vineland Adaptive Behavior Scales, Second Edition (VABS-II). The evaluation found that Claimant's overall ratings on the ADOS-2 "suggest that he shares many characteristics of youth who have an Autism Spectrum Disorder." (Exh. 7, p. 2.) His scores on the Social Communication Questionnaire, which is a parent report form that helps to evaluate communication skills and social functioning, suggested that Claimant "has some social communication deficits like those of children with an autism spectrum diagnosis." (Exh. 7, p. 3.) On the VABS-II, Claimant attained an adaptive behavior composite indicating an average adaptive level, which the assessors indicated should be viewed with caution due to the wide range of scores within the various domains measured on the VABS-II. The highest subscale of receptive language was in the above average range and the lowest subscales of personal self-care and interpersonal skills were in the below average range. In the area of self-care, Claimant's mother rated him as below average (at the age-level of three years, five months).

(C) The July 2013 evaluation concluded: "[Claimant's] testing results reported above and his developmental history indicates that at an early age he exhibited behaviors that are characteristic of children with an Autism Spectrum Disorder. Current assessments also indicate [Claimant] has deficits in social communication and social interaction. [Claimant] has difficulty making eye contact, communicating and relating to peers, he has circumscribed interests which he can persevere on, he has a number of sensory sensitivities, and he has difficulty being flexible and tolerating changes in routine. Observations of [Claimant] in the ABC program, testing results, and early developmental history strongly suggest that [Claimant] meets criteria for an Autism Spectrum Disorder." (Exh. 7, p. 5.)

(D) The July 2013 evaluation recommended that Claimant should be considered for special education services during his school day, in accordance with his diagnosis of Autism Spectrum Disorder. The evaluation recommended that, given the nature of Claimant's difficulties, he should be placed in a small, self-contained instructional environment and provided additional behavioral and therapeutic supports, such as specialized instruction and assignments, monitoring of his mood regulation and behavior, and use of a positive behavior support plan.

6. (A) Claimant is eligible for special education services from his local school district as a student with the disability of autism. Claimant's individualized education program (IEP) dated August 8, 2016, was presented. The August 8, 2016 IEP provides for, among other things, Claimant's placement in a non-public school setting.

(B) The August 8, 2016 IEP notes that Claimant has behavioral needs due to his being "very sensitive to having his work corrected across all content areas." (Exh. 8, p. 7 of 33.) When his work is corrected or he is given constructive feedback, Claimant "will either shut down (head down, work refusal, etc.) or escalate to physical aggression," which disrupts him and causes disruption in the classroom. (*Ibid.*) When Claimant believes he cannot complete a task, "he becomes angry and will verbally attack staff members or verbally demean his intelligence." (*Ibid.*)

(C) The August 8, 2016 IEP notes that in the area of reading, Claimant does well during independent work time but struggles to complete group reading assignments, and he needs prompting and guidance to collaborate with his peers. When staff provides feedback or corrections on math assignments, Claimant's frustration escalates to physical aggression, such as kicking, pushing over a desk, biting, and scratching. Similarly, when given corrections on writing assignments, Claimant will escalate to "tearing his paper, throwing his pencil, and/or kicking his desk." (Exh. 8, p. 6 of 33.) In the social-emotional area, the IEP notes: "When upset, frustrated, or triggered,

[Claimant] tends to shut down and struggles with utilizing positive coping skills that could help him manage his feelings appropriately. [Claimant] is very hard on himself and has unusually high expectations for his work performance in class. When he becomes frustrated with his school work he will often make self deprecating statements." (Exh. 8, p. 9 of 33.) The August 8, 2016 IEP includes a behavior support plan to address Claimant's outbursts, rage, and explosive reactions, which are described as "kicking table, pushing over desk, biting, scratching." (Exh. 8, p. 31 of 33.)

7. Claimant has been hospitalized at the neuropsychiatric hospital at UCLA on two occasions. In September 2014, Claimant was admitted to the neuropsychiatric hospital for seven days because of an incident at his school when he threw scissors at staff and scratched staff to the point he was drawing blood. Claimant's parents also reported that Claimant was having more frequent "rages" at home and that he scratched them and had thrown objects at them. The second hospitalization occurred in September 2016. Claimant was finished with his appointment at the hospital. He wanted to leave immediately but was told he would have to wait. Claimant tried to run away. A guard told Claimant that if he did not sit down, he would be restrained. Claimant raised his fist to the guard. Claimant was hospitalized from September 27, 2016, until October 14, 2016.

