BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

vs.

FAR NORTHERN REGIONAL CENTER, Service Agency

OAH No. 2019050590

DECISION

Dena Coggins, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on October 1, 2019, in Chico, California.

P.J. Van Ert, Attorney at Law, represented the Service Agency, Far Northern Regional Center (FNRC).

Claimant, who was not present at the hearing, was represented by his mother.[1]

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[1] The names of claimant and his family members are omitted throughout this Decision to protect claimant's privacy.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on October 1, 2019.

ISSUE

Is claimant eligible to receive regional center services as an individual with autism, or based on the "fifth category"[2] because he has a condition closely related to intellectual disability, or that requires treatment similar to that required for individuals with an intellectual disability pursuant to Welfare and Institutions Code section 4512?

FACTUAL FINDINGS

1. Claimant is a 20-year-old male who lives with his mother and brother. He was referred to FNRC by the Emergency Assistance Center at the Silver Dollar Fairgrounds based on a suspicion of Autism Spectrum Disorder (ASD).[3] He has a history of Attention Deficient Hyperactivity Disorder (ADHD) and an auditory

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[2] To be eligible under the fifth category, an individual must: (1) have a disabling condition closely related to an intellectual disability; or, (2) have a disabling condition which requires treatment similar to that of a person with an intellectual disability. (*Samantha C. v. State Department of Developmental Services*, (2014) 185 Cal.App.4th 1462, 1492.)

[3] At the time of the referral, claimant was living with his family at the Silver Dollar Fairgrounds after surviving the Camp Fire, but losing his family home and belongings.

processing deficit. Claimant's mother requested a diagnosis and eligibility determination.

2. FNRC issued a Notice of Proposed Action (NOPA) to claimant on March 20, 2019. The NOPA notified claimant of its proposed action to close his case immediately. The specific reason for action was noted as:

> [Claimant] does not have intellectual disability and shows no evidence of epilepsy, cerebral palsy, autism, or disabling condition found to be closely related to intellectual disability or to require treatment similar to that required for individuals with intellectual disability. Psychological records show evidence of Narcissistic Personality Disorder, Persistent Depressive Disorder, Alcohol and Cannabis [U]se [D]isorder-severe but they are not qualifying conditions for regional center services. Eligibility Review (multi-disciplinary team) determined [claimant] was not eligible for FNRC services based on Medical dated 09/20/19-01/11/19 by Enloe Behavioral Health. Psychological dated 03/14/19 by J. Reid McKellar, Ph.D.[,] Psychological dated 03/18/15-01/20/16 by Therapeutic Solutions. Intake summary/medical history dated 02/04/19 by Ann Popp, IS.

3. Claimant appealed FNRC's decision on May 13, 2019, and this fair hearing ensued.

Medical Records

4. The eligibility review team consisted of Christine Austin, M.D.; Bob Boyle, PsyD; Ann Popp, Intake Specialist; and Robin Larson, Case Management Supervisor. As part of their eligibility review process, the team reviewed records provided by claimant. Included in the documents provided were medical records from Enloe Behavioral Health; a Neuropsychological Report, dated December 27, 2014, by Patricia Jane Weiss, Ph.D. (2014 Neuropsychological Report); a Psychiatric Evaluation Report by Therapeutic Solutions, dated March 18, 2015; a Psychological Testing Evaluation Report by J. Reid McKellar, dated March 14, 2019 and Social Assessment/Intake Summary by Ms. Popp, dated February 4, 2019.

5. The medical records provided by Enloe Behavioral Health contain a summary of social history, medical history, psychiatric history, family history, current medications, claimant's chief complaint history, and an EEG Awake and Asleep report. Claimant's previous illnesses were noted as depression, anxiety, ADHD, and sleep issues. Claimant's chief complaint on September 20, 2018, was noted as racing thoughts, intrusive thoughts, anxiety, lack of focusing/focusing too much, depression, panic attacks, overthinking, and "I can't take my mind off of negative thinking." Follow-up notes, dated October 23, 2018, November 13, 2018, and January 11, 2019, were included in the medical record. In a brief history summary on the EEG Awake and Asleep report, Paramijt Singh, M.D., noted that claimant smokes marijuana every day and binges on alcohol over the weekends. Claimant received the EEG because of possible seizures. The summary of the report stated, "This is a normal EEG. There is no evidence of focal slowing or epileptic discharges. Please correlate clinically." All of the follow-up notes indicated "Autistic Spec" under the heading "Diagnosis Axis I & II", but there was no information contained in the medical records about whether this was a

formal diagnosis, who made the diagnosis, when the diagnosis was made, or what testing, if any, supported the diagnosis.

