

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

SOUTH CENTRAL LOS ANGELES REGIONAL
CENTER,

Service Agency.

OAH No. 2018031175

DECISION

Irina Tentser, Administrative Law Judge (ALJ) with the Office of Administrative Hearings, heard this matter on May 8, 2018, in Los Angeles. Claimant was represented by his mother.¹ South Central Los Angeles Regional Center (SCLARC or Regional Center) was represented by Karmell Walker, 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 May 8, 2018.

ISSUE

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

EVIDENCE

Documentary: SCLARC's exhibits 1-8.

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

Testimonial: Sandra Watson, Ph.D., and Claimant's mother.

FACTUAL FINDINGS

PARTIES AND JURISDICTION

1. Claimant is a 13-year-old boy who lives at home with his mother, her boyfriend, and three younger siblings (two sisters and one brother). He visits his biological father once a month. Claimant seeks eligibility for regional center services on the basis of autism.

2. On September 18, 2017, SCLARC sent a letter to Claimant's mother informing her of its determination that Claimant is not eligible for regional center services. The letter explained that, although Claimant was given a diagnosis of Autism Spectrum Disorder by Regional Center, "his condition is not considered substantially handicapping." (Exh. 2.) No specific reasons were provided to mother as to why Claimant's autism was deemed not substantially handicapping.

3. On March 26, 2018, Regional Center requested for the Office of Administrative Hearings to set a Lanterman Fair Hearing because Claimant's mother filed a fair hearing request on her son's behalf appealing the eligibility denial. (Exh. 1.)²

CLAIMANT'S BACKGROUND

4. Claimant has attended approximately six schools over the years. Claimant's mother credibly testified, as corroborated by school records (Exhs. 6 and 7), that Claimant's latest school move, to attend seventh grade at Charles Drew Middle School in Fall 2017, was prompted by continued behavioral and academic issues he experienced

² The Fair Hearing Request was not submitted into evidence by the parties during the hearing.

at his former middle school, South Gate Middle School. (Exh. 7.) Claimant was failing his courses at South Gate and it was determined, through the individualized education program (IEP) process, in consultation with mother that he would benefit from a transfer to a school closer to home with smaller classes. As a result, he enrolled in Charles Drew. Mother reported that Claimant was prescribed medication around the time of the school transfer, the name of which she could not identify, that has helped Claimant focus in school.

5. According to mother, Claimant is performing better academically at Charles Drew than his prior middle school, and is enrolled in a combination of special education and general education classes. However, both mother and Claimant's most recent IEP (Exh. 6) report that Claimant continues to require near constant redirection in order to gain and maintain his attention, interest, and compliance when producing work. He has no friends, spending his time with either the school psychologist or at the library when not in the classroom. Claimant expresses feelings of not wanting to be in this world to the school psychologist; often seems to live in an imaginary world with a family of invented friends; and refers to his made-up friends when communicating with teachers in the classroom.

6. (a) Claimant was initially evaluated by the Los Angeles Unified School District (LAUSD) in November 2010, when he was five years old, based on Claimant's behavioral, attention, impulsive, and distractibility difficulties at school and at home. The LAUSD psychological evaluation ruled out autism and determined ADHD (attention deficit hyperactivity disorder) as the likely cause of Claimant's behaviors.³ (Exh. 8, p. 3.) After the 2010 evaluation, Claimant remained in a general education classroom.

³ The bases for the findings and conclusions of the 2010 evaluation are unknown as the evaluation was not submitted into evidence at hearing.

However, because of continued concerns regarding Claimant's social emotional skills, attention and concentration skills, peer relations, and talk completion, and peculiar behaviors that were negatively impeding his academic performance in the general education classroom setting, LAUSD conducted a psychological re-evaluation in 2012. As a result of the re-evaluation, Claimant was qualified for special education services by LAUSD in February 2012,⁴ when he was seven years old, under the eligibility of autism. (Exh. 8.) The findings and conclusions of the February 2012 evaluation are set forth in a written Psychological Evaluation Report. (Exh. 8.)

