BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: CLAIMANT, v. ALTA CALIFORNIA REGIONAL CENTER, Service Agency.	OAH No. 2018060450

DECISION

The fair hearing in this matter was heard by Administrative Law Judge Marcie Larson (ALJ), Office of Administrative Hearings (OAH), State of California, on September 4 through 7, 2018, in Sacramento, California.[1]

Alta California Regional Center (ACRC) was represented by Robin Black, Legal Services Manager.

Claimant's mother represented claimant.

Evidence was received, the record was closed and the matter was submitted for decision on September 7, 2018.

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[1] This matter was conducted as a consolidated hearing with two fair hearing requests for two of claimant's siblings, OAH Case Nos. 2018060468 and 2018060463. Separate decisions have been issued for those matters. Interpreters Maria Fletes, Jennifer Gibson and Raquel Sigal were sworn and provided English/Spanish and Spanish/English translation for claimant's mother.

ISSUES

Does claimant qualify for services from ACRC under the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500 et seq., because she is an individual with autism, or intellectual disability, or because she has a disabling condition that is closely related to intellectual disability or requires treatment similar to that required for individuals with an intellectual disability?

FACTUAL FINDINGS

1. Claimant was born in December 2002. Claimant is currently 15 years old. Claimant lives with her parents and five siblings, in Sacramento, California. On November 15, 2016, claimant was assessed at the Kaiser Permanente Autism Spectrum Disorders Center (Kaiser Center). Thereafter, claimant was diagnosed with Autism Spectrum Disorder (ASD).

2. In approximately March 2017, claimant's mother sought services for claimant from ACRC under the Lanterman Act, for ASD. On May 16, 2018, ACRC denied her request, asserting that claimant was not eligible for regional center services because she does not have autism, intellectual disability, or a disabling condition that is closely related to intellectual disability, nor requires treatment similar to that required for individuals with an intellectual disability. There was also no evidence that claimant had epilepsy or cerebral palsy. ACRC based the determination on a Social Assessment completed by David Webb, M.A., a psychological evaluation completed by Katherine Redwine, Ph.D., and other medical, education and psychological records provided to ACRC.

3. Claimant appealed the denial. A fair hearing was held on her appeal. During the fair hearing, claimant's mother argued that based on the Kaiser Center

evaluation, claimant is eligible for ACRC services under the Lanterman Act because claimant is an individual with ASD.

KAISER PEDIATRIC DEVELOPMENTAL BEHAVIOR EVALUATION

4. In 2015, claimant was referred by her pediatrician to The Permanente Medical Group, Inc. Pediatric Developmental Services (Kaiser Pediatric), for an evaluation "due to concerns for intermittent urinary incontinence, difficulty with self care skills, and emotional dysregulation." On July 19, 2015, Meghan Davignon, M.D. conducted an evaluation of claimant and prepared a report. Claimant was 12 years, seven months old at the time.

5. Claimant was accompanied to the evaluation with her parents and siblings. The interview was completed primarily with claimant's mother, who spoke Spanish. Claimant speaks English. Claimant's mother reported that she became concerned with claimant's development when she was three and a half years old. Claimant fell from a second-story window and "sustained multiple injuries including a head injury." Since the accident, claimant had displayed concerning behavior.

Claimant's mother explained that her current concerns about claimant included that she appeared to be forgetful. Claimant often lost her phone and had to be reminded to do her homework. She would not engage in self-care, including taking care of personal hygiene and picking out clothes to wear. Claimant preferred to play with younger girls. Claimant often became angry and did not like to be touched or kissed. She would also become upset when she could not understand her mother. At times, claimant's father, who spoke Spanish and English, and her siblings, would have to translate. Claimant's mother also explained that one of claimant's brothers has ASD and intellectual disability. Claimant understands her brother is disabled but she hits him when she is angry and has stated that she wanted to kill him. Claimant's mother also explained that claimant prefers to be alone in her room, in bed, playing on her

cellphone, rather than engaging with her family. She had a history of stating that she would kill herself if her mother died. She also stated that claimant appeared to hallucinate and had a tendency to eat her hair.

6. Dr. Davignon obtained information concerning claimant's past medical history, which included a diagnosis of "educational counseling problems" and anxiety as of October 10, 2014, and depressive disorder as of March 30, 2015. Dr. Davignon also noted a family history of two siblings with autism and intellectual disability, and her father with bipolar disorder.

7. Dr. Davignon obtained information concerning claimant's educational history, including reviewing report cards and teacher notes, which indicated that claimant was "meeting standards or approaching standards for English/Language Arts (more difficulty with reading comprehension, writing) … [and] meeting standards in Math and Science." Dr. Davignon also reviewed a Neuropsychoeducational evaluation completed on March 22, 2011. The summary included the following relevant findings:

> Average intelligence, average academic achievement, age typical attention, working memory, executive functions, language, visual perceptual, visual-spatial and construction, memory and learning, and sensory motor tasks. Relative weakness in semantic fluency, reproduction of complex figures, withdrawal from difficult tasks-though better explained by anxiety. Felt [claimant] had not sustained permanent brain injury but did have chronic adjustment difficulties.

8. Dr. Davignon administered claimant several tests including the Kaufman Brief Intelligence Test, which tests academic skills. She noted that claimant's verbal score

was just below average and her non-verbal score was average. The Wide Range Achievement Test tested claimant's achievement in word reading, sentence comprehension, spelling, math computation and reading composite. Claimant's scores were at, near or above grade level in all areas except sentence comprehension and math computation. Reading composite was not reported "due to significant differences in the component scores." Results from the Beery Buktenica Developmental Test of Visual Motor Integration, which tested visual, perceptual and fine motor skills, were borderline.

9. Dr. Davignon also documented various observations of claimant during the evaluation. She opined that claimant "engaged with testing easily," but that she "tended to give up somewhat easily on items that were more challenging." Additionally, "she did not often integrate eye gaze and vocalizations, and few gestures were noted during the evaluation." Claimant had a "fairly flat facial expression throughout the evaluation." However, at one point when claimant's mother was crying, claimant became "somewhat tearful" and told her mother to "stop".

10. Dr. Davignon noted under "Impressions" that claimant had a "history concerning of on-going depression, possible auditory and visual hallucinations, trichotillomania[2], and intermittent suicidal ideation as well as previously expressing homicidal thoughts …" Dr. Davignon also noted that "although prior neuropsychological testing did not indicate executive function deficits, [claimant's] history is concerning for difficulties" with executive function including, attention deficits, response inhibition, emotional control, task initiation, planning/prioritization and organization.