Therapeutic Solutions Psychiatric Evaluation

6. Claimant also provided FNRC with psychiatric evaluation reports and notes by Therapeutic Solutions, dated between March 18, 2015, and January 20, 2016. An evaluation was conducted on claimant on March 18, 2015, pursuant to an appointment made by claimant's mother. At the time of the evaluation, claimant was 16 years old. The evaluator, Ahmed Abouesh, M.D., provided a summary of claimant's medical history noting that claimant was diagnosed with ADHD at age eight and has been treated with stimulants since that time. The report also notes a history of auditory processing deficits, a diagnosis of a nonverbal learning disorder, and notes that he has been treated for dysthymia. Claimant's history of substance abuse was noted as "occasional marijuana use."

7. In a Physician Progress Note by Ethan Ittner, D.O., dated October 22, 2015, Dr. Ittner noted that claimant and his mother self-reported that claimant became hostile around age 10 or 11. At age 12, he had an Intelligence Quotient (IQ) of 130. Later IQ tests, around the same time, showed IQ scores of 126 and 129. Claimant has a history of suicidal ideation. Claimant further reported that he has some anxiety and difficulty falling asleep, and lack of empathy for others. Dr. Ittner wrote that claimant's father "has some fairly Asperger like quality. The pt was denoted to have some aspects of that as denoted by previous psychologists", although Dr. Ittner did not make a specific reference to a particular psychologist or report. On October 22, 2015, Dr. Ittner diagnosed claimant as having a primary diagnosis of Mood Disorder Not Otherwise Specified, and secondary diagnosis of Conduct Disorder. Additionally, Dr. Ittner diagnosed claimant with Oppositional Defiant Disorder. Dr. Ittner noted the results of

claimant's mental status examination, which included entitled, oppositional demeanor; poor insight and judgment; above average intelligence estimate; and angry/hostile/anxious mood.

8. In a subsequent Physician Progress Note by Dr. Ittner, dated January 20, 2016, claimant's mental status examination resulted in findings of poor insight and judgment, withdrawn demeanor, recent impaired memory, distractible concentration, sad/depressed/angry/hostile/anxious mood. When explaining clinically significant findings in the mental status examination, Dr. Ittner wrote, "Pt. is cognitively slowed", but he did not provide a basis for that finding.

2014 Neuropsychological Report

9. Patricia Jane Weiss, Ph.D., conducted a neuropsychological examination on claimant on December 20 and 21, 2014, and prepared a report, dated December 27, 2014. The evaluation was conducted because of claimant's mother's concerns about claimant's school grades and whether he was suffering from depression, Bipolar Disorder, Schizoaffective Disorder, or some other mood or personality disorder.

10. Dr. Weiss administered the Wechsler Adult Intelligence Scale, Fourth Edition, Rorschach Inkblot Test, Rotter Incomplete Sentence Blanks, Personality Assessment Inventory, Beck Youth Inventories, Cat-A for ADD/ADHD, Woodcock-Johnson Tests of Achievement, and Test of Auditory Processing Skills, Third Edition. The examination was conducted in five hours, over two sessions, which included a clinical interview.

11. Based upon her evaluation of claimant, Dr. Weiss diagnosed respondent with the following DSM-IV Diagnoses:

Axis I:	Dysthymic Disorder (300.4)
	Nonverbal Learning Disorder vs. Receptive Auditory Processing D/O (307.9)
	History of Attention Deficit Disorder (ADD) without Hyperactivity Rule out Bipolar II Disorder
Axis II:	Deferred
Axis III:	No serious medical illness
Axis IV:	Moderate to severe stressors: Academic Difficulties; Possible Learning Disorder(s); parents' divorce five years ago
Axis V:	65

12. In her report, Dr. Weiss provided the following summary:

> [Claimant] is a 16.1-year-old male who is presently living in Paradise, near Chico, California.
>
> On an overall cognitive level, [claimant] ranks at the 96th percentile, in the *very superior* range. He scored at the 99th percentile, in the very superior range, in the category of Verbal Comprehension. In the category of Perceptual Reasoning, which includes three visual-spatial and fine motor tasks, [claimant] scored in the high average range at the 87th percentile. His working Memory domain is at the

