BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

VS.

NORTH LOS ANGELES COUNTY REGIONAL CENTER

OAH No. 2019061197

DECISION

Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on August 12, 2019, in Santa Clarita, California.

Claimant was represented by his foster parent (Parent). (Claimant and his family members are identified by titles to protect their privacy.)

North Los Angeles Regional Center (Service Agency or NLACRC) was represented by Monica Munguia, Fair Hearing Manager and Jimmy Alamillo, Fair Hearing Manager.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on August 12, 2019. Exhibits 3-19 were placed

under seal pursuant to a protective order to protect the privacy interests of Claimant and his family.

The record was re-opened on August 21, 2019 for the parties to submit an English translation of Exhibit 5 and any objections, no later than September 3, 2019. NLACRC submitted the document which was marked and admitted as Exhibit 27. No objections were filed. The record was closed and the matter was re-submitted on September 3, 2019.

ISSUE

Is Claimant eligible to receive services and supports from Service Agency under the Lanterman Developmental Disabilities Services Act (Lanterman Act)?

EVIDENCE

Documentary: Service Agency's exhibits 1-27.

Testimony: Sandi Fischer, Ph. D and Parent.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant is a three-and-one-half-year-old boy. Parent is Claimant's foster parent. Claimant had been an Early Start Services[1] consumer of Central Regional Center (CRC) in his previous placement. At CRC's suggestion, on or about December 12, 2018 Claimant's grandfather, who was his previous foster parent, signed an NLACRC Intake Application. Around that time, Claimant's placement was changed and no one had authority to provide consent for the Intake Application. Subsequently, on February 11, 2019, Parent signed a NLACRC Intake Application and requested that NLACRC make Claimant eligible for regional center services. NLACRC reviewed Claimant's records, conducted assessments and on May 20, 2019, determined that Claimant was not eligible for regional center services.

2. On May 22, 2019, Service Agency sent a letter and Notice of Proposed Action to Parent informing her that its clinical team determined Claimant is not eligible for services as there was no evidence of Claimant having substantial handicapping

---

1 Early Start services are provided to at-risk babies and toddlers from birth to three years of age. At the age of three, Early Start services terminate. Some consumers become eligible for special education services through local school districts. Some also become eligible for regional center services under one of five qualifying categories of developmental disabilities. Typically, the regional center and the school district assess recipients of Early Start services on or before the age of three as they exit Early Start services.

conditions related to a qualifying developmental disability, as defined in the Lanterman Act and Title 17 of the California Code of Regulations.

3. On June 18, 2019, Parent filed a fair hearing request, on Claimant's behalf, to appeal Service Agency's decision and to request a hearing.

Background

4. Parent is Claimant's foster parent and the girlfriend of his paternal uncle. Claimant lives with his two-year-old biological sibling, Parent, Parent's eight-year-old daughter (Claimant's cousin) and his paternal uncle who is also his foster parent within the NLACRC catchment area. Claimant was removed from the custody of his biological parents at birth when he tested positive for methamphetamine. He lived with his paternal grandfather for two years until he was removed after allegations of abuse and neglect. Claimant has been diagnosed with Post-Traumatic Stress Disorder (PTSD), Speech and Language Disorder, Disinhibited Attachment Disorder and Attention Deficit Hyperactivity Disorder (ADHD). Parent hopes to adopt Claimant and his sibling.

5. Claimant was an Early Start consumer of CRC when he lived with his paternal grandfather. CRC offered Claimant minimal services and there is no evidence or indication that Claimant actually received those services. Claimant was placed with Parent around his third birthday which coincided with the time that a transition meeting, a regional center eligibility assessment and a school district assessment for special education, are typically scheduled. Parent contacted CRC when Claimant was placed with her. CRC staff advised Parent that she should have the assessments conducted by NLACRC because she resides within the NLACRC catchment area and Claimant is likely to remain with her and not return to the CRC catchment area. After

Parent contacted NLACRC, Claimant was assessed and found not found eligible because he did not suffer from a qualifying disability.

Medical Information

6. Parent was provided with a "Confidential Health and Education Passport" (Passport) by the Madera County Department of Social Services. The Passport contained Claimant's immunization records, birth records, and a list of his medical visits. The Passport also notes that in 2017 at the age of 14 months, Claimant's hair follicle test was positive for Methamphetamine 1291 pg/mg. The cut-off for Methamphetamine confirmation is 500 pg/mg. The Passport also notes concerns about Claimant's communication skills, gross motor skills, hearing and tantrums.

7. A March 21, 2019 one-page summary of medical records prepared by Margaret Swaine, MD, on behalf of NLACRC provided:

> A chart review of medical records was completed. Ongoing medical care in the community is reported. Available information in the chart does not suggest the presence of a substantially handicapping cerebral palsy or epilepsy. Mental health records from Penny Lane list a diagnosis of PTSD.

(Ex. 11.)