Dr. Davignon noted that, based on claimant's parents' report, claimant has two siblings with ASD. Additionally, claimant's parent reported that claimant had a history of difficulty communicating her wants and needs and had limited eye contact during the

[2] Trichotillomania refers to a mental disorder associated with hair pulling.

evaluation. As a result, Dr. Davignon recommended further screening for ASD. Dr. Davignon also "strongly recommended" a psychiatric evaluation for "diagnostic clarification and treatment." Dr. Davignon also opined that claimant "may benefit from cognitive behavior therapy and positive behavioral support around skills to help overcome some of her executive function difficulties."

KAISER CENTER ASD EVALUATION

11. Claimant was referred to the Kaiser Center for evaluation by Sandra Lai, M.D. The referral information noted that claimant's parents had concerns regarding claimant's "long-standing social difficulties, stereotyped behaviors, restricted interests, sensory sensitivities and emotional sensitivity." It was noted that claimant was "previously diagnosed with Anxiety Disorder, Depressive Disorder and Learning Disorder by her psychiatric team." On November 15, 2016, an ASD evaluation was performed by Marzieh Forghany, Psy.D. Clinical Psychologist, with diagnostic consultation from Megan Rhoads, Psy.D., Psychologist Assistant. Dr. Forghany issued a report detailing her findings. No Kaiser Center practitioners testified at hearing.

12. Dr. Forghany obtained background information concerning claimant. At the time of the evaluation claimant was 13 years, 10 months old. She was completing eighth grade in a regular middle-school class. Claimant lived with her parents and five siblings ranging in age from six to 16 years old. Claimant's parents are Hispanic and speak Spanish. English and Spanish is spoken in the home. Claimant speaks English. A Spanish-language interpreter was present at the evaluation to translate for claimant's mother.

During the evaluation, medical, family, psychiatric, psychosocial and developmental histories were obtained, and claimant's Kaiser medical and psychiatric records were reviewed. Additional information that was obtained and reviewed include the following: Developmental and Medical History Form, Education, Social and

Behavioral Form; Social Communication Questionnaire (SCQ)-Lifetime version; the Achenbach Behavior Rating Questionnaire, including the Child Behavior Checklist (CBCL) completed by claimant's parents; the Teacher Report Form (TRF); and the Youth Self-Report (YSR).

Additionally, claimant's mother was interviewed and tests were administered, including the following: Differential Ability Scales, School Age, Second Edition (DAS-II); Autism Diagnostic Observation Schedule, 2nd Edition (ADOS-2): Module 3; a mental status interview of claimant; the Adaptive Behavior Assessment System, 3rd Edition (ABAS-3); and Differential Ability Scale, 2nd Edition (DAS-II). Dr. Forghany also reviewed the Diagnostic and Statistical Manual for Mental Disorders, Fifth Edition (DSM-5).

13. Claimant's mother reported that that sources of stress affecting their family included claimant's behavior and social difficulties. Additionally, psychiatric issues affecting claimant's father who was diagnosed with bipolar disorder and schizophrenia and claimant's two brothers who were diagnosed with ASD, contributed to the family's stress.

14. Claimant's mother stated that claimant's medical history included traumatic brain injury at age three. Around that same age, claimant showed concerns with her social development. She did not "interact with others and her communication was 'poor'." She was also rigid and aggressive. She showed "aversive reactions to texture/tactile and displayed sensory seeking behaviors." Claimant was diagnosed with depression and anxiety. She was prescribed Prozac for her symptoms but was not taking the medication. Claimant also showed "some symptoms and features of psychotic disorder (e.g., hallucinatory experience, frankly bizarre thinking)." Claimant's mother explained that claimant had reported seeing "'a headless person twice'." However, claimant denied such experiences to Dr. Forghany.

15. The SCO questionnaire completed by claimant's parents is a "40-item parent-report screening measure that measures symptoms associated with autism." On the form, claimant's parents described claimant as "having shown a significant number of ASD symptoms over her lifetime." Additionally, the Achenbach Child Behavior Checklist, completed by claimant, her mother and her teacher, which is "used to assess behavior problems and social competencies," indicated that claimant's mother "reported more problems compared to [claimant's] teacher."

Specifically, claimant's mother "endorsed numerous symptoms in the clinically significant range." Both claimant's mother and claimant reported that she "has displayed many emotional problems, social difficulties, unusual behaviors, somatic symptoms/physical complaints, aggressive and oppositional problems, and anxiety problems." Claimant's teacher did not rate claimant with a score above average or indicating clinical significance in any area. Dr. Forghany did not address how the significant discrepancy between the teacher's responses and claimant and her mother's responses affect the validity of the findings.

16. Claimant's parents completed the ABAS-3, which is a "measure of the functional skills of individuals from birth to adulthood necessary for daily living, focusing on what they do without help from others and whether they do them when needed." Claimant's parents ranked claimant as extremely low for conceptual, social and practical areas.

17. Claimant's cognitive functioning was tested with the DAS-II, which is an "individually administered battery of cognitive subtests for children and adolescents." Dr. Forghany noted that claimant "demonstrated excellent focus and attention. She appeared to give her best efforts." Overall, claimant's scores fell into the "low to average range of intellectual functioning." Dr. Forghany noted that there were "discrepancies between cluster scores" that should be interpreted with "caution."

18. Claimant was assessed using the ADOS-2, Module 3, which is a "semi-structured, standardized assessment of communication, social interaction and play or imaginative use of materials for individuals who have been referred because of possible autism or other pervasive developmental disorders." The assessment is broken into several sections. For the "Language and Communication" section, Dr. Forghany noted that claimant "was often difficult to understand," but she did not engage in "echolalia, nor did she use stereotyped words or phrases." Additionally, she "spontaneously offered information about her experiences and interests, such as summer vacations, and her grandparents." However, she never asked Dr. Forghany any questions, "even when probed," and there was "[l]ittle reciprocal conversation."

Under "Reciprocal Social Interactions," Dr. Forghany noted that claimant had "poorly modulated" eye contact for "social means." She "directed a few smiles when talking about relatives, but overall her affect was limited in range." She "demonstrated some insight into typical social relationships as well as the feelings of others, but less than expected based on her level of intelligence and age." Dr. Forghany also noted that there was "a slight unusual quality to [claimant's] social overtures, such as dropping leads to follow, interrupting and talking over [Dr. Forghany]." She responded to "most social contexts," but "her responses were somewhat limited and socially awkward." Dr. Forghany further noted that "the rapport was fairly comfortable, but not sustained."

For the "Imagination" section, Dr. Forghany noted that claimant "did not have any difficulties when required to create a story with unrelated items." Additionally, claimant "engaged in a creative reciprocal play" with Dr. Forghany and "created a coherent story during the Creating a Story activity."

Under the "Stereotyped Behaviors & Restricted Interest" section, Dr. Forghany noted that claimant "engaged in brief sensory interests (e.g., rubbing her face.)." However, she did not have "stereotyped motor mannerisms," did not engage in self-

harm, nor did she "make excessive references to highly specific topics," or engage in "compulsions or rituals."