> 77th percentile, and his Processing Speed domain returned to a higher score at the 82nd percentile. He may have a Nonverbal Learning Disorder, of one of the types mentioned above, and could also have a visual scanning difficulty. . . .
>
> His psychological testing showed a brilliant and strong young man, of genius full scale cognitive abilities: a striking and stunningly intelligent person who is under extreme stress internally, who has marked symptoms of depression and anxiety. . . .
>
> [Claimant] is a very intelligent, creative, and thoughtful individual who has been battling with depression, anxiety and Learning Disorders for the last number of years. . . .
>
> [Emphasis in original.]

2019 FNRC Social Assessment

13. Ms. Popp interviewed claimant on February 4, 2019; claimant's mother was present, and memorialized the interview in a Social Assessment (2019 Social Assessment). Claimant's mother reported that claimant was diagnosed with ADHD and auditory processing disorder at age seven. She further reported that claimant had an IQ of 130.

14. Claimant reported that he "hates people" and will only leave his house for up to two hours. He is sensitive to loud noises. He has never understood authority and is baffled by why anyone has to do what someone tells them to do. He speaks on

topics of interest to him and does not want to be interrupted because he will have to start all over again. Claimant and/or his mother reported that he endangers himself, does not make safe decisions or move easily from one activity to another, has problems relating or interacting with peers, and displays challenging behaviors. The challenging behaviors include aggression, self-injurious behaviors, property destruction, and emotional outbursts. He did not graduate from high school.

2019 Psychological Testing Evaluation

15. FNRC referred claimant to J. Reid McKellar, Ph.D., a licensed clinical psychologist, to perform an ASD evaluation of claimant. On February 22, 2019, Dr. McKellar performed a psychological testing evaluation on claimant. Claimant's mother also participated in the evaluation. The instruments used in testing were the: (1) Autism Diagnostic Observation Schedule 2-Module 4; (2) Adaptive Behavior Assessment System, Third Edition;[4] (3) Million Clinical Multiaxial Inventory-IV; and (4) a review of the symptoms for ASD, as contained in the Diagnostic Statistical Manual of Mental Disorders, Fifth Edition (DSM-5).

16. Respondent wrote a psychological testing evaluation report, dated March 14, 2019, based upon his evaluation of claimant. Dr. McKellar reviewed the FNRC Psychological Testing Referral, 2019 Social Assessment, and a 2005 Psychological Evaluation by Jennifer Kennelly.

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[4] Dr. McKellar's Psychological Report appears to have a typographical error under "Instruments utilized" where he refers to the Adaptive Behavior Assessment System-Second Edition, as he later refers to the test instrument as the Adaptive Behavior Assessment, Third Edition throughout the remainder of the report.

17. Dr. McKellar's psychological testing evaluation report provided a summary of claimant's pre-natal birth history, developmental history, medical history, social, behaviors of concerns, sensory, interests, and educational, family, and psychiatric histories, among other things. Dr. McKellar noted in his report that claimant "has a long history of mood disturbance and aberrant (anti-social) behavior, and he abuses alcohol and marijuana on a regular basis. Regarding claimant's developmental history, Dr. McKellar noted that claimant met most of his developmental milestones early, and his play and social communication were both normative in early childhood.

Regarding his medical history, Dr. McKellar noted that aside from claimant's psychiatric history, his medical history is normative. Regarding claimant's social history, Dr. McKellar wrote that claimant has "good empathic capacity (understanding of non-verbal communication and social emotions)"; tended to have a few close friends through all stages of development; and was able to engage in "to and fro" conversation; and uses non-verbal and verbal communication. He further noted that claimant "has good abstract reasoning skills; a fair degree of cognitive creativity and he is capable of engaging in introspective thought."

18. Dr. McKellar found that claimant "evinced signs of personality disturbance and addiction issues during evaluation, and he did not evince any sign of [ASD]." Additionally, Dr. McKellar observed signs of depression. Claimant self-reported that he has a history of anxiety with recent panic attacks, a history of depression, and an extensive history of marijuana and alcohol abuse.