(b) The February 2012 evaluation was based on the results of assessment tools including, but not limited to, the Parent Interview, Behavioral Observation, Classroom Observation, Background Information Cumulative Files, Beery Visual Motor Integration (Fifth Edition), Test of Visual Perceptual Skills-3 (TVPS-3), Test of Auditory Processing Skills-3 (TAPS-3), Cognitive Assessment System (CAS), Gilliam Autism Rating Scale – 2nd Edition, Aspergers Syndrome Diagnostic Scale (ASDS), and Behavior Assessment Scales for Children – 2nd Edition (BASC-2). The evaluation found that "[Claimant's] cognitive ability falls within the average range." (Exh. 8, p. 12.) Below average skills (deficits) were noted in the areas of auditory processing skills, attention and overall social emotional concerns. Specifically, Claimant was described as easily distracted, lacking focus, and

⁴ Regional Center's Dr. Isis Jones' psychological evaluation incorrectly stated that Claimant was initially qualified for special education services by LAUSD in December 2010 under the eligibility of autism. (Exh. 3, p. 3.) In fact, LAUSD's psychoeducational evaluation report states that "autism was ruled out at the time of the [2010] assessment," and determined that Claimant's behavioral, attention, impulsive, and distractibility difficulties in both the school setting and in the home environment "appeared to be due to ADHD." (Exh. 8, p. 3.)

demonstrating impulsive behavior. (*Id.*, p. 13.) In sum, the evaluation determined that Claimant met the eligibility criteria for autism based on Claimant's: cognitive ability in the average range; deficits in pragmatic language; delays in social skills; extreme egocentricity; misreading or misinterpretation of social cues; inability to understand social communications; easy overwhelming by change; high anxiety, frustration with failure, preoccupation with certain subject matters, problems in maintaining on topic, strong rote memory, a history of withdrawal or relating to people inappropriately, continued impairment in social interaction from infancy through early childhood, an obsession to maintain sameness, preoccupation in things as opposed to people, extreme resistance of controls, and self-stimulating behaviors.

(c) The February 2012 evaluation recommended that Claimant be referred to an IEP team for appropriate eligibility and placement. In addition, given the nature of Claimant's difficulties, the evaluation recommended, among other things, that he be placed in a small group and provided individual instruction in basic reading, math, and written language; be provided with simplified instruction; number of transitions be reduced; directions should be repeated in a variety of ways to facilitate his understanding; and distractions be minimized in workspace to maximize concentrations.

7. (a) As noted, Claimant is eligible for special education services from his local school district as a student with the disability of autism. Claimant's IEPs, dated May 31, 2017 (May IEP) and November 28, 2017 (November IEP) were presented at hearing. (Exhs. 6 and 7.) The more recent November IEP provides, among other things, that Claimant will attend the Special Day Program at the General Education Site.

(b) Behavior.

1. The May IEP notes that Claimant has behavioral needs and "is able to follow one-step instructions with prompting. He can complete simple task [*sic*] when he is seated away from all distractions." (Exh. 7, p. 3.) Claimant's needs were described as

requiring redirection to gain and maintain his attention, interest, and compliance when producing work. Claimant required “paraphrasing and teacher prompting . . . to complete classroom tasks.” He is described as tending to stare off and not complete any work in class, continuing not to complete work after redirection. (*Ibid.*)

2. The November IEP notes that Claimant has behavioral needs and “often requires redirection in order to gain and maintain his attention, interest, and compliance when producing work. He continues to need paraphrasing and teacher prompting in order for [Claimant] to complete classroom tasks. [Claimant] tends to stare off and not complete some assignments in class.” (Exh. 6, p. 4.)

(c) Reading.