PSYCHOLOGICAL EVALUATION BY DR. SHILAKES

8. In January 2017, WRC consulting psychologist Kaely Shilakes, Psy.D., completed a psychological evaluation of Claimant. Dr. Shilakes prepared a written report of her findings and conclusions. The purpose of the evaluation was to rule-out or substantiate a diagnosis of Autism Spectrum Disorder. Dr. Shilakes interviewed Claimant's mother, reviewed records, observed Claimant at school and during two evaluation sessions at WRC, and administered the Wechsler Intelligence Scale for

Children, Fifth Edition (WISC-V), the VABS-II, the ADOS-2 (Module 3), and the Autism Diagnostic Interview-Revised (ADI-R).

9. Dr. Shilakes administered the WISC-V to measure Claimant's cognitive functioning. The results of the WISC-V indicated that Claimant's overall cognitive ability as measured by the full-scale IQ was in the high average range. Dr. Shilakes administered the ADI-R, using Claimant's mother as the informant, to assist in determining whether Claimant met the diagnostic criteria for autism. The results obtained on the ADI-R supported characteristics of Autism Spectrum Disorder and met the diagnostic cut-offs in all areas except for restricted, repetitive, and stereotyped patterns of behavior. To further assess for Autism Spectrum Disorder, Dr. Shilakes also administered the ADOS-2 (Module 3). Claimant's scores indicated a moderate level for autism related symptoms and he met the cut-off for Autism Spectrum Disorder. Dr. Shilakes assessed Claimant's everyday self-care skills using the VABS-II. The results from the VABS-II indicated that Claimant's overall adaptive functioning was in the moderately low range, his communication skills were in the adequate range, and his daily living skills and socialization skills were in the moderately low range.

10. (A) Dr. Shilakes interviewed Claimant's mother. Claimant's mother reported that at age two or three, Claimant was not playing with other children. He would just walk the perimeter of the school yard and he lacked eye contact. Claimant only talked about his preferred topics, sometimes out of context. Claimant's mother reported that he has difficulty reading social cues and enjoys quiet time more than engaging in conversation with others.

(B) Regarding behavioral concerns, Claimant's mother reported that Claimant started biting and hitting other children at age three or four. He had issues with aggression and was defiant toward teachers. He lined things up when he was younger. He is very concrete, has narrow interests, and exhibits rigidity. He has issues with

flexibility and thinking of others. If someone does not want to play what he wants, Claimant will bribe or threaten them. Changes in routine or transitions, especially from preferred to non-preferred activities, are difficult. He requires a lot of prepping and reminding.

(C) Regarding sensory issues, Claimant's parents tried to get him into swimming, but he is sensitive to water and screams when it gets on his face. In terms of self-care, Claimant does not like zippers or buttons and he wears pants with elastic waistbands. He refuses to wear underwear. Every few months, he has an accident where he will urinate on himself. The accidents occur when he cannot open a button on his pants and waits until the last minute. Claimant will not shower or brush his teeth without reminders.

11. (A) Based on her evaluation, Dr. Shilakes concluded that Claimant met the DSM-5 diagnostic criteria for Autism Spectrum Disorder. (See Exh. E.)

(B) Dr. Shilakes found that claimant demonstrated persistent deficits in social communication and social interaction across multiple contexts. Claimant met the requirement of deficits in social-emotional reciprocity, in that he sometimes ignored Dr. Shilakes and did not direct shared enjoyment toward her. When Dr. Shilakes tried to converse with him, he disengaged and asked to read a book instead or leave. He ignored many of his peers' social overtures at school. Claimant reportedly will only engage in back and forth conversation if the topic involves him and interests him. Claimant met the requirement of deficits in nonverbal communicative behaviors used for social interaction, in that his eye contact was inconsistent. He generally used minimal eye contact, although his eye contact increased when he spoke about certain topics. Also, when he spoke during class, it was often not clear to whom he was speaking, as he did not look toward or address others. Claimant met the requirement of deficits in developing, maintaining, and understanding relationships, in that Claimant showed

some interest in peers and reported that he had some friends at school, though he did not show interest in engaging with them. In preschool, Claimant was not playing with other children. When he was younger, he did not imitate others' actions or engage in group activities with peers.