19. The Adaptive Behavior Assessment System, Third Edition, (ABAS-III) is an individually administered, norm-referenced assessment of adaptive behavior. The ABAS-III is compatible with the American Association on Intellectual Disabilities and the DSM-5. Claimant's mother provided ratings which resulted in claimant scoring

"extremely low" in the area of communication, community use, functional academics, home living, leisure, self-direction, and social, and "Below average" in the area of health and safety. The obtained adaptive profile indicates that claimant exhibits "pervasive deficits in adaptive behavior across all domains."

20. The Million Clinical Multiaxial Inventory-IV, a self-report measurement of expressed concerns, personality patterns, and clinical syndromes, provided results that suggest claimant has a Persisting Depressive Disorder, with a propensity for episodes of Major Depression, and he is prone to anxiety.

21. The ADOS-2 is a semi-structured standardized assessment of communication, social interaction, play/imaginative use of materials, and restricted and repetitive behaviors for individuals suspected of having ASD. The summary of claimant's ADOS-2 observation resulted in a score of 4, "which indicates a subclinical classification" that does not suggest he has ASD.

22. Based on the evaluation of claimant, Dr. McKellar concluded that claimant did not meet diagnostic criteria for ASD as set forth in the DSM-5. However, Dr. McKellar diagnosed claimant with the following DSM-5 diagnoses:

301.81 Narcissistic Personality Disorder

300.4 Persistent Depressive Disorder with anxious distress

303.90 Alcohol Use Disorder–severe

304.30 Cannabis Use Disorder-severe

23. Dr. McKellar further concluded:

> [Claimant] presented with numerous features of narcissistic personality disorder during evaluation, including the common, seemingly paradoxical combinations of low self-confidence, a strong sense of entitlement and grandiose ideation. Although some of these features are suggestive of Asperger's Disorder, [claimant] also exhibited numerous strengths not suggestive of an Autism Spectrum Disorder.
>
> . . .
>
> Testing data, results of the DSM-5 symptom review and [claimant's] social history is highly inconsistent with the presence of Autism.

2019 Neuropsychological Report

24. Dr. Weiss conducted a subsequent neuropsychological evaluation of claimant on July 20 and 21, and September 27, 2019, then prepared a neuropsychological report, dated September 27, 2019. Claimant was referred for testing by his mother after he was found ineligible for services from FNRC.

25. Dr. Weiss administered the Wechsler Adult Intelligence Scale, Fourth Edition; Woodcock-Johnson Tests of Achievement, Third Edition; Psychological Assessment Inventory for Adolescents; and Asperger Syndrome Diagnostic Scale (Questionnaire for ASD). Additionally, Dr. Weiss performed a clinical interview of claimant. The evaluation occurred over two sessions, resulting in five hours of testing.

26. Dr. Weiss administered the Asperger Syndrome Diagnostic Scale, a scale that looks for symptoms of ASD, by interviewing claimant's mother, reviewing previous

testing conducted in 2014,[5] and psychiatric interviews by Dr. Long, who claimant has been seeing since September 2018. Based on the interview, claimant scored a 131 on the Asperger Syndrome Quotient, which is the 99th percentile, showing a highly likely probability of such syndrome.

27. In Dr. Weiss's report, she noted that claimant has been diagnosed with Obsessive Compulsive Disorder by Joel Long, M.D., and was prescribed medication for the disorder. Claimant admitted to using marijuana and alcohol to an abusive level.

28. Claimant's "Full Scale Score (which used to be called the "IQ")" was a 108 standard score, which is the "upper part of the average range." On the test of intellectual functioning, claimant's overall performance was in the high average range, at the 70th percentile. Dr. Weiss noted that "although many of [claimant's] scores on the cognitive part of the assessment fell in the superior to the very superior range, the scatter between his individual subtests ranged between the 16th percentile . . . to the 99th percentile . . . ." Dr. Weiss explained, "This is a difference of more than three standard deviations, . . . a highly significant difference; the range for the normal subjects should fall with a one standard deviation range." Dr. Weiss wrote:

> This difference is significant, and shows that there are certain factors that may be greatly impairing [claimant's] day-to-day performance when he was at school and college and when he tried to work (which never worked out). [Claimant] is likely on the Autistic Spectrum, and also has significant Learning Disorders. According to this latest

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[5] It is unclear which previous testing Dr. Weiss reviewed.

testing, he likely has a Processing Speed Learning Disorder and also a Receptive Auditory Processing Deficit. His Autistic Disorder could be playing a very large factor in this situation.

