BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: CLAIMANT, v. ALTA CALIFORNIA REGIONAL CENTER, Service Agency.	OAH No. 2018060463

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 2018060450. 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 he is an individual with autism, or intellectual disability, or because he 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 October 2004. Claimant is almost 14 years old. Claimant lives with his parents and five siblings, in Sacramento, California. On March 17, 2015, claimant was assessed at the Kaiser Permanente Autism Spectrum Disorders Center (Kaiser Center) and diagnosed with Autism Spectrum Disorder (ASD).

2. Since claimant was approximately six years old, his mother has sought services for him from ACRC under the Lanterman Act, based on ASD and intellectual disability. Claimant's mother most recently sought services in March 2017. On May 16, 2018, ACRC denied her request, asserting that claimant was not eligible for regional center services because he 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 reports provided to ACRC.

3. Claimant appealed the denial. A fair hearing was held on the appeal. During the fair hearing, claimant's mother argued that based on the Kaiser Center evaluation, and other medical records and reports, claimant is eligible for ACRC services

under the Lanterman Act because claimant is an individual with ASD and intellectual disability.

2011 Assessments and Evaluation Completed by ACRC

Social Assessment

4. In 2011, claimant's mother requested services from ACRC for claimant. A clinician a La Familia Counseling Center (La Familia) had referred claimant's mother to ACRC to determine if he was eligible for services based on autism and mental retardation.[2] On July 12, 2011, Maria Mendezona, M.A., Intake Counselor for ACRC, conducted a two and one-half hour social Assessment of claimant at his home. Ms. Mendezona prepared a written report of the assessment.

5. Ms. Mendezona described claimant was six years, ten months old, and of "Hispanic descent." He lived at home with his parents and four siblings. Claimant's mother completed up to the sixth grade in Mexico. She did not continue her education. Claimant's father completed 10th grade. Both parents reported that they were disabled and unable to work. Both parents spoke Spanish. Claimant's father and claimant spoke English.

6. Claimant's mother related that when claimant was four years old he slipped and hit his head. She reported that after the fall he began to have "unusual behavior." He became preoccupied with "monsters." He also "began to bite his nails and

[2] The language used to describe the developmental disabilities relevant in this matter has changed over time. The Lanterman Act was amended to change the term "mental retardation" to "intellectual disability." The Lanterman Act still uses the term "autism" but that developmental disability is now called an "autism spectrum disorder" in the DSM-5.

could not sleep." As a result, he was referred to River Oak Center for Children (River Oak) and participated in therapy twice a week for a period of time with some success. Claimant's mother explained that she was told by River Oak that claimant "exhibited autistic-like behaviors."

7. Claimant's parents explained to Ms. Mendezona that there were also concerned about claimant's aggressive behavior towards his siblings. He "screams and slams the door when his is angry or frustrated." He also "screams at his mother and calls her stupid." Claimant's parents explained that he preferred to play alone, would "line up and stack his toys," and "carry the same toy with him for days and will sleep with it." At times, "he would go to the corner of the house and will urinate and defecate."

8. Claimant was attending second grade in the San Juan Unified School District (San Juan District). As of April 2010, he spent 90 percent of his time in a regular class and 10 percent of his time in special education, based on an Individualized Education Program (IEP) that classified him with "non-severe" Speech and Language Impairment.

9. Ms. Mendezona conducted a review of claimant's adaptive skills. She noted that he "demonstrated an adequate use of both expressive and receptive language." He understood two-step directions. He also "demonstrated the use of gestures, facial expressions and true point." His eye contact was good. Claimant's parents reported that claimant needed some assistance, contending he was not able to dress himself. However, upon request by Ms. Mendezona, claimant demonstrated that he was capable of independently picking out clothes and dressing himself. Claimant was also able to follow a schedule and express when he was in pain.

Evaluation Performed by Monica Silva, Ph.D.

10. After the completion of the Social Assessment, claimant was referred to Monica Silva, Ph.D., Licensed Clinical Psychologist with ACRC. On August 23, 2011, Dr.

Silva completed a psychological evaluation and testing to determine if claimant qualified for ACRC services based on ASD and/or "cognitive and adaptive delays. As part of the evaluation, Dr. Silva interviewed claimant's parents, obtained social, medical and educational histories, and administered several assessments and tests, including the: Adaptive Behavior Assessment System, 2nd Edition (ABAS-II) Parent Form: Autism Diagnostic Observation Schedule, Module II (ADOS); the Gilliam Autism Rating Scale-2 (GARS-2); and the Wechsler Preschool and Primary Scales of Intelligence-III (WPPSI-II). She also reviewed and applied the Diagnostic and Statistical Manual for Mental Disorders, Fourth Edition (DSM-IV), criteria for Autistic Disorders, 299.00.

11. Claimant was almost seven years old when he was assessed by Dr. Silva. Claimant's mother explained to Dr. Silva that claimant was a "highly affectionate child." As he progressed from an infant to a toddler, he struggled with gross and fine motor difficulties. His early childhood was unremarkable for any medical issues, until he was four years old, when he slipped and hit the back of his head. He developed nose-bleeding and "his ability to function independently decreased." His speech also developed slowly and he "struggles with difficulties expressing himself." Claimant communicated primarily in English, while claimant's mother spoke Spanish. Claimant's parents expressed concerns about claimant's articulation issues that made him difficult to understand. Dr. Silva noted claimant did not display any idiosyncrasies in his use of language, other than making noises when he played with toys.

12. Claimant's parents also expressed concern about claimant's "reciprocal relationships with others." Specifically, that he appeared to be immature. Claimant wanted to be treated like a baby. He often used his younger siblings' pacifiers and baby bottles. He was also a sensitive child who comforted others, but he often did not cry when he was hurt. Claimant played with friends in the neighborhood and at school. Claimant's mother was concerned that although he had friends in kindergarten, by first

grade she believed his classmates made fun of him because he did not interact well. At one point, claimant told his mother that he was upset and cried because he did not have a girlfriend.