(C) Dr. Shilakes found that Claimant demonstrated restricted, repetitive patterns of behavior, interests or activities. Claimant's tone of voice was sometimes flat, his mother reported that he used to line up his toys, and he was sometimes observed wiggling his fingers in an unusual manner. Claimant exhibits rigidity and difficulty with transitions or changes in routine. He showed some difficulty moving on after exceeding the time limit during testing with Dr. Shilakes. Claimant is highly fixated on Pokemon and Legos, which impacts his participation in other activities. He referenced Pokemon and paper airplanes often during the assessment with Dr. Shilakes. She also noted Claimant's sensitivity to water being on his face and his refusal to wear underwear.

12. In her written report, Dr. Shilakes explained that Claimant's Autism Spectrum Disorder impacts his functioning across settings:

[Claimant] shows strengths such as his reported improvements in behavior and strong family support system. The quality of [Claimant's] testing responses, observed behaviors, history, and review of records are indicative of an individual with Autism Spectrum Disorder. **It is this examiner's clinical impression that [Claimant's] restricted interests, rigidity, and social communication deficits are impacting his functioning across settings.** In addition, [Claimant] has a history of emotional and behavioral issues including depression, suicidal statements, psychiatric hospitalizations, and is currently prescribed medication.

Additional concerns include threats of violence, non-compliance, and aggression. He would benefit from ongoing medication management and psychotherapy to help process and work on coping skills. These mental health issues were considered as sole diagnoses, however [Claimant] also shows rigidity, difficulty with appropriate back and forth conversation, poor nonverbal communication, some social aloofness, and early history consistent with ASD. Though he does present with clear depressive symptoms, **it is this examiner's impression that his social communication deficits and restricted, repetitive patterns of behavior are also greatly impacting his functioning across settings.**

(Emphasis added.)

(Exh. 4, p. 14.)

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SUBSTANTIAL DISABILITY

13. Thompson Kelly, Ph.D., is WRC's Chief Psychologist and Manager of Intake and Eligibility Services. Dr. Kelly, as Chief Psychologist, was a member of the WRC eligibility team that determined Claimant was not eligible for services. The other two members of the eligibility team were a physician (Ari Zeldin, M.D.) and a service coordinator (Valerie Lattanza, M.S.). Dr. Kelly testified at the hearing regarding the eligibility team's determination that Claimant was not eligible for services.

14. Dr. Kelly also testified regarding Dr. Shilakes' Psychological Evaluation report, as Dr. Shilakes did not testify at the hearing. In reviewing Dr. Shilakes' behavioral observations of Claimant during the two evaluation sessions, Dr. Kelly noted Claimant showed some defiance and was "testing the limits" with Dr. Shilakes. At times, Claimant

tried to change the rules of the testing. Claimant enjoyed some of the tests, and had behavioral resistance to the tests he did not like. Dr. Kelly described Claimant as "bright and capable," demonstrating strong verbal skills and capable of problem solving, but struggling in nonverbal areas.

15. The eligibility team reviewed documents and records that were available to it at the time of its decision regarding Claimant, including the Psychological Evaluation report by Dr. Shilakes (Exhibit 4); discharge summaries for Claimant's neuropsychiatric hospitalizations in 2014 and 2016 (Exhibits 5 and 6); the Psychological Evaluation report dated July 2013 (Exhibit 7); and Claimant's IEP dated August 8, 2016 (Exhibit 8).

16. Claimant has a diagnosis of Autism Spectrum Disorder, which WRC does not dispute. Claimant was first diagnosed in July 2013. The diagnosis was confirmed by Dr. Shilakes in January 2017. Given that diagnosis, the determinative issue for the eligibility team was whether Claimant was "substantially disabled" in three or more areas of major life activity, demonstrated by the existence of significant functional limitations in three or more of the following areas of major life activity: (1) receptive and expressive language; (2) learning; (3) self-care; (4) mobility; (5) self-direction; (6) capacity for independent living; and (7) economic self-sufficiency.