1. The May 2017 IEP describes Claimant as being able to read 146 words per minute with correct speed and intonation. (Exh. 7, p. 4.) In the area of reading, Claimant was given the “San Diego Quick Assessment,” and was able to decode words at an eleventh-grade level. When given a story to read at Claimant’s independent reading level, Claimant was described as being able to understand the main idea, the cause and effect and sequence in a story. Although Claimant’s decoding skills are above grade level, it was noted that Claimant is having difficulty in the area of reading comprehension, which was at approximately a third-grade level based on his inability to make inferences and recall details. (*Ibid.*)

2. The November 2017 IEP described Claimant’s decoding skills at above grade level, but noted that Claimant has difficulty in the area of citing evidence to support his claims. (Exh. 6, p. 3.)

(d) Writing Skills.

1. The May 2017 IEP described that Claimant is able to express his ideas in writing, and writes in complete sentences with proper capitalization, punctuation, and verb agreement. However, it was noted that it is difficult to get Claimant to write

because “he only writes when he is interested in the subject.” (Exh. 7, p. 3.) It was further noted that Claimant’s paragraphs lack organization, lacking a beginning, middle, and end and that he has difficulty writing a multiple paragraph essay. (*Id.*)

2. The November 2017 IEP described Claimant’s writing skills as able to write complete sentences with proper capitalization, but noted that Claimant has difficulty developing a topic with relevant facts, definitions, and concrete details. (Exh. 6, p. 3.)

(e) Math.

1. According to the May 2017 IEP, Claimant is able to add and subtract numbers with regrouping, multiply and divide one digit numbers, solve simple word problems, and read an analog clock. (Exh. 7, p. 4.) It was noted, however, that Claimant is having difficulty with multiplying and dividing numbers that have two or more digits and with fractions and percentages.. (*Id.*)

2. The November 2017 noted “[Claimant] has difficulty solving and constructing simple equations and inequalities to solve problems by reasoning about quantities.” (Exh. 6, p. 4.)

PSYCHO-SOCIAL ASSESSMENT BY MARITZA CORTES

8. (a) On June 23, 2017, SCLARC’s service coordinator Maritza Cortes conducted an initial intake meeting with Claimant and his mother. Generally, Ms. Cortes described Claimant as providing responses that “were sometimes irrelevant to the conversation at hand”; engaging in self-talk; moving his hands and grimacing; and discussing his imaginary friend “Mac.” (Exh. 4.)

(b) Fine/Gross motor skills: Ms. Cortes noted that Claimant is able to perform physical activities with no limitations. (Exh. 4.)

(c) Self-care: Ms. Cortes described the following, based on mother’s report: Claimant can self-feed using his fingers and eating utensils with spills and needs to be reminded to use a napkin. He will brush his teeth when reminded. Claimant can go to

the toilet independently, but does not wipe himself well after toileting. He is afraid of the shower and his mother has to help him by using a bucket. Claimant can dress himself, after repeated prompting by mother, but needs orienting his clothes as he often does not button or leaves the zipper open or his clothes on backwards. Within the house, Claimant's mother reported that he has a hard time following commands, but will comply with encouragement and prompts, but often seems not to care. With regards to safety awareness, Claimant knows street signs and how to cross the street, but is impatient and often runs to cross faster. (Exh. 4.)

(d) Social/Behavioral/Emotional: Ms. Cortes described the following, based on mother's report: Claimant initiates interaction with his peers, and wants to make friends, yet they do not have the patience to play with him. He has a hard time fitting in with kids his age, has difficulty with social boundaries, and likes to hug everybody. Claimant does not get along well with his siblings, who get mad and pick fights with Claimant because of his repetitive behaviors. Claimant loves to read books and learn about science. He is very interested in learning about space and wants to build a time machine and to find the cure for cancer. Claimant sometimes confuses fiction with reality. He has his own world, where he has an imaginary friend "Mac," and talks about his world as a place where he can do the things he wants (i.e., "In my world, I can do . . ."). Claimant's mother often has to confront him and tell him that his world is not real.