13. Claimant's parents were also concerned that claimant demonstrated "a strong reaction to certain sounds, dislikes certain textures of food, and exhibits a high tolerance for pain." He did not like to be around crowds and he would exhibit "highly emotional reactions to some situations where he will be inconsolable or very angry." Claimant would throw a tantrum if he did not get his way and would be aggressive towards his parents. Additionally, his parents were concerned about claimant's "almost obsessive masturbation and the fact that he seems to have little awareness of others and may masturbate in front of family members." Claimant did not engage in any repetitive or stereotyped motor behaviors, or "non-functional routines, rituals, or preoccupations with parts of objects, or restricted areas of interests."

14. Claimant's parents explained that after claimant hit his head, he became anxious and said that he saw "monsters." He also began to bite his nails. In 2010, claimant's parent sought treatment for him from Sacramento County Mental Health (County). On March 24, 2011, claimant had a mental health assessment through the County due to "difficulties at home and school." Specifically, claimant's mother reported that claimant had "anger issues, verbal aggression, being teased at school, anxiety, seeing monsters, isolates, does not follow rules, does not do homework, urinates on himself." Dr. Silva noted that the "examiner stated that [claimant] meets the diagnosis of Disorder of Childhood NOS, and that assessments will continue to rule out for Enuresis, Anxiety/Depression, and MH Disorders." The examiner also recommended that claimant be further assessed for "sensory motor, sleep challenges, neurologist referral and enuresis because of organic cause."

15. Claimant also received mental health services through La Familia. La Familia employees told claimant's mother that claimant exhibited "autistic-like behaviors." Dr. Silva noted that an evaluation of claimant was completed by William Hughes, M.D., of La Familia, on May 9, 2011. Dr. Hughes opined that claimant's "development is grossly abnormal with lack of language development and coordination problems as well as lack of social engagement … development history consistent with mild autism, possible mild retardation." Claimant's treatment at La Familia was discontinued and he was referred to ACRC for further assessment.

16. Dr. Silva also reviewed claimant's education history. Claimant attended second grade in the San Juan District. On April 21, 2010, when claimant was five years, six months old, he underwent a "Psychoeducational Evaluation in order to determine special education eligibility due to concerns which included: cognitive abilities, auditory processing and social emotional functioning." The administered assessments indicated "low range verbal reasoning abilities, average non-verbal abilities and average reasoning abilities, poor phonological memory and awareness and below average fluency, with a processing disorder in the areas of auditory processing." Claimant was also assessed with an "Inventory of Early Development" which assessed his "general knowledge and comprehension skills" at "4 3/4 years of age." His "social and emotional skills measured" as six years old. He was also evaluated by a Speech and Language Pathologist, who administered the "Peabody Picture Vocabulary Test" in English and Spanish. Claimant received an age-equivalent score of two years, nine months old on the English test and two years, six months old on the Spanish.

17. Dr. Silva administered claimant the WPPSI-II, an "individually administered clinical instrument for assessing the intelligence of children aged 2 years 6 months through 7 years 3 months." The test was broken into verbal intelligence, performance intelligence and visual motor integration. Dr. Silva noted that she selected the WPPSI-II

because claimant "demonstrated some delays in his language and this test, which was geared for children from two and a half to seven years three months, seem more appropriate." During the tests, claimant "exhibited some difficulties with both the verbal and nonverbal tasks presented and he required repetition or simplification of the instructions at times." Claimant's verbal score was 81 and fell into the "low average" range. His performance score was 82 and also fell into the "low average" range. His full scale IQ was 80, which was also considered low average.

18. Dr. Silva also administered the ADOS, a "standardized, semi-structured observation assessment tool, which allows examiners to observe and gather information regarding an individual's social behavior and communication in a variety of different social communicative situations." The ADOS is divided into several sections. Dr. Silva noted under the "Language and Communication" section that "[a]fter a short, initial period of reticence [claimant] began to share information verbally and maintained a chatty and talkative demeanor through the remainder of the evaluation." He also "exhibited a strong desire to communicate and would do so in simple terms." However, he "frequently struggled with difficult word findings." If he could not think of the word, he would change the topic. He also used non-verbal gestures to get his "point across." Dr. Silva opined that claimant "struggles with significant issues as far as his expressive language ability," but that claimant did not exhibit any "speech abnormalities associated with Autism." Claimant scored a "1" for Communication. The ADOS autism cut-off was "3." The ASD cut-off was "2."

Under "Reciprocal Social Interactions," Dr. Silva noted that claimant "seemed at ease interacting with an unfamiliar adult after a short, initial period of possible hesitance regarding the interaction." He exhibited "appropriate eye contact, directed facial expressions … and linked verbal and nonverbal communication well." He also demonstrated "some empathy and comments on another's emotions and was able to

read the emotions of the characters in a book." Dr. Silva opined that claimant's "insight into typical social relationships was found to be somewhat immature or he possibly was not able to express himself well as far as that is concerned." Claimant mentioned several friends at school and in his neighborhood. He also denied that he had any social difficulties and shared that he had a girlfriend at school. Dr. Silva opined that the difficulties he displayed with reciprocal social communication appeared to be "primarily due to language issues rather than a disinterest in communication verbally." Claimant scored "2" for Social Communication. The ADOS autism cut-off was "6." The ASD cut off was "4."

For the "Imagination and Creativity" section, Dr. Silva noted that claimant "seemed slightly hesitant when first presented with the play figurines." However, once Dr. Silva "modeled some play scenarios he seemed more comfortable with tasks and demonstrated some imaginative skills." Claimant did not demonstrate any stereotyped behaviors or restricted interests and abnormal behaviors. Dr. Silva opined that claimant total score on the ADOS was "3." The autism cut-off was "10." The ASD cut off was "7."

19. Claimant's parents completed the GARS, which is an "assessment of patterns of behavior that are often present in children with autism." The results were that claimant ranked in the "1st percentile and is considered to indicate an unlikely probability of autism."

20. Claimant's mother completed the ABAS-II, a "standardized instrument of adaptive functioning." The focus of this instrument is on the functions an individual actually performs without assistance from others." Claimant's mother scored claimant as "extremely low" in all areas of adaptive functioning.