29. Dr. Weiss further opined:

> In this examiner's opinion, [claimant] is an extremely intelligent young man, but he does likely have Autistic Spectrum Disorder, given the oral history of his childhood and adolescence, from his mother, as well as how the ASDS turned out (the Asperger Syndrome Diagnostic Scale).

30. Dr. Weiss diagnosed claimant with the following DSM-5 Diagnostic Impressions:

> AXIS I: Cannabis Use Disorder (304.40) . . .
>
> Receptive Auditory Deficit (307.9) . . .
>
> Processing Speed Learning Disorder (307.9) . . .
>
> Generalized Anxiety Disorder (300.02) . . .
>
> Post Traumatic Stress Disorder (309.81) . . .
>
> Major Depressive Disorder, Recurrent (296.32) . . .
>
> Autistic Spectrum Disorder (ASD) (299.0) . . .
>
> AXIS II: Deferred.

AXIS III: No serious medical problems for claimant at this time

AXIS IV: Learning and concentration difficulties

Testimonies from Eligibility Review Team Members

31. Christine Austin, M.D., medical director at FNRC, testified at the hearing. She has served in her current position for 12 years. She is a licensed physician in California, and received her doctor of medicine in 1997. She completed a pediatric residency at the Children's Hospital in Oakland, California, in 2000. She was first trained to conduct autism evaluations in 2007, and has received continuing education relating to autism evaluations.

32. In her current position, Dr. Austin is a member of the eligibility review team at FNRC. She explained that the eligibility review team follows the Department of Developmental Services' (DDS) best practices for autism evaluations, which is: (1) an interview with the individual seeking regional center eligibility and the individual's caretaker; (2) observation of the individual; and (3) review of the DSM-5 criteria to determine if the individual meets the criteria for an ASD diagnosis. Medical records are also reviewed to determine if past signs and symptoms of ASD exist.

33. The ADOS-2 is the "gold standard" for the observation component of an ASD evaluation. The ADOS-2 is a diagnostic tool geared for the language level and communicative ability of the testing individual. The observation includes conversations and activities involving the individual being tested to observe if signs of ASD are present. The observation typically lasts 30 minutes to one hour.

34. Dr. Austin participated on the eligibility review team to determine whether claimant was eligible for regional center services. FNRC referred respondent for an ASD evaluation with Dr. McKellar after finding an October 2018 medical record indicating possible ASD.

35. Dr. Austin noted that Dr. Weiss's 2014 Neuropsychological Report did not mention ASD or note any concerns regarding ASD. That report also did not mention any observation conducted for purposes of diagnosing ASD. The report did not contain any factual observations to support a diagnosis of ASD and Dr. Weiss did not diagnose claimant with ASD in her report.

36. On the other hand, Dr. McKellar followed the DDS's best practices for ASD evaluation. The evaluation found claimant's score of four to be below the cut off for finding evidence of ASD. Claimant did not meet the DSM-5 diagnosis for ASD. Based on review of all reports available to the eligibility review team, which did not include the 2019 Weiss Neuropsychological Report, there was no evidence claimant is an individual with ASD, although, Dr. Austin acknowledged claimant has substantial handicaps.

37. Dr. Austin reviewed Dr. Weiss's 2019 Neuropsychological Report. In the 2019 report, Dr. Weiss did not use the DDS's best practices for ASD evaluation, as she did not indicate in her report that she conducted an observation of claimant for ASD signs/symptoms or any description of observable behavior that would indicate claimant is an individual with ASD. Additionally, Dr. Austin expressed concerns that the report did not contain a description of claimant's behaviors that Dr. Weiss observed that were relevant to an ASD diagnosis. Also, Dr. Weiss's 2019 Neuropsychological Report did not contain any analysis of whether claimant met the DSM-5 criteria for ASD. Dr. Austin was also concerned that the Asperger's Syndrome Diagnostic Scale is a

screening test for individuals between ages 5 and 18, and claimant was 20 years old at the time Dr. Weiss administered the Asperger's Syndrome Diagnostic Scale. Additionally, Dr. Weiss's 2019 Neuropsychological Report did not indicate that Dr. Weiss administered the ADOS-2. After reviewing Dr. Weiss's 2019 Neuropsychological Report, Dr. Austin did not change her conclusion that claimant is not eligible for regional center services.