With regards to Claimant's behaviors, Claimant's mother reported that he has frequent tantrums. He does not display aggressive or self-injurious behaviors. He pushes away his younger brother and argues with his sisters. If he is frustrated, Claimant cries and says that no one understands him and that he would like to be in a different world. Claimant states that he does not want to hurt anyone and that he loves everyone. About unusual behaviors, Claimant exhibits repetitive body movements such as moving his hands; has to spin things in his hands; lines up or stacks up his toy cars, but does not

play with them; likes to play with toys that flash; has difficulty with transitions (cries and has a fit); does not like to get interrupted when he is talking; engages in self-talk and often makes sounds and grimaces; is peculiar with his food and has difficulty understanding changes. For example, if Claimant does not like the food they are serving at school, he will not eat and will not function in the classroom because he is hungry. (Exh. 4.)

(e) Communication: Ms. Cortes observed that Claimant is able to speak in a clear manner using sentences such as, "My favorite place is mine . . . ancient mines where I can find treasures." Claimant's eye contact was noted as fleeting. He needs repetition and prompts to follow commands.

(f) Cognitive: Claimant knew his age, date of birth and grade level. He can read and write, but struggles with reading comprehension. He has difficulty paying attention and needs redirection and prompts. (Exh. 4.)

(g) Based on the intake interview, Ms. Cortes recommended that a psychological evaluation be conducted of Claimant to evaluate for the presence of autism/intellectual disability and that the evaluation findings be presented to the interdisciplinary team to determine eligibility and obtain recommendations. (Exh. 4.)

PSYCHOLOGICAL EVALUATION BY DR. JONES

9. In August 2017, SCLARC consulting psychologist Isis Jones, Psy.D., completed a psychological evaluation of Claimant. Dr. Jones 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. Jones interviewed Claimant's mother, reviewed records, observed Claimant during two evaluation sessions, and administered the Adaptive Behavior Assessment System, Third Edition (ABAS-III), Autism Diagnostic Interview-Revised (ADI-R), Gilliam Autism Scale-Second Edition (GARS-3);

Wechsler Nonverbal Scale of Ability (WNV); and the Childhood Autism Rating Scale, Second Edition (CARS2-ST)

10. Dr. Jones administered the WNV to measure Claimant's cognitive functioning. The results of the WNV indicated that Claimant's overall cognitive ability as measured by the full-scale IQ was in the average range (61st percentile). Dr. Jones administered the ADI-R, using Claimant's mother as the informant, to assist in determining whether Claimant met the diagnostic criteria for autism. The results⁵ obtained on the ADI-R met the diagnostic cut-offs consistent with Autism Spectrum Disorder, evidencing deficits in social interaction and communication, as well as restricted, repetitive patterns of behavior and interests. Dr. Jones also administered the CARS2-ST, an additional tool used to assess for autism, using herself as informant, to screen for abnormalities in relating to people; imitation; emotional responses; body use; adaptation to change; visual response; listening response; taste, smell, and touch response and use; fear or nervousness; verbal and nonverbal communication; activity level; and level and consistency of intellectual response. Claimant's score of 32.5 suggested mild to moderate symptoms of Autism Spectrum Disorder.

11. To assess for adaptive functioning, Dr. Jones administered the ABAS-III. Claimant's general functioning fell into the low range of functioning (fifth percentile), indicating deficits in his adaptive skills. His performance revealed functioning in the low range in the social (third percentile) and practical (fifth percentile) domains, indicating significant challenges in leisure, interpersonal, health and safety, community use, home

⁵ The ADI-R results were as follows: Abnormalities in Reciprocal Social Interaction totaling 15 (autism cut-off equals 10); Abnormalities in Communication totaling 14 (autism cut-off equals 7); and Restricted and Stereotypic Patterns of Interest totaling 12 (autism cut-off equals 3). (Exhibit 3, p. 9.)