21. Dr. Silva reviewed and applied the DSM-IV criteria for autistic disorders. She opined that claimant "does not present with the marked impairments in communication, socialization, and stereotyped behavior and restricted interest

characteristic of a diagnosis of Autism Disorder." Dr. Silva acknowledged claimant's parents' concern regarding claimant's adaptive issues, which she recommended needed to be "supervised closely when the family accesses the community." However, Dr. Silva opined that claimant's "IQ scores denote mild delays" and that he "does not present with the global delays in cognitive and adaptive functioning characteristic of Mental Retardation or Borderline Intellectual Functioning, [claimant], however, presents with language delays and difficulties expressing himself verbally. He also struggles with significant anxiety and some impulse control issues." Dr. Silva further opined that claimant "did not attend preschool, nor did he receive early intervention, and began kindergarten at the young age of four years and ten months." She noted that he would "likely require more intensive intervention services at school in order to benefit from his educational curriculum."

22. As a result of Dr. Silva's evaluation and review of information provided to ACRC, on or about September 20, 2011, claimant's parents were informed that claimant was not eligible for ACRC services.

KAISER CENTER ASD EVALUATION

23. Claimant was referred to the Kaiser Center for evaluation by Alan Lundberg, M.D. The referral information noted that claimant "has been given the label of an autism spectrum disorder by a therapist in the past (La Familia Counseling Center), yet has never had a formal evaluation." Additionally, claimant's mother reported that she was concerned about claimant's "continued delay in development, his poor personal hygiene, his repetitive activities and poor academics." On March 17, 2015, an ASD evaluation was performed by Jennifer Cartinella, Psy.D., Clinical Psychologist ,with diagnostic evaluation and consultation from Wendy Lewis, Psy.D., Clinical Neuropsychologist. Dr. Cartinella issued a report detailing her findings. She noted that

the purpose of the evaluation was to determine whether claimant met the criteria for ASD. No Kaiser Center practitioners testified at hearing.

24. Dr. Cartinella obtained background information concerning claimant. At the time of the evaluation, claimant was 10 years, 5 months old. He was completing fifth grade. Claimant lived with his parents and five siblings ranging in age from one and one half to 15 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 at the evaluation.

During the evaluation, medical, family, psychiatric, psychosocial and developmental histories were obtained, and claimant's patient records were reviewed. Additional information obtained and reviewed included the: ASD Clinic Parent Questionnaire; Social Communication Questionnaire (SCQ); the Achenbach Child Behavior Checklist (CBCL); and the Achenbach Teacher Report Form (TRF).

Additionally, claimant's mother was interviewed and tests were administered, including the: ABAS-II; Differential Ability Scales, 2nd Edition (DAS-II); and the Autism Diagnostic Observation Schedule, 2nd Edition (ADOS-2). Dr. Cartinella also reviewed the Diagnostic and Statistical Manual for Mental Disorders, Fifth Edition (DSM-5).

25. Dr. Cartinella conducted a clinical interview of claimant's mother, to obtain background information, history, concerns and observations. Claimant's mother denied that claimant was impacted by "any significant stressors or traumas in the family." However, she disclosed that there was a family history of "autism, intellectual disability, and learning disability." Claimant's father was diagnosed with schizophrenia. However, claimant's mother denied that there was a family history of developmental delays.

26. Claimant's mother stated that claimant had chronic ear infections when he was younger. He was also hospitalized for a lung infection when he was six months old. Dr. Cartinella noted that claimant "has not had any other significant hospitalizations,

surgeries, illnesses or injuries." There is no indication in the report that claimant's mother disclosed that claimant suffered from a head injury when he was four years old. Claimant's mother reported that claimant struggled with gross and fine motor skills. She described claimant as "clumsy." She also explained that claimant "never picked up Spanish, and just spoke English he picked up from his father." She reported that claimant's communication skills are "still significantly delayed and he rarely speaks."

27. Concerning claimant's mental health, claimant's mother reported that claimant was "first seen for a mental health intake assessment through La Familia Counseling Center approximately one year ago due to his continued development delays and history of behavioral and social problems." Dr. Cartinella noted that he was "given a diagnosis of Pervasive Development Disorder, NOS, with a rule out of Autistic Disorder." She further noted that "[t]his is [claimant's] first psychological evaluation."

28. Claimant's mother also informed Dr. Cartinella that claimant "has previously been eligible for early intervention services through the Regional Center." Dr. Cartinella noted that "[t]hese records were not available to review and his mother reported that he was given a diagnosis of Mental Retardation by the Regional Center when he was 5 years old." Claimant's mother also informed Dr. Cartinella that claimant was placed in a special education class in the San Juan District and been serviced by IEP since the first grade. Claimant's mother explained that she was "unclear about which academic label he has and academic records were not available to review."

29. Claimant's mother completed the Spanish version of the SCO questionnaire, which is "used to determine the degree of concerns related to the social and communication difficulties most often associated with [ASD]." Dr. Cartinella noted that a score of "15 and above are considered to be clinically significant." Claimant's mother "reported 30 positive symptoms, resulting in a significant score."

30. Dr. Cartinella also requested that claimant's mother and a teacher complete the CBCL, which is a "behavioral checklist that helps to detect significant behavior difficulties or inter-personal concerns that might be present in a child." Based on claimant's mother's report, the following Syndrome scales fell in the Clinical Range: Anxious/Depressed; Withdrawn/Depressed; Somatic Complaints; Social Problems; Thought Problems; and Attention Problems. Aggressive behavior fell into the Borderline Clinical range. On the DSM-5 scale, Affective and Anxiety problems fell into the Clinical range.

Claimant's special education teacher did not rate claimant with any of the "Syndrome scales" in the Clinical range. However, the Anxious/Depressed fell in the borderline clinical range. On the DSM-5 scales, Affective, Anxiety and Somatic problems fell into the borderline clinical range. Dr. Cartinella noted that the "results of this measure indicate that his teacher observes him to have some internalizing behavioral concerns, and no externalizing behavioral concerns."

31. Claimant's mother completed the ABAS-II, to "assess his current adaptive functioning." Claimant's mother ranked claimant in the less than .1 percentile for conceptual, social and practical areas. Dr. Cartinella did not comment on the score, other than to note that based on claimant's mother's assessment, claimant "appears to have significant adaptive skill deficits across domains compared to his same-aged peers."