Dr. Forghany opined that claimant "displayed several behaviors consistent with [ASD]." Specifically, Dr. Forghany opined that the "Social Interaction, Communication, and Restricted and Repetitive Behavior Total score exceeded the cut-off for 'autism,' and her score for autism (measure of symptom severity that takes into account the child's age and language abilities) was in the 'High' range." Dr. Forghany did not list the scores in her report.

19. Dr. Forghany utilized the DSM-5 criteria for ASD. DSM-5 section 299.00, ASD, lists the follow Diagnostic Criteria that must be met in order to diagnosis an individual with ASD:

> A. Persistent deficits in social communication and social interaction across multiple contexts, as manifested by the following, currently or by history (examples are illustrative, not exhaustive; see text):
>
> 1. Deficits in social-emotional reciprocity, ranging, for example, from abnormal social approach and failure of normal back-and-forth conversation; to reduced sharing of interests, emotions, or affect; to failure to initiate or respond to social interactions.
>
> 2. Deficits in nonverbal communicative behaviors used for social interaction, ranging, for example, from poorly integrated verbal and nonverbal communication; to abnormalities in eye contact and body language or deficits in

understanding and use of gestures; to a total lack of facial expressions and nonverbal communication.

3. Deficits in developing, maintaining, and understanding relationships, ranging, for example, from difficulties adjusting behavior to suit various social contexts; to difficulties in sharing imaginative play or in making friends; to absence of interest in peers.

Specify current severity:

Severity is based on social communication impairments and restricted, repetitive patterns of behavior (see Table 1).

B. Restricted, repetitive patterns of behavior, interests, or activities, as manifested by at least two of the following, currently or by history (examples are illustrative, not exhaustive; see text):

1. Stereotyped or repetitive motor movements, use of objects, or speech (e.g., simple motor stereotypes, lining up toys or flipping objects, echolalia, idiosyncratic phrases).

2. Insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior (e.g., extreme distress at small changes, difficulties with transitions, rigid thinking patterns, greeting rituals, need to take same route or eat same food every day).

3. Highly restricted, fixated interests that are abnormal in intensity or focus (e.g., strong attachment to or

preoccupation with unusual objects, excessively circumscribed or perseverative interests).

4. Hyper-or hypo-reactivity to sensory input or unusual interest in sensory aspects of the environment (e.g., apparent indifference to pain/temperature, adverse response to specific sounds or textures, excessive smelling or touching of objects, visual fascination with lights or movement).

Specify current severity:

Severity is based on social communication impairments and restricted, repetitive patterns of behavior (see Table 1).

C. Symptoms must be present in the early developmental period (but may not become fully manifest until social demands exceed limited capacities, or may be masked by learned strategies in later life).

D. Symptoms cause clinically significant impairment in social, occupational, or other important areas of current functioning.

E. These disturbances are not better explained by intellectual disability (intellectual developmental disorder) or global developmental delay. Intellectual disability and autism spectrum disorder frequently co-occur; to make comorbid diagnoses of autism spectrum disorder and intellectual disability, social communication should be below that expected for general developmental level.

(Italics and bolding in original.)

20. Dr. Forghany opined that claimant demonstrated marked deficits in each of the three diagnostic criteria in Criteria A. Dr. Forghany did not provide any examples in the table which lists the DSM-5 ASD criteria. However, in the narrative of her report, she provided examples based on her observations and claimant's mother's report that supported her opinion that claimant met each criterion. For the first criterion of Criteria A, which is described as "social emotional reciprocity," the only example that Dr. Forghany included based on her observations was that claimant did not ask her questions "despite many presses and opportunities." All of the remaining explanations that supported Dr. Forghany's opinions were based on claimant's mother's report. These included that claimant's conversations are "one-sided," that claimant has difficulty "expressing her emotions," that she "takes things literal" and does not know how to take sarcasm and that she has difficulty communicating her needs at home and school.

Dr. Forghany also determined that claimant had deficits in the second diagnostic criterion for Category A: "nonverbal communicative behaviors used for social interaction." Two of the four examples Dr. Forghany used to support this finding were based on claimant's parents' report, not observations made by Dr. Forghany. Specific examples observed by Dr. Forghany included that she displayed "limited range of facial expressions (often appear flat or neutral)." Dr. Forghany also observed that claimant showed "little modulation in her tone of voice when speaking." Dr. Forghany described her tone of voice as "very soft, flat and monotone." However, Dr. Forghany also noted that claimant "used a wide range of gestures during [the] evaluation (descriptive, expressive and emphatic gestures)." Claimant's parents reported that she had inconsistent eye contact that was "brief and on her own terms." They also reported "poor or odd use of body posturing and/or spacing when interacting" but gave no specific instances or examples of this type of behavior.

Dr. Forghany determined that claimant had deficits in the third diagnostic criterion for Category A: "deficits in developing and maintaining relationships, appropriate to developmental level." Dr. Forghany included 13 bullet points of examples, all of which appeared to be based on claimant's parents' report, rather than specific observations made by Dr. Forghany. The examples provided by claimant's parents included that claimant is immature compared to her peers, she has difficulties developing and maintaining friendships, but that she has had two friends at school that she had known since pre-school, that she prefers to stay in her room and watch movies, that she displays aggressive behavior towards her parents and siblings, that she does not notice others' distress and does not express guilt or embarrassment, and that she has never showed any interest in pretend play with other children.

21. Dr. Forghany opined that claimant demonstrated marked deficits in three of the four diagnostic criteria in Criteria B. Dr. Forghany's determination is based exclusively on claimant's parents' report. For the first diagnostic criterion described as "stereotyped or repetitive speech, motor movements, or use of object," Dr. Forghany determined that claimant had "some" symptoms. Examples provided by claimant's parents occurred when she was younger, included "activating light switches repeatedly," "opening and closing doors," and "lining up Lego pieces and stacking toys repetitively."

Dr. Forghany also determined that claimant met the second diagnostic criterion which is described as "excessive adherence to routines …" Examples provided by claimant's parents included that she had "significant difficulties with transitions," rigidity, and that she wants "exactness" when given a time frame. She also eats alone in her room every day.

For the third diagnostic criterion described as "highly restricted, fixated interests that are abnormal in intensity and focus," Dr. Forghany determined that claimant met the criterion based on claimant's parents' report that she had "strong interests in

watching certain movies (she watches the same movie over and over again)." She also watched the same television shows. No other examples other than claimant's media consumption were identified.

Dr. Forghany also determined that claimant met the fourth diagnostic criterion described as "hyper or hypo-reactivity to sensory input or unusual interest in sensory aspect of the environment …" Examples provided by claimant's parents included that she has a "severe aversion to tactile/texture" and that she "sleeps naked." She also pulls and eats her hair, picks her skin, chews on her nails and breaks "raw noodles with her fingers and says it feels good."