17. According to Dr. Kelly, the eligibility team reached a consensus that Claimant had significant functional limitations only in the area of self-direction. Self-direction refers to a person's ability to initiate and sustain attention to task. WRC considers problems with socialization and social pragmatics to be included in the area of self-direction, not receptive and expressive language. The eligibility team agreed that self-direction was a problem area for Claimant. The difficulty with the remaining areas of major life activity was Claimant's autism being comorbid with behavioral/mental health issues, and the difficulty of determining whether Claimant's limitations were due to

autism, behavioral/mental health issues, or both. Dr. Kelly testified that the eligibility team looked at the severity of Claimant's developmental disability. Claimant was diagnosed with autism spectrum disorder in the mild range (Level 1 under the DSM-5 criteria). As such, the impact of autism on Claimant's functioning was deemed to be mild. Dr. Kelly noted that acute psychiatric hospitalization at a young age and changing schools multiple times was indicative of a major mental health condition, which would have a corresponding significant impact on Claimant's functioning.

18. Dr. Kelly explained that WRC considers behavioral outbursts to be included in the area of self-direction. For an individual who has high intellectual skills and intellectual capacity but struggles with appropriate communication, as Claimant does, that individual would be considered to have a deficiency in self-direction.

19. On cross-examination, Dr. Kelly acknowledged that it is common for Autism Spectrum Disorder to be comorbid with mental health issues. Dr. Kelly also testified that the eligibility team found that Claimant was borderline in whether he had significant functional limitations in the areas of self-care and capacity for independent living. On the VABS-II, Claimant's score was in the low range for personal daily living skills, which was indicative of a substantial limitation in self-care. Dr. Kelly admitted that he cannot say with certainty whether Claimant's problems and deficiencies are due to autism, mental health issues, or both.

CLAIMANT'S CONTENTIONS

20. Claimant's father testified credibly at the hearing regarding Claimant's background, educational history, and mental health history, consistent with the behavioral history and information contained in the psychological evaluations, hospital records, and Claimant's IEP presented at the hearing.

21. Claimant's father testified regarding Claimant's functioning. Claimant rages when directed to non-preferred tasks; he cannot pull away from a preferred task or

activity that he is focused on. When Claimant's father comes home from work, Claimant walks up to his father's face and starts telling him about his score on the videogame Minecraft. Claimant will rage for one hour about a task that would take him only 10 minutes to complete. Claimant is averse to things that are not within his narrow scope of interest. He cannot problem solve and does not remember concepts. When working on homework, he will persevere on the instructions and claim he cannot complete the homework because the instructions are ambiguous. Claimant is aware that he is intelligent and deficient, which exacerbates his anxiety and frustration. His self-worth is low. He does not want work that is too easy and freaks out if the work is too hard.

22. Claimant's father disagrees with Dr. Kelly's opinion that the area of receptive and expressive language does not include social communication and pragmatics. If Claimant does not like something, Claimant is unable to express himself. Claimant has vocabulary to communicate his needs and wants. He reads like a 16-year-old but he emotes like a two-year-old.

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23. Claimant's father testified that Claimant is "sensory sensitive and awkward." For example, when showering, Claimant will scream if water gets in his eyes and say that his parents are trying to kill him. Claimant does not wash his hands because he does not like soap. Claimant will brush his teeth with little toothpaste and says that water in his mouth feels like he is drowning. He will not clear his own plate after meals because he does not like the smell of garbage in the trash can, and he does not like the sink because it has dirty dishes.

24. Claimant's father contends that Claimant's deficiencies in self-care and capacity for independent living overlap. Claimant has gone to sleep-overs at other families' homes but comes back right away. He is unable to be at school without an aide. He cannot control his impulse to use "potty language" at school or at home.

Claimant's rigidity has ruined family trips. On one trip, the family went to a hotel with a water park. Claimant screamed after being in the hotel for 45 minutes. The family had to check out and returned home. Twice per month, Claimant accidentally urinates on himself. This has happened at school during the last few months. Claimant's father recounted an incident at school where Claimant went to the bathroom, he did not know what to do, he had an accident and urinated on himself, and then cowered in the bathroom until his mother came to pick him up. From that incident, Claimant's parents now send him to school with a change of clothes. Claimant's father testified that these bathroom accidents happen when Claimant is focused on something and does not want to stop to go to the bathroom. This has occurred at school and during play dates with friends.