32. Claimant's cognitive functioning was tested with the DAS-II, which is an "individually administered battery of cognitive subtests for children and adolescents." Dr. Cartinella noted that: "[The] core and diagnostic subtests were designed to measure specific abilities that allow for the evaluation of profiles of strengths and weaknesses. Due to discrepancies between [claimant's] spatial scores (Below Average to Average range) a Spatial composite score and an overall General Conceptual Ability score could not be obtained." Claimant scored in the "Low range" for his Verbal composite score. For

the "Nonverbal Reasoning Composite" he obtained a "Below Average range." Dr. Cartinella opined that claimant "has a relative weakness in his verbal skills and a relative strength in his spatial skills (drawing)."

33. Claimant was also 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." Dr. Cartinella noted that "two examiners participated in the ADOS-2 testing." The assessment is broken into several sections. For the "Social Affect" section, under the subheading of "Communication," Dr. Cartinella noted that claimant "used some relatively complex speech, but with recurrent grammatical errors." His speech was described as having "little variation in pitch and tone and he spoke in a baby-like voice, but it was not obviously peculiar." Claimant was able to give a "reasonable account of a routine event that was not part of a preoccupation or intense interest and seemed likely to be real." At times, his "speech included some spontaneous elaboration of his own responses for the examiner's benefit, but this was less in amount than would be expected for [claimant's] expressive language level." He also showed some "spontaneous use of descriptive gestures (e.g., airplane, shooting basketball, brushing teeth), but this was limited in range and context."

Under the "Reciprocal Social Interaction" subheading, Dr. Cartinella noted that claimant had "poorly modulate eye contact to initiate, terminate and regulate social interaction." He "never directed appropriate facial expressions to the examiner." Although he did show "some pleasure that was appropriate to context during interactions," Dr. Cartinella noted that there was a "slightly unusual quality of some social overtures, such as interrupting or talking over the examiner." He demonstrated "responsiveness to most social context, but this was somewhat limited" and also "some reciprocal social communication."

Under the "Restricted and Repetitive Behavior" subheading, Dr. Cartinella noted that claimant "never used stereotyped or idiosyncratic words or phrases." He showed "definite interest in sensory elements" by rubbing his pants and twisting his fingers in his shorts. However, he "did not demonstrate unusual or repetitive movements or posturing of the hands and fingers, arms or body." He also showed "no excessive interest in references to unusual, highly specific, restricted topics and repetitive behaviors."

Dr. Cartinella opined that claimant "achieved an overall total score on the ADOS-2 in the Autism range." She explained that claimant's score of "(8) indicates a High level of Autism Spectrum relayed symptoms" and that he was "demonstrating many symptoms of an [ASD]." Dr. Cartinella did not list the specific scores for each criterion in her report.

34. Dr. Cartinella 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.)

35. Dr. Cartinella checked the boxes in the DSM-5 ASD table indicating that claimant demonstrated marked deficits in each of the three diagnostic criteria in Criteria

A. She also checked that claimant demonstrated marked deficits in all four diagnostic criteria in Criteria B, and Criteria C, D, and E. Dr. Cartinella did not provide any information in the DSM-5 ASD table indicating what observations or information she relied upon to render her opinions that claimant met all of the criteria for ASD. The narrative portion of her report is not organized in manner that correlates with the DSM-5 ASD criteria table. Rather, Dr. Cartinella included a narrative portion entitled "Social and Behavioral Functioning," in which some of the DSM-5 ASD criteria appear to be addressed. However, virtually all of the information is based on claimant's mother's report rather than observed conduct.

For example, under "Communication Abilities," Dr. Cartinella noted that claimant's "language skills are delayed and his vocabulary and grammar are poor." She added that claimant's mother stated that he "rarely speaks unless he needs to and does not engage in back-and-forth conversations." She also noted that claimant's mother reported that he "rarely used descriptive gestures" and "struggles to following simple everyday directions."

Under the "Social Interactions" heading, Dr. Cartinella noted that claimant had "poor" eye contact and "limited range of facial expressions directed to others." All of the other examples included in this section were provided by claimant's mother. Specifically, claimant's mother reported that claimant does not respond to his name being called, isolates himself from his family, does not express affection towards his family, but asks to be "held like a baby"; further, he misunderstands emotional cues, does not share his interest or emotions with others, and does not share when he is hurt. His mother also reported that he prefers to play with two and three year old children, rather than children his own age, and that his play is not reciprocal, he is easily upset and he only had one friend his age.

Under the "Play and Interests" heading, all of the information was provided by claimant's mother, who reported that claimant "enjoys playing video games, Legos and drawing." She reported that he did not have a "variety of interests" but that he was "fascinated by turtles" and Legos. She also said that he "did not have a history of engaging in pretend play, nor did he share imaginative play with others."

Under the "Stereotyped Behavior & Pattern of Routines" heading, all of the information was provided by claimant's mother. She reported that claimant engages in "many sensory seeking behaviors, such as chewing on his clothes, rubbing objects with his hands, pulling and rubbing his hair, picking his nose frequently, smelling his food before eating it, and wrapping a blanket around his head before sleeping." He has a high tolerance for pain, and is "sensitive to loud noises and textures of clothing."

Under the "Behavior History" heading, claimant's mother reported that he had "frequent temper tantrums," was aggressive, would urinate on himself when he was frustrated and that he had to be constantly supervised. She also stated that he was highly interested in stoves and "other hot elements in the kitchen."

36. Dr. Cartinella's overall opinions were that claimant "had enough behaviors to warrant a diagnosis of an [ASD]." His "history of speech and language delay/impairment" also qualified him for the "langue impairment qualifier." However, his cognitive testing demonstrated that he was in the low to average range for cognitive abilities and did not qualify for the "intellectual impairment qualifier." As a result of Dr. Cartinella's findings, claimant was provided behavioral services.