living, and self-care skills. His score on the conceptual domain fell in the below average range (twelfth percentile), signifying slight limitations in communication, functional academics, and self-direction. In the area of practical skills, his performance indicated an ability to function and get around the community, including shopping and using communication resources in the average range. Claimant's level of functioning inside the home, including cleaning, food preparation, performing chores and taking care of personal possessions, was in the low range. His ability to protect his physical well-being and prevent and respond to injuries, including following safety rules, showing caution, and using medicine when appropriate was in the below average range. Claimant's ability to perform self-care activities such as eating, dressing, and taking care of personal hygiene was in the extremely low range.

12. (a) Dr. Jones interviewed Claimant's mother. Claimant's mother reported significant concerns about Claimant's speech and language development. She indicated that prior to age three, Claimant only spoke to alert her of his immediate needs. She noted that, at that time, Claimant spoke in short phrases and sentences, but would not engage in conversations until age nine, when he met mother's boyfriends who talked to Claimant about his interests. Claimant's mother also reported he uses idiosyncratic speech, intermittently, as well as precise grammar.

(b) Regarding behavioral concerns, Claimant's mother reported that Claimant has temper tantrums that consist of excessive crying and screaming. His temper tantrums reportedly last for hours and are usually resolved with alone time or redirection to his other interests. Mother also reported that Claimant gets bored often, is easily distracted, has difficulty sitting still, climbs on furniture, and moves about a room, playing with different things, unless he is in a library.

(c) Regarding Claimant's social skills, mother reported that Claimant has difficulties socializing with peers. During conversations, she explained, Claimant focuses

on his interests and talks excessively, disallowing participation from others. According to mother, Claimant does not like being touched and has no friends.

(d) Regarding stereotypic and repetitive behaviors, Claimant's mother listed several. Claimant perseverates about his interests, which include all things related to science. Mother also reported odd play and ritualistic patterns with toys, such as flipping cars over (wheels turned up) and organizing them in straight lines and pretending basketballs and footballs are planets. Mother noted that this tendency impairs Claimant's ability to engage in play with others.

(e) Mother also described rigidity and excessive resistance. For example, mother reported that if Claimant does not like the food that is served for lunch at school, he not only will refuse to eat it, but he will also refuse to proceed with his schedule for the day until he is given something that he wants to eat, even going to the principal and asking to speak to the person who cooks the food. Mother reported that Claimant engages in echolalia and echopraxia, has an excellent memory, repetitively twists hangers back and forth with his wrists, and makes other gestures with his wrists frequently. Mother mentioned that Claimant has difficulties adjusting to changes in routine and transitions. As an example, she described that Claimant insisted on going to school the day after school ended for the summer. She also described that when Claimant removed from class for special education services, he wants to resume the same activity that he was doing before he left the class when he returns.

(f) Mother reported auditory sensitivity as well, as evidenced by Claimant covering his ears in response to sirens, cars passing, people talking loudly, etc. She further described engagement in sensory-seeking behavior by Claimant, such as touching everything, putting things he likes close to his eyes, getting close to and staring at others while they are talking, and smelling objects or items before eating or playing with

them. Mother disclosed that Claimant prefers playing with younger children, explaining that he has age-appropriate toys, but likes to play with his baby sister's light-up toys.

13. (a) Based on her evaluation, Dr. Jones concluded that Claimant met the DSM-5 diagnostic criteria for Autism Spectrum Disorder. (Exh. 3.)

(b) Dr. Jones found that Claimant demonstrated persistent deficits in social communication and social interaction across three out of three deficit criteria in social-emotional reciprocity, nonverbal communicative behavior, and developing and maintaining relationships. As evidence, Dr. Jones described that Claimant's behavior met the requirement of the foregoing deficits in that he avoided eye contact, was unable to sustain interaction and to engage with others around shared interests, had difficulty understanding and responding to social cues, and tended to monopolize conversations. Dr. Jones also cited Claimant's self-reported lack of close friendships besides his imaginary friend, "Mac."