Dr. Forghany did not indicate or provided any explanation as to whether claimant met Diagnostic Criteria C, D, or E. Dr. Forghany opined that claimant did not have accompanying intellectual or early language impairment.

22. In her report, Dr. Forghany opined that claimant:

> … presents with a complex diagnostic picture. She had presented with long-standing and significant impairment in functional social-communication and socializations, especially in her development of peer and reciprocal social interactions. These deficits exist in conjunction with equally long-standing rigidity/inflexibility (which has manifested itself in many forms), her persistent preoccupations with a narrow range of interests, and sensory-driven behaviors and sensitives. Together, this pattern of symptoms is consistent with an autistic spectrum disorder (ASD) … The severity of her ASD was determined to be mild.

> [Claimant's] strengths, lack of observed severity in her ASD symptoms, and other abilities are indicative an atypical ASD presentation. For example, when she is not upset, she can present as a typical teenager. This, along with her language skills and overall cognitive functioning (see DAS-II results), indicate that she is well into the high-functioning end of the autistic spectrum.

Dr. Forghany further opined that ASD is "often associated with other neurodevelopmental, mental or behavioral disorders." Claimant "has been diagnosed with Anxiety Disorder, Depressive Disorder, Educational Problems, and Learning Disorder." Also, based on claimant's mother's report, claimant suffers from "occasional visual hallucinations," which claimant denies. Based on these findings, Dr. Forghany recommended that claimant's "psychiatric team" monitor her symptoms. She also recommended that claimant be evaluated for speech and occupational therapy, to contact claimant's school district for educational services, in addition to providing information about various resources that may be available to claimant and her family.

NATOMAS UNIFIED SCHOOL DISTRICT TESTING

23. On May 4, 2017, claimant underwent an academic assessment through Natomas Unified School District (Natomas). At that time, claimant was 14 years, five months old and attended eighth grade at Natomas Middle School. The purpose of the assessment was to "provide more complete information regarding her academic progress and current eligibility for special education services." Amy Mathison, M.Ed., Spec.Ed., Resource Teacher at Natomas administered the testing and issued a report dated May 18, 2017.

24. Ms. Mathison administered claimant the Woodcock-Johnson IV Tests of Achievement (Woodcock-Johnson), to measure claimant's "academic achievement and oral language abilities." Ms. Mathison noted that claimant was "quiet throughout the testing, but when she did talk, conversational proficiency seem typical for her age level." Claimant's "Reading Cluster Scores" fell into the average and below average range. Her standard score for Math was in the average range. Likewise, her "Written Language Scores" were in the average range. The combined measure of word reading, math calculation, and spelling skills, was considered "low average." Claimant's academic fluency which measured her "ability to quickly read and understand short sentences, do simply math calculations quickly and write simple sentences quickly," also fell in to the low average range. Additionally, claimant's academic application which "measures her ability to apply her skills to solve academic problems" was in the low average range.

25. The results of claimant's performance in the Woodcock-Johnson were incorporated into a Psychological-Educational Evaluation (Natomas Evaluation) completed on May 4, 5, 8, 10, 15, and 16, 2017, by Anthony Da Marto, M.S., School Psychologist for Natomas. Mr. Da Marto issued a report dated May 18, 2017. The purpose of the Natomas Evaluation was to respond to a referral made by claimant's parents to assess whether claimant was "eligible and would benefit from special education services." Claimant's parent's informed Natomas that the Kaiser Center had diagnosed claimant with ASD. Natomas was also aware that claimant was diagnosed with anxiety and depressive disorders. As a result, Natomas agreed to conduct an evaluation of claimant to determine if she met "the special education criteria as a student" with ASD, as well as "determine if she qualifies for special education under any other eligibility categories."

26. The "Method of Data Collection" for the Natomas Evaluation included an interview of claimant, review of cumulative records, classroom observations, and

assessment observations. Claimant was also administered various tests to evaluate cognitive ability, working memory, visual-motor integration and language. In addition, behavior and ASD assessments were administered, including the: Behavior Assessment Systems for Children (BASC-3)-Self Report of Personality; Conduct Disorder Scale (CDS), Revised Children's Manifest Anxiety Scale (RCMAS-2); Gilliam Autism Rating Scale (GARS-3); and Childhood Autism Rate Scale-High Functioning Version (CARS-2-HF).

27. During the course of Mr. Da Marto's interview with claimant, she explained her areas of strength and weakness in school. Claimant "feels confident" in physical education and art. She has "difficulties with math and language arts." Claimant reported that she was able to "sustain her attention in her classes and is not easily distracted." She has developed friendships with her classmates and she did not feel that she had any social deficits. Claimant also explained that she wanted to pursue a teaching career.

28. Mr. Da Marto reviewed claimant's school attendance as well. He noted that as of January 25, 2017, claimant had missed "69 class periods, which is the equivalent to missing 9.5 days of school." He noted that claimant's "pattern of attendance is suspected to be negatively impacting [claimant's] progress and grades." Her grades as of May 17, 2017, consisted of A's in art and science, a B in physical education, C's in introduction to Spanish and math, and a D in language arts which was primarily due to missing assignments. Mr. Da Marto also reviewed claimant's grades while attending Arden Middle school from sixth through part of eighth grade. Her cumulative grade point average was 3.0278. Additionally, Mr. Da Marto noted that [t]hroughout her enrollment at Greer Elementary School, [claimant] earned grades within basic to proficient ranges. Teacher reports of behavior on [claimant's] report cards did not indicate any concerns regarding attention, behavior, or social functioning in school." Claimant had no history of receiving "any classroom-based accommodations or specific intervention programs."

29. Mr. Da Marto observed claimant's behavior during her Language Arts class. Claimant was observed "using 20-minute point interval observation method in which her behavior was recorded on the 1st second of each minute and narrative observations were recorded for the remainder of each minute." Claimant was "on-task 80% of the observed points of intervals." This was compared to "comparison students" who were on-task 65 percent of the point intervals. Claimant also demonstrated "sustained attention for up to 9 minutes, attentively listening to the lecture, accurately following the teacher's verbal directions, taking notes, having her correct material out, and remaining in her seat." Her "off-task behaviors generally included socializing with the female student seated across from her" in class. Additionally, claimant was observed engaging in seven "social conversations over a 20 minute period of time." Claimant initiated two of the conversations.

Claimant was not observed exhibiting "any overt behaviors associated with Autism, such as: stereotyped repetitive movements." Claimant was observed exhibiting "a typical range of facial expressions while interacting socially with another peer, as well as maintaining eye contact with her peers while engaged in social communication." Additionally, claimant "appeared to have no difficulties picking up on social cues and nonverbal gestures of others in this class." She also did not "exhibit any evidence of an attention disorder or an elevated activity level."