SAN JUAN UNIFIED SCHOOL DISTRICT PSYCHOEDUCATIONAL EVALUATION

37. On April 7, 2016, the San Juan District performed a Psychoeducational Evaluation (San Juan Evaluation) on claimant and issued a report. Claimant was 11 years, 6 months old and in the sixth grade. The purpose of the evaluation was for his "three years special education re-evaluation to aid in the determination of eligibility for special

education services." The report noted that claimant had an "active IEP under the Speech/Language Impairment eligibility category. He has a secondary eligibility of Other Health Impairment."

38. The San Juan Evaluation noted that claimant underwent a "Independent Psychoeducational Evaluation (IEE)" on January 5, 2016, which indicated that claimant's "overall cognitive ability fell in the borderline range (SS=74) as measured by the Wechsler Intelligence Scale for Children, 5th Edition (WISC-5). His visual-spatial index (SS=89) and processing speed (SS=86) fell into the low average range." Additionally, his "overall adaptive behavior was rated delayed by the parent (SS=56) and average (SS=92) by his teacher." The behavior ratings by claimant's parents indicated that claimant's issues with "depression, attention problems, atypicality [*sic*], withdrawal, adaptability, social skills, leadership, functional communication, and activities of daily living were rated in the clinically significant range." Claimant's teacher rated his "depression in the at-risk range and somatization in the clinically significant range."

The report also referenced the findings of the Kaiser Center ADS evaluation, noting that claimant was found to meet "every criterion for [ASD] with a high level of symptoms." However, it was also noted that the Kaiser Center findings were not consistent with other findings. Specifically, the San Juan Evaluation references the IEE findings that contradicted the Kaiser Center findings as follow:

> [T]he IEE report … indicates that records reviewed (1) 'do not reflect concerns about social interaction, nonverbal communication, repetitive activities, stereotyped movements, or resistance to change.' (2) Teacher 'ratings have not identified these concerns at any time in his school career.' (3) Classroom 'observations do not support the presence of these challenges.' (4) Behavior 'during assessment did not

> reflect these concerns.' (5) [Claimant's] 'performance on direct measures of social perception and interpretation were fully average for his age.' And (6) [Claimant] does not meet criteria for autism in the school setting at this time.

39. The San Juan Evaluation concluded by stating that claimant's "cognitive functioning fell in the borderline to low average range based on the assessments available. His overall adaptive behavior was rated delayed by the parent and average by his teacher." Both claimant's parents and teacher rated "depression, negative emotionality and internalizing problems as areas of concern." Additionally, attention problems were in the "at-risk range." Claimant left the San Juan District and moved the Natomas Unified School District (Natomas) in the seventh grade.

SOCIAL ASSESSMENT PERFORMED BY ACRC

40. 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 22, 2017.[3] On April 7, 2017, Mr. Webb met with claimant, his mother and his siblings. On August 22, 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.

41. 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, his medical, psychiatric and educational history, to document behavior concerns and social

[3] The Social Assessment report reflects interview dates of March 7, and August 22, 2017. However, based on Mr. Webb's notes and testimony the first observation portion of the assessment took place on April 7, 2017.

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.

42. When claimant and his family arrived at the assessment on April 7, 2017, Mr. Webb noted that claimant "appeared to be unkempt and his hygiene seemed to be lacking." Mr. Webb offered claimant a "social greeting, which he returned." Claimant "exhibited appropriate social eye contact throughout the interview." Mr. Webb did not notice claimant engaging in any repetitive use of language, motions or "idiosyncratic speech." Claimant answered questions in full sentences. However, claimant appeared to be "preoccupied by having his siblings in the room." Claimant interacted with his siblings and exhibited a "broad range of affect." He used "gestures and facial expressions to communicate with his siblings." Mr. Webb noted that claimant "seemed immature for his age based on his play and interactions with his siblings."

43. Claimant's mother reported to Mr. Webb that when claimant was younger he was preoccupied with monsters, bit his nails and chewed on his clothes. She reported that claimant was aggressive towards his siblings, and hit when he is angry. He also had "no sense of modesty and may walk around the house without clothing on." Claimant had a "history of talking to himself and 'staring blankly at the walls.'" She also claimed that he was "fixated" on video games, which he played for "an excessive amount of time" and that he "d[id] not seem to understand social cues when interacting with others." Claimant's mother claimed that he did not have any friends that he regularly played with and that he preferred to play with younger children. She also claimed that claimant had "poor social eye contact." However, Mr. Webb noted that claimant "participated with appropriate social eye contact" during their conversations.

Claimant's mother reported that claimant had the "ability to complete self-care activities." However, he rushed through the activities and often did a poor job

completing the tasks. She described his hygiene as "poor." She also reported that claimant "must have one step directions at a time so that he does not become confused." She explained that his language skills were delayed. He does not "reciprocate in conversations well," and speaks in "short abbreviated sentences." She also reported that claimant "does not learn well," that his "short-term memory was poor" and that he needs more repetition to learn. He also does not pay attention when he is "learning something new." Additionally, he has "poor executive functioning skills." He has difficulty following a schedule and must be reminded to complete tasks. Finally, he does not participate in independent living skills and "becomes very upset if he is asked to do a chore."

44. Mr. Webb testified that based on his assessment of claimant, he did not observe any behavior or symptoms typical of a child with autism. 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

45. 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.

46. On April 18, 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.

47. Dr. Redwine interviewed claimant and his mother. She also reviewed available records, including the social assessment performed in 2011, the report issued by Dr. Silva in 2011, the social assessment performed by Mr. Webb, the Kaiser Center ASD Evaluation, claimant's education records and reports, Sacramento County records, La Familia records, Kaiser medical records, behavioral intervention records, and information received from claimant's Natomas special education teachers and the Director of Special Education. Dr. Redwine also administered claimant several tests, including the WISC-V, the ABAS-3, and the ADOS-2. Dr. Redwine reviewed and applied the DSM-5 diagnostic criteria for ASD.