(c) Dr. Jones found that Claimant demonstrated restricted, repetitive patterns of behavior, interests, or activities. Claimant perseverated about his interests, topics related to science. He also uses precise speech. Additionally, he exhibited sensory-seeking and repetitive behaviors, as he ran his hands across the table and fingers across the wall during session. Dr. Jones described observing Claimant twisting his fingers occasionally, and his self-disclosure that lately, he has been twisting them in a different way than he used to. In addition, long after his mother described Claimant had been to five different schools, Claimant suddenly began crying, saying he did not want to go to a new school because he didn't know about friends and it was going to be hard. According to Dr. Jones, this emotional reaction indicates a tendency to ruminate and be rigid.

(d) Dr. Jones found that a specifier of intellectual impairment is not supported, as Claimant's performance on the cognitive measure suggested intellectual abilities that meet age level expectancies.

(e) With regards to language impairment, Dr. Jones found that Claimant exhibited specifiers of language impairment due to history of and observed expressive language challenges.

14. Based her diagnosis of Claimant with Autism Spectrum Disorder (ASD),⁶ Dr. Jones recommended further behavior assessment to determine if there is a need for behavior intervention, and if so, to recommend the level of ABA (Applied Behavior Analysis) and other evidence-based intervention. In addition, Dr. Jones recommended that Claimant continue to receive special education services to improve academic performance and social emotional functioning, and social skills training and behavior therapy to further address social and other behavior skills.

APRIL 13, 2018 INFORMAL MEETING

15. (a) On April 13, 2018, an informal meeting was held at SCLARC between Executive Director Designee and Fair Hearing Coordinator Karmell Walker and Claimant's mother to discuss Claimant's appeal of SCLARC's decision. Subsequently, Ms. Walker sent an informal decision meeting letter (informal decision letter) dated April 16, 2018 to Claimant's mother explaining the bases for SCLARC's finding Claimant ineligible. (Exh. 5.)

(b) In the informal decision letter, Ms. Walker summarized Claimant's behaviors, based on mother's report, that were discussed at the meeting, including, but not limited to: Claimant having trouble socializing in school; stating that he does not want to be here anymore due to being bullied; exhibiting frustration at the way he is being treated

⁶ Dr. Jones's diagnosed Claimant with 299.00 Autism Spectrum Disorder without accompanying intellectual impairment, with accompanying language impairment; Level 1 Social Communication; and Level 1 Repetitive/Restrictive. (Exh. 3, p. 7.)

at school; mother's having to "stay on" Claimant about his hygiene and use a bucket to rinse him in the shower because he does not like the sensation of water; Claimant's twitching his eye, mouth, and neck area "look at things on his face"; making "creepy" faces while at school so that the other kids will leave him alone; deteriorating speech patterns including starting a statement with clarity and then mumbling towards the end of the sentence; continued need for prompting to dress himself; mix of special education and general education classes; Claimant's frustration with himself and resultant crying; Claimant telling mom he sees visions of something bad happening to her, causing him to be upset for extended periods of time until mother can reassure him that the vision is not true; Claimant zoning out at times and being unaware of his safety and surroundings, with mother citing that rather than waiting for a green light, Claimant will walk out into the street on the red light; and, having imaginary friends but not real friends. The letter also asserted that Claimant's mother had stated that Claimant is doing well in his classes, is respectful, but had trouble socializing.

(c) The informal decision letter notified Claimant's mother that, after reviewing the information provided by her at the April 13, 2018 meeting, SCARLC determined to uphold its previous decision to deny eligibility, citing Dr. Jones's psychological assessment, Ms. Cortes's psycho-social assessment, and Welfare and Institutions Code section 4512, subdivision (a). Aside from providing a summary statement that Claimant's autism condition was "not considered to be substantially handicapping," the informal decision letter provided no explanation to Claimant's mother how "substantially handicapping" was defined by SCLARC and how that definition was applied in making the Regional Center's decision to deny Claimant's eligibility. (Exh. 5.)