38. Dr. Boyle, a licensed staff psychologist at FNRC, testified at the hearing. He has been employed by FNRC for 10 years. He earned a doctorate and a master's degree in psychology. He was previously in private practice. He is experienced in conducting cognitive evaluations. In his position, Dr. Boyle regularly reviews other doctors' evaluations to determine eligibility for regional center services. He testified that one factor in qualifying as having a developmental disorder of intellectual disability is the individual must shows signs of sub average intelligence, one with an IQ score below 70.

39. As part of the eligibility review team, Dr. Boyle reviewed the same documents reviewed by Dr. Austin, and later Dr. Weiss's 2019 Neuropsychological Report. After reviewing all of the information, Dr. Boyle concluded that claimant did not have a qualifying developmental disability.

Claimant's Mother's Testimony

40. Claimant's mother testified at the hearing. She believes claimant acts as though he has a developmental disability, asserting that he "doesn't know how the world works", acts "clueless", is "incredibly dense", and lacks time management skills.

41. During her testimony, claimant's mother disagreed with some of the information contained in Dr. McKellar's report. She disagreed that claimant "exhibited

appropriate use of non-verbal communication, language pragmatics and social conventions through all stages of development." Instead, claimant only discusses subjects of interest to him. Claimant's mother also disagreed that claimant has an empathetic capacity or "social emotions." She also disagreed that claimant has close friends; instead, she stated that claimant has a diminished number of friends. She also disagreed that claimant has not exhibited noise sensitivity as an adult and that claimant was physically abused by his father. Claimant's mother also disagreed with Dr. McKellar's summary of claimant's family history and criminal history, claimant's ability to be engaged in conversation, the assessment of claimant's adaptive functioning, and that claimant has several interests, among other items. Claimant's mother does not believe claimant understands the emotions of others. Claimant's mother prepared a list of some of the discrepancies described above, read them to claimant, and claimant initialed next to all of the listed discrepancies.

42. Claimant's mother was not present during Dr. Weiss's 2014 and 2019 evaluations of claimant or Dr. McKellar's 2019 evaluation of claimant. Claimant's mother did not provide Dr. McKellar's report to Dr. Weiss.

43. Mother has seen claimant's behavior decline because of his alcohol use and she believes his lack of motivation may be connected with his marijuana use. She finds that his use of marijuana has helped him with his aggression and anger.

Discussion

44. Regional centers provide services to individuals who have a "developmental disability" as defined in the Lanterman Developmental Disabilities Services Act (Lanterman Act). The developmental disabilities described in the Lanterman Act include five categories, intellectual disability, cerebral palsy, epilepsy,

autism, and a “fifth category” of disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability. The evidence did not establish, nor did claimant assert, that he is an individual with intellectual disability, cerebral palsy, or epilepsy. The evidence showed that he received IQ scores of 130 when he was approximately 12 years old and 108 in 2019; neither score evidences an intellectual disability.

45. Additionally, there was insufficient evidence to establish that claimant had a disabling condition that is closely related to intellectual disability or requires treatment similar to that required for individuals with an intellectual disability. While claimant’s mother asserted that he may qualify for regional services based upon the fifth category, the evidence did not support her assertion. Dr. Weiss’s 2014 Neuropsychological Report indicated that at 16 years old, claimant’s overall cognitive level was in the very superior range. His psychological testing showed a “brilliant and strong young man, of genius full scale cognitive abilities.” In her 2019 Neuropsychological Report, Dr. Weiss, again, tested claimant’s cognitive functioning, and did not note any concerns of claimant having a disabling condition that is closely related to intellectual disability or requiring treatment similar to that required for an individual with an intellectual disability, nor did any of the other records provided to FNRC by claimant.

46. Also, there was insufficient evidence to establish that claimant is an individual with ASD. Claimant’s medical records did not sufficiently support a diagnosis of ASD. Dr. McKellar’s 2019 Psychological Testing Evaluation Report was detailed and persuasive. Dr. McKellar’s evaluation of claimant was an ASD evaluation. Dr. McKellar utilized testing instruments specific to testing claimant for ASD, including an observation for symptoms of ASD. He also administered the Adaptive Behavior

Assessment System and ADOS-2, and reviewed the DSM-5 to determine if claimant presented with symptoms of ASD. Dr. McKellar acknowledged that claimant had some features suggestive of Asperger's Disorder, but that he exhibited numerous strengths not suggestive of ASD and concluded that testing data, results of the DSM-5 symptoms review and claimant's social history is highly inconsistent with the presence of Autism.