48. At the time of the evaluation, claimant was 13 years, six-months old. Claimant arrived at the evaluation with his mother and a Spanish interpreter who translated for claimant's mother. Claimant did not greet Dr. Redwine and he appeared "sullen." Dr. Redwine explained the evaluation procedures to claimant and his mother. Claimant's mother "spoke very stridently to the evaluator in front of [claimant] stating that [claimant] 'cannot handle being in the room without his mother' and that he would become 'very upset and have bad behavior.'" Dr. Redwine observed that immediately, claimant "appeared increasingly upset and angry." Dr. Redwine asked claimant's mother to "speak supportively" to claimant about his "ability to do his best while working" with Dr. Redwine. Claimant's mother did so and left the testing office. Claimant "did not show any anxiety or distress when his mother left the testing office, but continued to appear sullen."

49. Dr. Redwine noted for claimant's background that he lived with his 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. Claimant's father was diagnosed with bipolar disorder and schizophrenia. Claimant's mother reported that claimant has appeared to have

hallucinations, which she had disclosed previously to a psychiatrist who said that claimant may be more at risk of developing that condition due to his father's conditions. Claimant's mother reported that family members and some of claimant's siblings had been diagnosed with autism and learning problems.

50. Dr. Redwine conducted a clinical interview with claimant's mother, and explained that "parents of adolescents often opt to speak privately" with her "so that they may speak openly about their child without embarrassment or discomfort to parent or child." Claimant' mother insisted that claimant stay in the room during her interview with Dr. Redwine. He sat quickly and did not interject. Dr. Redwine observed claimant "fidgeting his body such as shaking his leg." At times, Dr. Redwine asked claimant about his mother's responses." However, he "typically did not offer any opinion."

Claimant's mother reported to Dr. Redwine her concerns that claimant was "'behind in 'everything'." He does not "do anything without prompting and that he needs his mother for everything." He prefers to be alone in his room. Claimant's mother further reported that she has to remind him to engage in self-care. He often becomes aggressive if he is asked to do anything at home. She also reported that claimant has had "several episodes in which he heard voices and saw ghosts over the past two months when he was not sleeping in his mother's room." Claimant is also sensitive to loud noises and smells, and chews on things such as his clothes. She also stated that claimant "flaps his hands," "repeats words" and sometimes "makes repetitive high-pitched noises." He is also "very fidgety and distractible."

51. Dr. Redwine also interviewed claimant, who reported that he had several areas of concern about his functioning, including that he felt other children were smarter than him and had more friends. He also reported that at times he does "flap his hands and flick his fingers sometimes" which he demonstrated for Dr. Redwine. Claimant denied that he had "fixated or unusual patterns of interests." He admitted that he liked

video games but reported that he liked them a "'normal amount'." He also denied that he had any "rigid attachments to routines or rituals," but he did feel that he was "sensitive to smells and sounds."

52. Claimant attended eighth grade in Natomas Middle School, and reported that school was "alright." Claimant had an "IEP under the primary condition of speech or language impairment and no secondary disability." Socially, claimant reported that he had one school friend. Claimant explained that he had three friends when he was younger, but he changed schools and he went to a different middle school than his friends. Claimant explained that it was difficult to make friends and that he was shy when talking to other people. Claimant also reported that he "likes to make jokes" and that it is easier to make friends "when he is funny."

Claimant's mother reported that socially, claimant "never converses with other" or engages in "social conversations." However, Dr. Redwine noted that during the evaluation, claimant was texting on his telephone. She also reported that he does not make eye contact. When Dr. Redwine noted to claimant's mother that he sometimes made eye contact, she indicated that claimant's "psychologist was working on it and also at school."

53. As part of the evaluation process, Dr. Redwine contacted claimant's teachers and other staff at Natomas concerning claimant's performance and behaviors. Dr. Redwine received email correspondence from Anthony Da Marto, School Psychologist at Natomas, Lisa Claussen, Director of Special Education Services at Natomas, and two of claimant's special education teachers. Claimant's mother informed Dr. Redwine that Natomas was changing claimant's "IEP to reflect a disability condition of autism." However, Mr. Da Marto informed Dr. Redwine that the Natomas IEP for claimant "is not suspecting that [claimant] is on the autism spectrum." He further stated

that Natomas proposed a new special education assessment of claimant to address their concerns, but that claimant's parents did not consent to the new assessment.

Neither of claimant's special education teachers reported observing any autistic-like behaviors from claimant. Coletha Browning noted that claimant was "social and unless he is being bashful he is great at making eye contact." She also reported interactions were appropriate and "match how his peers act." She further stated that "[h]e is no trouble in class, although he can be chatty with his desk mate." She also reported that he needed "minimal help" with assignments.

Carol Baker-Tuney, also reported that claimant "has a tendency to be chatty with [his] desk mate." She explained that claimant "finishes his assignments, participates in class discussions and volunteers to read aloud." She also stated that he was "passing all of his classes." Ms. Baker-Tuney added that claimant was "well-liked by peers" and that he sought out "relationships and friendships." She further explained that claimant can be "quiet and reserved at times," but that he "often initiates social interactions with peers and is 'very social' when other peers want to initiate interactions with him." She described claimant's eye contact with peers as "great" and reported that he used "subtle gestures and is not overly expressive, but that you 'definitely read his face.'" Claimant also "'very much' shows sympathy to others who are hurt or sad" and that he is "able to change his behaviors to act appropriate in different social situations."

Ms. Claussen described to Dr. Redwine, "a pattern of unusual interactions" with claimant's mother in which she "reported very different functional levels and behaviors in [claimant] from what was observed within the school district." Ms. Claussen stated that claimant's mother "'does not see the same kid we see at school'." Ms. Clauseen stated that from her observations and information she has received from other school sources, claimant is "very social and frequently jokes and laughs" with his peers. She described claimant as using "appropriate eye contact," engaging in "reciprocal

conversations and can transition from one thing to another without help." She has never observed claimant in distress when the classroom is noisy, nor display any "repetitive or stereotyped language or motor mannerisms."

54. 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 observed that claimant "displayed very flat, depressive and withdrawn affect with only occasional minimal smiles." She noted that he "appeared to be quite sullen and this appeared to have a negative effect on his performance, therefore the results of the evaluation should be interpreted with caution." Dr. Redwine observed that his "eye contact was typically avoidant, and he often oriented his head and upper body down and away from this evaluator."