SUBSTANTIAL DISABILITY

16. Claimant has a diagnosis of Autism Spectrum Disorder, which SCLARC does not dispute. Claimant was first diagnosed in February 2012. The diagnosis was

confirmed by Dr. Jones in August 2017. Given that diagnosis, the determinative issue for SCLARC's 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. Sandra Watson, Ph.D., is SCLARC's Chief of Clinical Services psychologist. Dr. Watson was a member of the seven-person eligibility team that determined Claimant was not eligible for services. Dr. Watson's testified at the hearing regarding the eligibility team's determination.

18. 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. Jones (Exh. 3) and Ms. Cortes's psycho-social assessment (Exh. 4.) It does not appear that Claimant's school records, including the May 2017 and November 2017 IEPs were considered by the eligibility team in rendering its decision.

19. At hearing, Dr. Watson testified regarding Dr. Jones's Psychological Evaluation report, as Dr. Jones did not testify at the hearing. In addition, while Dr. Watson was not present at the April 13, 2018 meeting held between Ms. Walker and Claimant's mother, Dr. Watson also testified regarding the meeting and April 16, 2018 informal meeting decision that was sent to Claimant's mother. (Exh. 5.) Ms. Walker, who was present, did not testify.

20. In reviewing Dr. Jones's evaluation, Dr. Watson acknowledged that Claimant has "some deficits in self-care," but asserted that based on Claimant's mother's purported statements at the April 13, 2018 informal meeting that Claimant was doing well in school, his autism was not substantially disabling. Dr. Watson further asserted that the system that Claimant's mother had developed to wash Claimant, (i.e., having her

wash him with a bucket in the shower) indicated that he exhibited adequate self-care. In addition, Dr. Watson testified that, because Claimant's mother had reported at the informal meeting that he could dress himself if prompted, he exhibited sufficient self-care.

21. With regards to the categories of receptive and expressive language and learning, Dr. Watson testified that Claimant did not have substantially handicapping deficits. In support of her determination, she again asserted that, based on Claimant's mother report during the informal meeting, as described in the informal meeting decision, Claimant was doing well in school and normally communicated well with his mother. Dr. Watson further testified that Claimant's cognitive scores on the WNV were "good," indicating a lack of deficit in his ability to learn.

22. Self-direction refers to a person's ability to initiate and sustain attention to task. Dr. Watson acknowledged that Claimant had some deficits in self-direction, noting that Claimant had scored in the low range on the ABAS-III. (Factual Finding 11.) However, she dismissed those deficits by citing to Claimant's Community Use score of nine in the Practical portion of the ABAS-III, testifying that this was a relatively high score that allowed her to "assume" Claimant could manage self-direction in the future. As such, the impact of autism on Claimant's functioning was deemed to be mild.

23. According to Dr. Watson, the eligibility team provided no consideration as to whether Claimant's autism was substantially disabling in the areas of economic (6) capacity for independent living; and (7) economic self-sufficiency based on Claimant's age. Claimant's mobility was not considered by the eligibility team because it was not identified as an issue in Ms. Cortes's psycho-social report.