47. In Dr. Weiss's 2014 Neuropsychological Report, she did not diagnose claimant with ASD. While Dr. Weiss concluded in her 2019 Neuropsychological Report that claimant does likely have ASD based upon the oral history of his childhood and adolescence obtained from his mother and the results of the Asperger Syndrome Diagnostic Scale, her opinion was not as persuasive as Dr. McKellar's opinion. There was no indication she conducted an observation of claimant specific to symptoms and signs of ASD, there was no reference to a review of the DSM-5 for diagnosis of ASD, and she administered the Asperger Syndrome Diagnostic Scale, which was normed for individuals younger than claimant. For those reasons, more weight was given to Dr. McKeller's opinions. And while claimant's mother expressed numerous concerns about inaccuracies in Dr. McKellar's report, the evidence did not establish that those discrepancies would change Dr. McKellar's opinion that claimant did not have ASD.

48. The evidence did establish that claimant does have mental health conditions and learning disabilities, which were diagnosed from an early age. However, the legislature made the determination that only individuals with 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 and learning disabilities, if they cannot show that they fall within one of the five categories

delineated in the Act. Although the result may seem harsh, particularly for individuals with mental health conditions and learning disabilities like claimant, the legislature did not grant regional centers the authority to provide services to individuals whose disabilities fall outside the five specified categories. Because claimant did not show that he has autism, an intellectual disability, meets the criteria for fifth category eligibility, or any other qualifying developmental disability, he did not establish that he is eligible for services under the Lanterman Act.

LEGAL CONCLUSIONS

1. Eligibility for regional center services is limited to those persons meeting the eligibility criteria for one of the five categories of developmental disabilities set forth in Welfare and Institutions Code section 4512 as follows:

> "Developmental disability" means a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. . . . [T]his term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with 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. Welfare and Institutions Code section 4512, subdivision (l), defines substantial disability as:

> (l) The existence of significant functional limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person:
>
> (A) Self-care.
>
> (B) Receptive and expressive language.
>
> (C) Learning.
>
> (D) Mobility.

(E) Self-direction.

(F) Capacity for independent living.

(G) Economic self-sufficiency.

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

(a) "Substantial disability" means:

(1) A condition which results in major impairment of cognitive and/or social functioning, representing sufficient impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential; and

(2) The existence of functional limitation, as determined by the regional center, in three or more of the following areas of major life activity, as appropriate to the person's age:

(A) Receptive and expressive language;

(B) Learning;

(C) Self-care;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living;

(G) Economic self-sufficiency

5. To be eligible under the fifth category, an individual must: (1) have a disabling condition closely related to an intellectual disability; or, (2) have a disabling condition which requires treatment similar to that of a person with an intellectual disability. (*Samantha C. v. State Department of Developmental Services*, (2014) 185 Cal.App.4th 1462, 1492.) Conditions which are solely learning disabilities do not constitute a developmental disability. (Cal. Code Regs., tit. 17, § 54000, subd. (c)(2).) Likewise, conditions which are 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 do not constitute a developmental disability. (*Ibid.*)

6. As set forth in the Factual Findings, the evidence did not establish that claimant is intellectually disabled, autistic, or has a condition closely related to an intellectual disability, or requires treatment similar to that required for an individual with an intellectual disability. Rather, cognitive testing revealed that claimant is of average to very superior intelligence. Although claimant was diagnosed with learning disabilities and multiple mental health conditions prior to and after turning age 18, none of these qualify as a developmental disability under the Lanterman Act. (Cal. Code of Regs., tit. 17, § 54000, subd. (c)(2).)

7. Claimant exhibits deficits or impairments in his adaptive functioning. However, regional center services are limited to those individuals meeting the stated eligibility criteria. The evidence did not establish that claimant has impairments that result from a qualifying condition which originated and constituted a substantial disability before the age of 18.

8. Claimant failed to prove that he has a substantially disabling developmental disability as defined by the Lanterman Act. He is therefore not eligible for regional center services and supports at this time.

ORDER

Claimant's appeal is denied. The service agency's determination that claimant is not eligible for regional center services is upheld.

DATE: October 15, 2019

DENA COGGINS

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.