30. Claimant was also observed on each day of testing. She "did not exhibit any difficulties or observed anxious behaviors when asked to meet with the examiner unannounced." Claimant was observed to exhibit a "limited range of facial expression and her overall affect appeared to be flat, especially on the first day" of the assessment. However, over the course of several assessment sessions, claimant began to "smile more and more and became more interactive with the examiner."

31. Claimant was asked to complete the BASC-3, a self-rating "multidimensional test that measures various aspects of behavior, including clinical adaptive dimensions." Categories are broken into "Social Problems, Internalizing Problems, Inattention/Hyperactivity, Emotional Symptoms Index and Personal Adjustment." Claimant's score for "Inattention/Hyperactivity" was considered "at-risk." The rating indicated that claimant felt that she had "difficulty sustaining her attention, is easily distracted, and occasionally forgets things." Mr. Da Marto noted that her ratings differed from statements she made about her attention functioning during her interview. He also noted that during the classroom observation claimant had average attention functioning. Mr. Da Marto further noted that when claimant "is experiencing elevated levels of anxiety, she may be experiencing related difficulties sustaining her attention and concentrating."

Additionally, claimant rated herself in the "clinically significant" range in the "Personal Adjustment" area. The "very elevated composite rating was due to her very elevated concerns in areas of self-esteem and self-reliance." Mr. Da Marto noted that claimant's areas of concern indicate that claimant "may have a negative self-image, does not always view herself as a dependable person, and may lack confidence in her decision making and problem solving ability."

32. Claimant also completed the RCMAS-2, a "self-report instrument designed to assess the level and nature of anxiety in children and adolescents." The results of the test indicated that claimant was "experiencing elevated levels of physiological anxiety and an overall level of anxiety that is in excess of what most students her age experience."

33. Claimant's mother and her Language Arts teacher completed the GARS-3, "a norm-referenced screening instrument that is designed to identify individuals ages 3 through 22, who have severe behavioral problems that may be indicative of [ASD.]" The

GARS-3 "consists of 6 subscales based on the diagnostic criteria for autism disorder published in the DSM-5." Mr. Da Marto noted that claimant's rating "yielded inconsistent findings between the home and school environments." Claimant's mother indicated that claimant's behavior at home was "very likely related to a severe form of Autism requiring significant intervention." Examples of "autistic like behavior" reported by claimant's mother included:

> [E]ngagement in repetitive or stereotyped behaviors, making high pitched sounds for self-stimulation, showing unusual interest in sensory aspects of objects, infrequently following others gestures to look at something, showing minimal expressed pleasure when interaction with others, showing little interest in others, having difficulty understanding jokes, having difficulty understanding what causes other people to dislike her, lacking an understanding that other people have different thoughts and feelings than her own, needing excessive amounts of reassurance if things go wrong, becoming upset when routines are changed, exhibiting temper tantrums when frustrated, repeating words out of context, and exhibiting an abnormal tone/volume in her voice.

In contrast, the ratings provided by claimant's teacher demonstrated that "a majority of behaviors reported at home are not evidence in [claimant's] behaviors at school." The only areas that claimant's teacher rated her as exhibiting delays were in her "social interactions and speech patterns." Specifically, claimant's teacher stated that at times claimant "appears to be socially withdrawn, shows limited interest in others,

exhibits limited facial expression and speaks in a relatively flat tone." Mr. Da Marto noted that he witnessed some of the same behaviors during his observation of claimant. Mr. Da Marto further noted that the "behaviors may also be associated with an underlying mental health condition versus a form [of] autism."

34. In order to further evaluate claimant's "autistic-like behavior," claimant was assessed with the CARS-2, "a rating scale based on direct observations of a child." The CARS-2 was used to "verify the findings of the GARS-3 scale." The observations were completed by Mr. Da Marto, "in conjunction with direct observations and assessments conducted by Karah Tovar, Speech/Language Pathologist." Claimant was "found to exhibit minimal characteristics with that of a child classified as having [ASD]." Mr. Da Marto opined that the overall findings were "consistent with the results from the GARS-3 teacher rating scale, which suggests that it is very unlikely that [claimant] had an [ASD]." He further opined that the behaviors such as "inconsistent use of eye contact while talking to others, excess levels of anxiety related to social and academic issues, and exhibiting a flat affect and speaking in a flat tone" are "more consistent of a child with characteristics of anxiety and depression versus an [ASD]."

Mr. Da Marto stated that "[i]n order to meet the special education criteria under [ASD] a pupil must exhibit a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, and adversely affecting a student's educational performance." Mr. Da Marto opined that the evaluation results indicated that claimant "does not appear to meet the special education eligibility criteria as a student with an [ASD]."

35. Based on the assessments of claimant's cognitive functioning, it was determined that claimant was "a student with average nonverbal intellectual abilities compared to students her age." The findings suggest that claimant had an "average learning potential and should be capable of achieving within the average range in

school." The evaluation "ruled out the possibility of [claimant] having a specific learning disability."

Mr. Da Marto opined that claimant was found to have "evidence of elevated anxiety, which is consistent with her previous medical diagnosis of an anxiety disorder." She also demonstrated "low self-esteem and self-reliance, which may also be impacting her social and emotional functioning, as well as her classroom performance." Mr. Da Marto recommended that claimant's "emotional functioning" be "closely monitored." He also recommended that she participate in counseling to "develop appropriate coping strategies related to her anxiety, as well as address her concerns related to self-esteem and self-image."

SOCIAL ASSESSMENT PERFORMED BY ACRC

36. After claimant's mother requested services from ACRC, David Webb, Intake Counselor for ACRC, performed a social assessment of claimant on April 7 and August 23, 2017.[3] On April 7, 2017, Mr. Webb met with claimant, her mother and her siblings. On August 23, 2017, he finished the assessment with claimant's mother over the telephone. Thereafter, Mr. Webb prepared a report. Mr. Webb testified at the hearing in this matter.

37. Mr. Webb noted that claimant was to be assessed by ACRC due to "concerns related to social communication and behavioral difficulties." The purpose of the social assessment was to obtain information about claimant's family, her medical,

[3] The Social Assessment report reflects interview dates of March 7, and August 24, 2017. However, based on Mr. Webb's testimony and notes he completed the in-person portion of the assessment on April 7 and interview portion of assessment concerning claimant over the telephone with her mother on August 23, 2017.

psychiatric and educational history, to document behavior concerns and social functioning, and to obtain information about claimant's adaptive skills such as self-care, receptive and expressive language, learning, mobility, self-direction and capacity for independent living.