CLAIMANT'S CONTENTIONS

24. Claimant's mother 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 IEPs. Claimant's mother disagrees with Dr. Watson's testimony and was confused about the bases for Regional Center's decision that was not eligible for services, arguing that his autism is substantially disabling. She testified that Claimant's behavior was like a six-year old, in that he was unable to care for himself in most respects and was often disoriented. She described that Claimant's behavior had become more aggressive in the past six months as his frustration has increased, testifying that he had begun to hit his younger brother when they fought. As more fully described at Factual Findings 4, 5, 12, 15b, Claimant's mother testified that Claimant mixes fantasy and reality; has no real friends, relying in an imaginary world that he references in school when his teachers asks him academic questions, thus negatively impacting his learning; and spends time at school with adults, such as his school psychologist. Claimant's mother disputed that his self-care and self-direction are not substantially disabling, testifying, for example, that while Claimant can put on his clothes if they are laid out for him and she pushes him, he does so incorrectly, putting clothes on backwards. As an example of Claimant's deficits and inability to care for himself, she described that Claimant does not know where he lives, often walks past his home when he, his siblings, and mother walk home from school because he is, presumably, so engrossed in his imaginary world. Claimant's mother does not allow Claimant to go anywhere alone because of his inability to function in the community. She described that Claimant will have often have a temper tantrum when crossing the street and the light changes before he gets to the other side.

DISCUSSION

25. In this case, Dr. Watson's testimony is unpersuasive. Dr. Watson's testimony relies on Claimant's average cognitive ability and incomplete data, seemingly ignoring significant issues in Claimant's self-care, self-direction, and learning identified

by Dr. Jones' psychological evaluation, Claimant's school records, and Claimant's mother's testimony. Dr. Watson's assertion that Claimant, as a 13-year-old boy, does not have significant delays in self-care is unsupported by the evidence that he cannot shower without his mother being there to wash him with a bucket, and Claimant's low score in adaptive functioning on Dr. Jones's evaluation (Exh. 3, p. 6.)

26. Similarly, Dr. Watson's testimony that Claimant is not substantially disabled in the area of self-direction is unsupported by other credible corroborating evidence and is based on unfounded assumptions. As noted, self-direction refers to a person's ability to initiate and sustain attention to task. Problems with socialization and social pragmatics are generally included in the area of self-direction, not receptive and expressive language. Self-direction is a problem area for Claimant, as indicated by his May 2017 and November 2017 IEPs, in that he requires near constant redirection in the classroom, which negatively affects his ability to learn. During her testimony, Dr. Watson did not address Claimant's issues at school except to rely on a hearsay statement by mother purportedly made during an informal meeting to Ms. Walker that Claimant was doing well in school. Inadequate and cursory consideration and a lack of explanation was provided by Dr. Watson to the fact that Claimant has changed schools six times due to his ongoing autism related issues and to the difficulties he has in self-direction as described by his IEPs and by Dr. Jones psychological evaluation.

27. While Regional Center's eligibility team, according to Dr. Watson, did not consider Claimant's economic self-sufficiency and capacity for independent living because of his age, the complete omission of these categories is unwarranted by the factual circumstances, and by the recognized interrelationship between self-care and capacity for independent living. Claimant's inability to, for example, to engage in the common activities of a 13-year-old teenager should have been considered by Regional Center. The fact that Claimant, based on mother's credible report, cannot go anywhere

without supervision, is often unaware of where he lives, and mixes fantasy and reality, indicates that his autism is substantially disabling for age-appropriate levels of economic self-sufficiency and independent living.

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 mother requested a hearing, on Claimant's behalf, to contest SCLARC'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.)

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 (1)(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 (A), and California Code of Regulations, title 17, section 54001, subdivision (a)(2). Claimant needs to establish significant functional limitations in three 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, self-direction, and capacity for independent living. 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 his imaginary world to such an extent that, for example, he will pass his home without stopping. Deficiencies in self-care and self-direction limit Claimant's capacity for independent living and economic self-sufficiency.

(c) In addition, SCLARC contends that because Claimant's autism spectrum diagnosis is on the mild level, his autism has a corresponding mild impact on his functioning. This contention is not persuasive in light of SCLARC's psychology consultant, Dr. Jones's recommendation, after describing the overall significant impact of Claimant's autism-related behavior and functioning, warranted "further behavioral assessment . . . to determine a need for behavioral intervention." (Exh. 3, p. 8.)

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 1-27; 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:

IRINA TENTSER

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.