Claimant's "language was characterized by use of intelligible simple sentences with somewhat reduced variation in pitch and tone, with reduced variation in inflection and somewhat high volume, but otherwise appropriate rhythm and rate." Dr. Redwine did not observe any "repetitive, idiosyncratic or stereotyped use of language." She also did not observe any "repetitive or stereotyped use of body mannerisms, although he did frequently jiggle his leg in a fidgety manner." Dr. Redwine observed claimant "point and shake his head, but otherwise did not offer may gestures." He responded to questions, but "did not initiate chat or comments." When claimant sneezed, Dr. Redwine stated "'Bless you'" and claimant "automatically responded 'Thank you'." On another occasion, Dr. Redwine "accidently hit her hand against the wall" and claimant "spontaneously asked if she was okay."

55. Dr. Redwine administered claimant the WISC-V to assess his 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. Claimant's results included: Verbal Comprehension Index in

the Very Low range (SS=73); Visual-Spatial Index in the Low Average range (SS=84); Fluid Reasoning Index in the Very Low range (SS=76); Working Memory Index in the Very Low range (SS=74); and Processing Speed Index in the Low Average range (SS=83). His overall Full Scale IQ was 71, which was considered "Very Low Range." Dr. Redwine noted that claimant exhibited "low effort" and that the results should be interpreted with "caution."

56. 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 the responses, claimant obtained a General Adaptive Composite standard score of 48, which is "extremely low." However, Dr. Redwine opined that the results "should be interpreted with caution as mother reported that he was unable to perform several skills that the evaluator was able to observe him performing successfully during the course of the evaluation session."

For instance, claimant's mother reported that claimant "is unable to use sentences with a noun and a verb, however, he was observed to do so multiple times throughout" the testing and interview. Claimant's mother also reported that claimant does not "independently state the days of the week in order," does not "independently read and obey common signs," does not "independently say the names of other people and does not independently shake his head or say 'yes' or 'no' in response to a simple question." She also reported that he was "unable to tell [his] parents, friends, and others about his favorite activities and is unable to nod or smile to encourage others when they are talking." She also said that he did not "independently have good relationships with parents and other adults," that he is "unable to laugh in response to funny comments or

jokes, [keep a] stable group of friends, [or] show sympathy for other were they are sad or upset."

57. Dr. Redwine also administered the ADOS-2, Module 3, which included "a number of play-based and picture-based actives." Overall, claimant scored "13." 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" because of claimant's "significantly sullen affect," which, in Dr. Redwine's opinion, "may have resulted in artificially elevated scores." Dr. Redwine further opined that although claimant's scores met the ADOS-2 classification for autism, "suggesting a high level of autism spectrum related symptoms, the majority of his elevated scores were related to his 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."

58. 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 criteria of Criteria A. Dr. Redwine explained under Criteria A, although claimant presented at evaluation with a "sullen effect," a "good sample could not be obtained." However, information obtained from multiple school sources described claimant as "highly social" and "chatty." She further noted that claimant is observed at school as engaging in appropriate reciprocal conversations and is "empathetic to peers." He uses good eye contact at school towards peers and Dr. Redwine also observed claimant use "good gestures."

Dr. Redwine also opined that claimant met one of the four criteria in Criteria B. Dr. Redwine noted that school staff "denied observing him engage in any repetitive or

self-stimulating behaviors," nor did she observe any. He also did not demonstrate any "rigid attachment to routines and rituals" and did not demonstrate any "obsessive interests." However, Dr. Redwine opined that claimant was reported to have "significant sensory sensitives and there was evidence of this from his very chewed sweatshirt strings."

59. Dr. Redwine concluded that claimant did not meet the diagnosis of ASD. She explained that the information she obtained from claimant's school "stood out the most" because the observations of all four employees at Natomas, who have regular interaction with and ability to observe claimant, were that he was appropriate and well-liked. None of the Natomas employees that provided Dr. Redwine with information, had witnessed any autistic-like behavior. Dr. Redwine explained that it would be inconsistent with a diagnosis of autism to present at home one way and at school another. A person with autism cannot "turn it on or off."

She also found no evidence of intellectual disability. Pursuant to the DSM-5 diagnostic criteria, intellectual disability is diagnosed through a clinical assessment and standardized intellectual testing. Dr. Redwine explained that none of the evidence she reviewed indicated that claimant has been diagnosed with intellectual disability.

60. Dr. Redwine included three "rule out" conditions which should be considered as they may explain claimant's difficulties. The rule out conditions, also contained in the DSM-5, include: Language Disorder; Unspecified Depressive Disorder; and Unspecified Schizophrenia Spectrum and Other Psychotic Disorder.[4]

[4] Dr. Redwine's report included recommendations that claimant would benefit from "a referral to his psychiatrist or psychologist to access for the presence of a mood disorder given his flat affect interspersed with reported episodes of aggression." She also opined that claimant "would also likely benefit from being assessed for a psychotic disorder given his reported visual and auditory hallucinations." Additionally, Dr. Redwine

Dr. Redwine also opined that, based on her review of the Kaiser Center evaluation, claimant presented in a similar manner during her evaluation of him. The distinction is that Dr. Cartinella made a diagnosis of ASD based on his lack of social interaction, when all of the findings related to restricted and repetitive patterns of behavior were reported by claimant's mother, but not observed. Dr. Redwine opined that "best practices" requires a practitioner to not make a diagnosis if there is any doubt about why a child is presenting in a certain fashion. More information should be have been obtained or considered regarding how claimant behaved across multiple settings, including school. Dr. Redwine also explained that the Kaiser Evaluation failed to provide any differential diagnosis that may have explained claimant's behavior.

ADDITIONAL TESTIMONY AT HEARING

Cynthia Root, Ph.D.

61. 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 for 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.

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recommended that claimant would "likely benefit from a referral for family therapy to provide his parents parenting strategies for children with special needs and/or psychiatric disorders, as appropriate." She further opined that claimant would benefit from having his screen-time and media consumption reduced to "no more than one hour per day to provide him with ample opportunity to engage in language and social-based activities."

Root is part of the ACRC eligibility review team, in which 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 in 2011 and 2017.