38. When claimant and her family arrived at the assessment on April 7, 2017, Mr. Webb noted that he offered claimant a greeting, which she returned. Her "social eye contact was appropriate" when speaking to Mr. Webb, but she "looked away and appeared to become uneasy." Mr. Webb did not notice claimant engage in any "repetitive behaviors, mannerisms or repetitious in speech." Claimant spoke in full sentences, but appeared not to be interested in participating in the assessment. Rather, she interacted with her siblings, engaging in "back and forth conversations, teasing and banter." Claimant "giggled often throughout the interview," and laughed with her siblings. However, she appeared to be anxious about the interview, and often provided "short, one or two word statements." When Mr. Webb requested to take a photograph of claimant, a standard practice, she became upset, agitated and began to yell "'what are you going to do with that photograph?'" She yelled at her mother. Despite her mother's attempts to calm her down, she "continued in the same manner, repeating herself, even when an explanation was given."

39. Claimant's mother reported to Mr. Webb that her "main concern" about claimant was that she was not able to control herself. She explained that claimant became "'mad in a very strong way'." Claimant also spends a large portion of her time on her cellphone. She does not follow rules and she has a difficult time with transitions. She becomes upset if her routine is changed. She also prefers to watch the same television show repeatedly, although she does not repeat refrains from the shows. Claimant is also withdrawn and prefers to eat her meals alone in her room. Claimant's mother reported that claimant has one school friend whom she had known since

preschool. However, she often has conflicts with the friend, much like the way that she had conflicts with her other peers and siblings.

Claimant's mother also reported that claimant needs "assistance and reminders to complete self-care activities." She also stated that claimant "refuses to participate in all independent living activities," but also admitted that she did not know the true assessment of claimant's independent living skills because her of her lack of participation.

40. After Mr. Webb prepared his report, ACRC referred claimant to Katherine Redwine, Ph.D., Licensed Clinical Psychologist, for a psychological evaluation and testing.

PSYCHOLOGICAL EVALUATION AND TESTING PERFORMED BY DR. REDWINE

41. Dr. Redwine has been a Licensed Clinical Psychologist since 2007. Dr. Redwine currently works as a contracted psychologist performing psychological evaluations to determine whether a client is eligible for ACRC services. Dr. Redwine also operates a private practice performing psychological assessments, including administering testing to determine cognitive function and diagnosing of ASD. Dr. Redwine performs approximately 350 assessments per year.

42. On May 1, 2018, Dr. Redwine completed an evaluation of claimant. Dr. Redwine prepared a Psychological Evaluation Report and testified at the hearing in this matter. Dr. Redwine's report explained that the reason for the referral was to "assess [claimant's] level of intellectual and adaptive functioning" and "consider a diagnosis of autism" to assist in the determination of claimant's eligibility for ACRC services.

43. Dr. Redwine interviewed claimant and reviewed available records, including the social assessment performed by Mr. Webb, the Kaiser Pediatric Behavior Evaluation, the Kaiser Center ASD Evaluation and information received from claimant's Spanish teacher. Dr. Redwine requested that claimant's mother participate in a clinical

interview. However, she was resistant and informed Dr. Redwine that she should be able to find all of the pertinent information in the documents provided to her to review. As a result, a majority of the background information was obtained from the social assessment and Kaiser documents. Dr. Redwine also administered claimant several tests, including the Wechsler Intelligence Scale for Children, 5th Edition (WISC-V), the ABAS-3, and the ADOS-2. Dr. Redwine also reviewed the DSM-5 diagnostic criteria for ASD.

44. At the time of the evaluation, claimant was 15 years, four months old. Dr. Redwine noted that claimant lived with her parents and five siblings. Claimant's parents speak Spanish. The children speak English. Claimant's mother completed sixth grade. Her father completed 10th grade. Both parents are disabled and do not work. Claimant's father was diagnosed with bipolar disorder and schizophrenia. Claimant's mother reported that many of claimant's siblings had been diagnosed with autism and learning problems. Claimant's mother also reported that her most significant concern about claimant was that she had to do everything for claimant, who preferred to lie in bed. Claimant does not cook, do laundry, or engage in self-care. Dr. Redwine noted that claimant had a history of trauma when she fell from a great height when she was three years old. She was also diagnosed with anxiety and depression.

45. At the start of the evaluation, claimant's mother informed Dr. Redwine, in front of claimant, that claimant would "'not be able to handle being away from her mother' and in the room alone with [Dr. Redwine] as she would become too anxious and 'upset'." Dr. Redwine then spoke privately with claimant's mother and asked her to encourage claimant to try her best. After claimant returned to the testing office with Dr. Redwine, she displayed "mild anxiety and withdrawn, guarded affect."

46. During the clinical interview, claimant informed Dr. Redwine that she is "'going to need help later in life'." She further stated that she was an "'antisocial person'." She feels anxious when she needs to ask for help and often asks her parents to

make the request for her. She reported that she typically does not make eye contact with people she does not know well. However, claimant explained that she is comfortable talking to her best friend and a few friends from school. When Dr. Redwine asked claimant to describe her emotional state, claimant reported that she was "'stressed out, tired, hungry and angry'." Claimant explained that her depression had improved but she did not know why. However, her anxiety had gotten worse. Claimant explained that "'it's just too much, school, the future, I want to make my parents proud and go to college and I just don't know'." Claimant also admitted that she hears voices call her name at times and sometimes sees "shadows and figures at night in the dark but not during the day time."

Claimant reported that she attended ninth grade. She did not have an Individualized Education Program (IEP) and had never received any education services. Claimant reported that high school was more difficult than middle school, but that it was "'good'" and "'stressful'." Claimant explained that she wanted to go to college but was not sure if she would be able to do so.

47. As part of the evaluation process, Dr. Redwine did not receive a copy of the Natomas evaluations. However, she contacted several of claimant's teachers concerning claimant's performance and behavior. Claimant's Spanish teacher responded and reported that claimant "seems to be fully functional in all areas during the time in [her] supervision." The teacher denied that she ever observed claimant uses any "repetitive use of words or body mannerisms, any ritualistic behavior, or any difficulty with changes in tasks or routine." She also did not observe claimant "exhibit any unusual or obsessive interest or sensory sensitives." Claimant's teacher noted that claimant can appear shy at times, but "nothing abnormal for an adolescent teen." She had observed claimant engaged in "reciprocal conversations with peers." She used appropriate eye contact and engaged with a "wide variety of friends."

48. Dr. Redwine made numerous behavior observations of claimant during the course of the clinical interview and evaluation. During the administration of the cognitive measures, Dr. Redwine also observed that claimant "consistently presented as guarded and withdrawn, with slumped shoulders and face turned away from the evaluator." Dr. Redwine opined that claimant's "dysphoric and sullen emotional state may have had a negative effect on her performance and the results should be interpreted with caution." Claimant's "voice had a dysphoric sounding pitch and tone and was somewhat monotone." Dr. Redwine observed claimant "twist a string from her pajama pants but otherwise did not display any sensory sensitives." Dr. Redwine did not observe any "repetitive or stereotyped verbal or motor mannerisms." She also did not observe any "ritualized or compulsive behaviors nor any strong attachments to routine." Claimant did not make any "reference or repetitive or unusual topics with the exception of her depressive and withdrawn affect." Likewise, she "did not display any restricted or repetitive behaviors."