LEGAL CONCLUSIONS

1. An administrative hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Act to appeal a contrary service agency decision. (Welf. & Inst. Code, §§ 4700-4716.) Claimant's parents requested a hearing, on Claimant's behalf, to contest WRC's proposed denial of Claimant eligibility for services under the Lanterman Act and therefore jurisdiction for this appeal was established. (Factual Findings 1-3.)

2. Generally, when an applicant seeks to establish eligibility for government benefits or services, the burden of proof is on him to prove by a preponderance of the evidence that he meets the criteria for eligibility. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161; Evid. Code, §§ 115, 500.) "Preponderance of the evidence means evidence that has more convincing force than that opposed to it. [Citations] . . . [T]he sole focus of the legal definition of 'preponderance' in the phrase 'preponderance of the evidence' is the quality of the evidence. The quantity of the evidence presented by each side is irrelevant." (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 324-325.)

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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. To prove the existence of a qualifying developmental disability within the meaning of Welfare and Institutions Code section 4512, a claimant must show that he has a "substantial disability." Pursuant to Welfare and Institutions Code section 4512, subdivision (j)(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.

5. Additionally, California Code of Regulations, title 17, section 54001 states, in pertinent part:

(a) "Substantial disability" means:

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

6. California Code of Regulations, title 17, section 54001, subdivision (b), provides, in pertinent part, that the "assessment of substantial disability shall be made by a group of Regional Center professionals of differing disciplines," and the "group shall include as a minimum a program coordinator, a physician, and a psychologist."

7. In addition to proving that he suffers from a "substantial disability," a claimant must show that his 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.)

8. (A) In this case, the only eligibility criterion at issue relates to "substantial disability" and whether Claimant has significant functional limitations in three or more of the areas of major life activity specified in Welfare and Institutions Code section 4512, subdivision (f), and California Code of Regulations, title 17, section 54001, subdivision (a)(2). WRC stipulated that Claimant has significant functional limitations in the area of self-direction. Thus, Claimant needs only to establish significant functional limitations in two other areas in order to meet the eligibility requirements under the Lanterman Act. Claimant has met his burden.

(B) The preponderance of the evidence established that Claimant has significant functional limitations in the areas of self-care and capacity for independent living. Dr. Kelly testified that there is overlap between self-care and self-direction and between self-care and capacity for independent living, such that a limitation in one area leads to an expectation of limitations in the other area. Thus, for example, Claimant's problems in self-direction (i.e., his ability to initiate and sustain attention to task) causes problems in self-care, in that he will remain fixated on a preferred task to such an extent that, for example, he will not stop to use the bathroom until it is too late and then have a toileting accident, or he will not stop to get something to eat or drink if he is hungry or thirsty. Deficiencies in self-care and self-direction may limit Claimant's capacity for independent living.

(C) In addition, WRC contends that because Claimant's autism spectrum diagnosis is on the mild level, his autism has a corresponding mild impact on his

functioning, as compared to his significant mental health history, which would have a more significant impact on his functioning. This contention is not persuasive. WRC's psychology consultant, Dr. Shilakes, concluded that Claimant's restricted interests, rigidity, and social communication deficits, due to autism, are "greatly impacting" his "functioning across settings," even in light of his history of emotional and behavioral issues. Dr. Kelly, in his testimony, acknowledged that untangling Claimant's deficits attributable to autism versus his mental health condition is a difficult task, and he could not say with certainty whether Claimant's problems are due to his autism, his mental condition, or both.

9. Based on the foregoing and the totality of the evidence, Claimant established he has the qualifying developmental disability of autism, and that his condition is substantially disabling. It was established by a preponderance of the evidence that he is eligible for regional center services under the Lanterman Act. (Factual Findings 1-24; Legal Conclusions 1-8.)

10. Any evidence or argument not specifically addressed in this decision were deemed not persuasive, not supported by the evidence, and/or unnecessary to the ultimate disposition of this appeal.

ORDER

Claimant's appeal is granted. Claimant is eligible for regional center services under the category of autism pursuant to the Lanterman Developmental Disabilities Services Act

DATED:

ERLINDA G. SHRENGER

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.