As part of the review of claimant's request for services in 2017, Dr. Root reviewed Dr. Silva's 2011 evaluation and assessment of claimant. She noted that Dr. Silva determined that claimant did not meet the diagnosis for autism or intellectual disability. Dr. Root also reviewed Mr. Webb's social assessment, noting that Mr. Webb opined that claimant did not present as a typical child with autism. Additionally. Dr. Root noted that claimant's education records demonstrate that claimant has been assessed since he was five years old. His cognitive testing when he was five years old demonstrated that he was largely in the average range and there was no finding of autism. Additionally, he was qualified for services based on language and speech impairment. No documentation was provided to ACRC demonstrating that claimant qualifies for special education services based on autism or intellectual disability.

62. Dr. Root also reviewed the Kaiser Center ASD evaluation. Dr. Root explained that she had concerns about the ASD diagnosis because there is no information on the DSM-5 criteria table indicating what observation and information Dr. Cartinella relied upon to render her opinion that claimant met the criteria for autism. Dr. Root explained that it is standard practice to include this information in the table. Additionally, Dr. Cartinella was not provided the assessment completed by Dr. Silva, and Dr. Cartinella did not appear to take into account claimant's behavior at school. Dr. Root noted that claimant's reported difference in behavior at school and home should have been a "flag."

63. In contrast, Dr. Redwine obtained information from several people at Natomas concerning claimant's behavior at school. Dr. Root found the information they

provided to be compelling giving very specific details they provided about claimant's behavior. Each explained that they have not observed any behavior to suggest that claimant has autism. Dr. Root further explained that that the school information is helpful in determining whether symptoms of autism are observed over multiple contexts. Both Dr. Silva and Dr. Redwine opined that claimant did not meet the requisite criteria over multiple contexts.

64. 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 ASD or intellectual disability. However, Dr. Root opined that claimant demonstrated deficits in adaptive function in the home environment. Claimant has also displayed some learning disabilities and may meet the diagnosis for psychiatric conditions. However, he is not eligible for ACRC services for those conditions, because he has never had a development disability that would render him eligible for services.

Claimant's Mother and Graciela Medina

65. Claimant's mother explained she has been told by teachers and doctors that claimant was different and "weird" since claimant was five years old. As a child, he would not obey orders and was bothered by sounds. He would not cry when he fell. He would also line-up shoes and toy cars. Claimant was seen at La Familia who told claimant's mother that he had mental retardation and autism. She explained that the doctor that diagnosed him as such advised that claimant "would not have a life," but there were resources for him at ACRC.

66. Claimant's mother disagreed with Dr. Silva's assessment of claimant in 2011, and claimed that Dr. Silva only spent 25 minutes with her son. Dr. Silva told claimant's mother to continue taking him to school and he would improve. However, claimant's mother contends that he has not improved. She also contends that the school

districts have not provided her son with an adequate education. Claimant's mother also disputed the manner in which Dr. Redwine conducted the evaluation of claimant. She explained that Dr. Redwine asked claimant how his family behaved at home and whether his father or siblings had any mental health issues. Claimant's mother contended that such questions were inappropriate. She also asserted that claimant was scarred during the assessment.

67. 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. Through her visits at claimant's home she has observed claimant. She explained that claimant does not greet her or look into her eyes. She has been at the home when he reported that there were people in his room, when in fact there was no one in his room. Ms. Medina has also heard claimant scream and become upset. Ms. Medina has attended IEP meetings for claimant, with his mother. She explained that her role is not to provide medical or clinical support to claimant or his family. She has no clinical training in diagnosing ASD or intellectual disability. Rather, her role is to advocate for claimant's family.

DISCUSSION

68. 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. Dr. Redwine considered multiple sources of information to support her findings, including testing, assessments, interviews of claimant and his mother, review of Dr. Silva's report, medical and psychiatric records, extensive education records and assessments and

information supplied by four educators with recent, direct observations of and interactions with claimant. Dr. Redwine considered all of the information and supported her opinions with detailed explanations and evidence. Dr. Redwine also considered differential diagnoses which may explain some of claimant's behaviors.

69. Additionally, claimant has undergone various testing since he was five years old. Cognitive testing has consistently demonstrated that claimant does not have intellectual disability. His cognitive testing demonstrates that claimant has scored in the low and average range. Although he has struggled with language and speech, he has benefited from IEPs to address those issues, which continue to be addressed at Natomas. Learning disabilities are not included as an eligible condition under the Lanterman Act.

70. In contrast, the evaluation performed by the Kaiser Center and diagnosis of autism appeared to be largely based on claimant's mother's report, rather than observed behaviors. However, it is difficult to determine what information and observations support each criterion because Dr. Cartinella did not complete the DSM-5 ASD table, by including information to support her diagnosis. Based on the narrative portion of her report, the findings for Criteria B appear to be based almost exclusively on claimant's mother's report rather than Dr. Cartinella's personal observations. Additionally, while Dr. Cartinella noted that she had one teacher complete the CBCL, in which she did not rate claimant as clinically significant in any area, Dr. Cartinella did not appear to consider this information as part of her diagnosis. This is especially concerning considering the significant discrepancy between the teacher's opinions and report by claimant's mother of clinically significant behavior in numerous areas.

Dr. Cartinella also repeatedly noted that claimant had never been formally evaluated or assessed for autism, which was incorrect. Dr. Silva completed an assessment in 2011, just four years prior, and found claimant did not have autism or

intellectual disability. This information was not provided to Dr. Cartinella, and as a result could not have been considered as part of her assessment. Dr. Cartinella also did not review any of claimant's education records, which would have given her a more complete picture of claimant's abilities. Claimant's mother reported that claimant was in a special education class and that she did not know his educational classification. However, at the time of the Kaiser Center Evaluation, claimant only spent 10 percent of his time in special education for language and speech services. Additionally, Dr. Cartinella did not review claimant's psychiatric treatment records and failed to consider differential diagnoses that may have better explained claimant's symptoms.

71. 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, or learning disabilities, 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 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 he 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 eligibility 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 he is an individual with autism or an intellectual disability, or because he 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 21, 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).)