49. Dr. Redwine administered claimant the WISC-V to assess her intellectual ability. The test is comprised of "four global areas" testing verbal comprehension, visual-spatial, fluid reasoning and working memory. Claimant's scores ranged from average, low average and borderline. Her overall Full Scale IQ was 76, which was considered in the "Very Low range." Dr. Redwine opined that the results "should be interpreted with significant caution, as [claimant's] guarded and minimal responses may have had a negative impact on her scores."

50. Claimant's mother completed the ABAS-3, which is a "survey completed by parents, caregivers, and/or teachers regarding adaptive behavior of the person being evaluated." Answers to questions regarding the frequency of behavior observed, "provide a comprehensive picture of a person's ability to function in ten different domains." Based on her mother's responses, claimant obtained a General Adaptive

Composite standard score of 50, which is "extremely low." However, Dr. Redwine opined that the results "should be interpreted with extreme caution as … mother may have underestimated [claimant's] abilities."

Specifically, claimant's mother reported that claimant "does not independently say hello or good-bye others." She also does not "independently look at others faces when they are talking." She does not "independently nod or smile to encourage others when they are talking," and does not "swallow liquid medicines as needed without fussing." Her mother also reported that claimant could not buckle her own car seat belt and she does not test hot food before eating it. Socially, claimant's mother reported that claimant has a group of stable friends. Claimant looks at pictures, reads books and magazines in her free time. She also watches television, uses the internet, listens to music, and makes plans "for play and fun activities."

51. Dr. Redwine also administered the ADOS-2, Module 3, which included "a number of play-based and picture-based activities." Overall, claimant scored "15." The autism cut-off score is "9." The autism spectrum cut-off is "7." Dr. Redwine opined that the results "should be interpreted with caution," explaining that claimant's "dysphoric mood and withdrawn presentation interfered significantly with her performance." Dr. Redwine further explained that she did not believe she received a "valid sample of her typical behavior." As a result, her score was "artificially elevated." Dr. Redwine further opined that claimant's scores met the ADOS-2 classification for autism, "suggesting a high level of autism spectrum related symptoms, all of these were related to her withdrawn and sullen affect rather than any restricted or repetitive behaviors." Dr. Redwine explained that the high ADOS-2 score "does not necessarily reflect a diagnosis of autism."

52. Dr. Redwine utilized the DSM-5 to determine if claimant met the diagnostic criteria of ASD. In her report, Dr. Redwine included a chart containing the

DSM-5 Diagnostic Criteria for ASD. Dr. Redwine provided specific examples in the chart concerning claimant's observed behavior, and detailed discussion in her report, which supported her findings. Dr. Redwine opined that claimant did not meet any of Criteria A. Although claimant had some difficulty with reciprocal conversations, her "extreme withdrawal and avoidance … appeared to be more consistent with mood problems than with [ASD]. Likewise, her "very poor eye contact, flat affect and reduced use of gestures" was "consistent with an adolescent with angry and or anxious mood and withdrawn presentation." Additionally, information provided by claimant's teacher explained that in the school setting, claimant engaged in "appropriate social interaction," "appropriate eye contact," and that claimant behaves in a "socially interested and appropriate fashion" at school.

Dr. Redwine also opined that claimant did not meet any of the Criteria B. Claimant did not display any repetitive behavior, had no rigid routines or compulsive behaviors, no unusual or fixated patters of interest and no sensory sensitives. Likewise, claimant's teacher did not report observing any of the behaviors described in Criteria B.

53. Dr. Redwine concluded that claimant did not meet the diagnosis of ASD. She also found no evidence of intellectual disability. However, she included two "rule out" conditions which should be considered, because these conditions may explain claimant's difficulty. The rule out conditions, also contained in the DSM-5, included: Unspecified Depressive Disorder and Unspecified Anxiety Disorder.[4]

[4] Dr. Redwine's report included recommendations that claimant would benefit from "psychological services including psychotherapy and family therapy to address her anxious, angry and depressive symptoms." Dr. Redwine also recommended that claimant's "screen time" be limited to two hours per day to give her time to engage in social activities.

54. Dr. Redwine also opined that although claimant was diagnosed with autism through Kaiser, it was difficult to determine how all of the criteria was met, particularly Criteria B, because there was no documentation demonstrating that the Kaiser evaluator directly witnessed the conduct which was used to support the findings. Rather, the findings appear to be based on claimant's mother's report. Dr. Redwine also took issue with Dr. Forghany's statement that when claimant is not upset, she can present as a "typical teenager." Dr. Redwine explained that research demonstrates that autism is a pervasive and persistent set of symptoms and deficits. Children with autism do not present as "typical" even in ideal circumstances.

Dr. Redwine also explained that the Kaiser Center evaluation also did not provide any differential diagnosis that may have explained claimant's behavior. Dr. Redwine noted that many psychiatric and psychological disorders can have similar symptoms and it is important for an evaluator to consider those differential diagnoses. Additionally, biological and social factors should be considered with the symptom presentation. Dr. Redwine explained that as a child develops into adolescence, there is larger exposure to more factors in environment and biological development changes and so the picture can become more complex. Adding to the complexity is that claimant has been diagnosed with depression and anxiety disorders and there is a history of psychiatric conditions in her family.

ADDITIONAL TESTIMONY AT HEARING

Cynthia Root, Ph.D.

55. Cynthia Root, Ph.D., is a Staff Psychologist employed by ACRC. She has been a Licensed Clinical Psychologist since 2008. Dr. Root has ten years of experience completing and reviewing assessments autism. Dr. Root is familiar with all of the conditions and categories in which an individual can be made eligible for regional

center services. Her main duty at ACRC is performing evaluations and determining whether an individual is eligible for services. In addition to performing evaluations, Dr. Root is part of the ACRC eligibility review team. She reviews assessments and evaluations performed by vendored psychologists. Dr. Root was part of the eligibility team that reviewed claimant's request for services under the Lanterman Act.

56. As part of the review of claimant's request for services, Dr. Root reviewed Mr. Webb's social assessment. She noted that Mr. Webb opined that claimant did not present as a typical child with autism. Dr. Root also reviewed the Kaiser Pediatric Behavioral Evaluation which referenced the Neuropsychoeducational evaluation completed on March 22, 2011. The Neuropsychoeducational evaluation was not provided to ACRC, but the findings were that claimant had average intelligence, which is not consistent with intellectual disability. Additionally, there was nothing noted from the Neuropsychoeducational evaluation suggesting concerns with autism.

57. Dr. Root also reviewed the Kaiser Center ASD evaluation. Dr. Root explained that she had concerns about the ASD diagnosis because the determination appeared to be based on information provided by claimant's mother, and some observations, but did not take into account on how she was behaving at school and did not include differential diagnoses to explain the symptoms reported by mother and what seen during the evaluation. Dr. Root explained that symptoms and behaviors, such as not engaging in conversations, can be caused by other conditions. Dr. Forghany did not provide any examples in the table which lists the DSM-5 ASD criteria. Dr. Root explained that the typical practice is to include specific examples in the table as to how each symptom is met.

Additionally, Dr. Root noted that Dr. Forghany's opinion that claimant could present as a typical teenager when she was not upset, is inconsistent with an ASD diagnosis. She explained that part of diagnostic criteria for autism requires persist

deficits in multiple contexts. An individual with autism would be expected to show symptomology of autism all the time. It would very unusual for an individual with autism to present as normal or typical.

58. Dr. Root explained that her role was to review all of the evidence and make an independent decision given all the data presented. Dr. Root opined that there was no evidence that claimant has an intellectual disability. Dr. Root did not find the Kaiser Center's diagnosis of ASD to be credible. Rather, Dr. Root agreed with Dr. Redwine's findings that claimant does not have ASD and supported the recommendation that claimant be evaluated for other psychiatric conditions.

Claimant's Mother and Graciela Medina

59. Claimant's mother explained when claimant was three and one half years old she fell from the second floor and sustained significant injuries to her skull, arm and bladder. After the accident claimant "was not the same." As she aged, claimant was reserved and quiet. She avoided eye contact and did not make friends. When claimant was in the fifth grade, she became aggressive. She avoided her family and preferred to eat alone. In the sixth grade, claimant began receiving psychotherapy without success. Claimant received psychotherapy for two years because she heard voices, saw faces and had thoughts of suicide. She took medication for anxiety and depression in 2014, but claimant's mother took her off the medication in 2015, because it made her sleep too much.

60. Claimant's mother contends that she must do everything for claimant, including bathing her, picking out her clothes, dressing her, and helping her with self-care. Claimant received some in-home therapy to address her behavior, but claimant refused to participate. Claimant's mother is very concerned about claimant's well-being. Claimant shared with her mother that she has a friend that was taken to a psychiatric

hospital. Claimant expressed concern that she might be taken away because she is "weird and crazy."

61. Graciela Medina also testified on behalf of claimant. Ms. Medina works for Norcal Mental Health America-Sacramento Advocacy for Family Empowerment (Norcal). She has known claimant for three years. Claimant's mother requested services from Norcal. Ms. Medina assists claimant's parents with completing paperwork and supporting the family in obtaining mental health services.

Ms. Medina has interacted with claimant over the years. However, claimant will not greet her or engage in a conversation. She has also observed claimant become angry when her mother asks her to come out of her room. Ms. Medina has attended meetings at claimant's school to support claimant's mother to obtain services for claimant. Ms. Medina explained that her role is not to provide medical or clinical support to claimant or her family. She has no clinical training in diagnosing ASD or intellectual disability. Rather her role is advocate for claimant's family.

DISCUSSION

62. When all the evidence is considered, claimant's mother did not establish that claimant is eligible for services from ACRC under any of the categories of developmental disabilities covered under the Lanterman Act. Dr. Redwine's opinion that claimant is not an individual with autism or an intellectual disability was persuasive. Additionally, no evidence was presented that demonstrates claimant has a disabling condition that is closely related to intellectual disability or requires treatment similar to that required for individuals with an intellectual disability.

Dr. Redwine considered multiple sources of information to support her findings, including testing and assessment results, Kaiser records and information from claimant's teacher. Dr. Redwine also considered that differential diagnoses may be the cause of claimant's sullen and withdrawn conduct during the evaluation. Coupled with the

extensive testing performed by Natomas in May 2017, which paints a very different picture of claimant's abilities and behavior in the school setting, Dr. Redwine's opinions are further supported. The Natomas evaluation results demonstrate that claimant is a young woman of average intelligence who may be struggling with issues of self-esteem and other mental health conditions that effect behavior and performance. However, the direct observations made by Natomas also demonstrate that claimant engages in appropriate social exchanges in class, is attentive and capable of learning and succeeding.

63. In contrast, the evaluation performed by the Kaiser Center and diagnosis of ASD appeared to be based on the report by claimant's mother, rather than observed behaviors. In fact, the entirety of the findings for Criteria B was based on claimant's mother's report rather than personal observation. Additionally, there is no discussion in the report that educational records or information from claimant's teachers were considered as part of the evaluation. Additionally, Dr. Forghany failed to consider differential diagnoses that may have better explained claimant's symptoms.

64. The legislature made the determination that only individuals with one or more of the five specified types of disabling conditions identified in the Lanterman Act are eligible for services from regional centers. The legislature chose not to grant services to individuals who may have other types of disabling conditions, including mental health disorders, if it is not demonstrated that the conditions fall within one of the five categories delineated in the act. The legislature did not grant regional centers the authority to provide services to individuals whose disabilities fall outside the five specified categories.

In addition, the legislature provided that, in order for an individual to qualify for services under the Lanterman Act, the individual's developmental disability must be substantially disabling and must be the cause of the adaptive deficits to which the

requested services relate. Claimant's mother expressed great concern about claimant's history of difficulties since her traumatic fall many years ago and her on-going challenges. While these difficulties may contribute to stresses at home, claimant's mother did not establish that claimant is eligible for services under the Lanterman Act because she failed to demonstrate that claimant is an individual with autism or an intellectual disability, or that she has a disabling condition that is closely related to intellectual disability, or requires treatment similar to that required for individuals with intellectual disability. Therefore, claimant's request for services from ACRC must be denied.

LEGAL CONCLUSIONS

1. 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 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.

2. 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.
>
> (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.

3. An administrative "fair hearing" to determine the rights and obligations of the parties, if any, is available under the Lanterman Act. (Welf. & Inst. Code §§ 4700 through 4716.) Claimant's mother requested a fair hearing to appeal ACRC's denial of her request that claimant be found eligible for services. The burden is on claimant to establish that she is eligible for services. (See *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.)

4. As set forth in the Factual Findings, claimant's mother did not establish that claimant qualifies for services under the Lanterman Act because she is an individual with autism or an intellectual disability, or because she has a disabling condition that is closely related to intellectual disability or requires treatment similar to that required for individuals with an intellectual disability. Consequently, she did not establish that claimant qualifies for services from ACRC under the Lanterman Act. Claimant's appeal must therefore be denied.

/ / /

ORDER

Claimant's appeal is DENIED. Alta California Regional Center's denial of services to claimant under the Lanterman Act is SUSTAINED.

DATED: September 20, 2018

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MARCIE LARSON

Administrative Law Judge

Office of Administrative Hearings

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).)