8. At hearing, the parties stipulated that Claimant did not have Cerebral Palsy or Epilepsy.

Assessments/School Records

9. CRC performed an Early Start Evaluation on January 25, 2018, when Claimant was approximately 26 months old. Claimant was referred to CRC by the Madera County Department of Social Services. According to the Evaluation, Claimant lived with his biological mother and maternal grandmother from birth until he was approximately 6 months old. His biological mother was no longer involved in his life at the time of the evaluation. Claimant's biological father was incarcerated at the time of the evaluation. Claimant lived with his paternal grandfather at the time of the evaluation and had lived there from the age of eight months.

10. The multidisciplinary team consisting of Kathy McCarthy, MA, Clinical Coordinator Crystal Valdez, LVN, and Aaron Pachelbe, Speech Coordinator, determined that Claimant was eligible for Early Start services based upon his "delayed language skills." The evaluation was conducted in Spanish which was the family's primary language. The Hawaii Early Learning Profile tool was administered to determine Claimant's level of functioning. On the measure, Claimant who was 26 months old, performed at the following levels: 25 months in cognitive, 27 months in gross motor skills, 22 months in fine motor skills, 15 months in expressive language, 25 months in receptive language, 29 months in social/emotional and 25 months in adaptive skills. The assessor noted that the M-CHAT-R, modified checklist for autism in toddlers, was not administered because Claimant made "great eye contact, participated in reciprocal play, and was socially engaging." (Ex. 4.) Evidently, he did not show any signs of autism. Claimant also passed vision and hearing screenings.

11. Although Claimant was made eligible for Early Start Services, the evidence did not establish what services were offered and did not establish that Claimant actually received such services. A transition Individualized Family Service Plan

(IFSP) dated September 10, 2018, provided that the Claimant had "Areas of Suspected Disability: speech and language." (Ex. 6.) The IFSP indicates that Grandfather was interviewed and the Batelle Developmental Inventory 2nd Edition was administered to Claimant. According to the IFSP, "[Claimant] is an active 30-month old toddler. He currently resides with his paternal grandfather. [Claimant] made eye contact and responded to his name when he was allowed to free play. When attempts were made to have [Clamant] participate in testing activities, he resisted. During these times he ran into another room or sat with his back to the tester. [Claimant] was heard to vocalize jibberish. Although Grandfather indicates that [Claimant] is able to say 10 spontaneous words, no intelligible words were heard today. [Claimant] eats with utensils and is able to drink from a sippy cup, as well as from a straw. [Claimant's] gross and fine motor skills appeared to be age appropriate." (Ex. 6.) The IFSP sets forth development levels as follows: Fine Motor-18-37 months; Gross Motor-27 months; Cognitive-18-25 months; Receptive Language-13 months; Expressive Language-20 months; and adaptive/self-help-26-31 months. The IFSP also provided that an Individualized Education Program (IEP) meeting with the school district was to be held no later than November 30, 2018 and that the CRC would close Claimant's case without further assessment.

12. A Los Angeles County Mental "Relationship Enrichment Initial Assessment" was performed by the Penny Lane agency on January 10, 2019. At that time, Claimant's foster parents, who had only had him for a few months, expressed concerns about Claimant's tantrums, aggressive behavior, sleep difficulties, feeding issues, lack of toilet training, poor motor control, poor communication skills and lack of speech. It was also noted that Claimant's biological parents were incarcerated and had histories of alcohol, methamphetamine and heroin abuse. The assessment noted Claimant tested positive for Methamphetamine as an infant, was taken from his

parents, who later lost all parental rights, and that Claimant may have been subjected to physical and/or sexual abuse and/or neglect. (Ex.8.)

13. The assessor opined that Claimant had poor fine and gross motor skills, a poor attention span and had delayed communication skills. The assessor noted that Claimant had moderate psychosocial stressors and would benefit from therapy. The assessor also referred Claimant to the regional center. (Ex. 8.)

14. On March 19, 2019, NLACRC Intake Coordinator Maile Asenbauer, MA, performed a summary social assessment of Claimant. She noted:

> [Claimant] is affectionate and will go with anyone and calls them mom. [Parent] stated that if he sees a Hispanic lady in the store, he will run up to her and says "mom." When upset, it is difficult to console him and he does not want to be with anyone. [Claimant] is aggressive with his brother and his cousin. She tries to help but also knows to give him space when he is upset.
>
> [Claimant] requires assistance with self-care needs. He is not toilet trained and does not indicate a wet or soiled diaper. He will urinate when placed on the toilet. He does not assist with dressing and [Parent] has to pick up his arms to push through the sleeve of his shirt. Foster parents brush his teeth, as he simply holds the toothbrush and sucks on it. They also bathe him. [Claimant] eats a good variety of foods. He does not like mashed potatoes. He eats very fast and does not recognize when he is full and will keep eating

if allowed. When he has only one piece of food remaining, he holds onto it. [Parent] stated she tells him he can eat it, as he will have a snack in a bit, and then he does. He can feed himself with a spoon, with spillage. He tends to scoop the food onto the spoon with his other hand, and then puts it in his mouth. [Claimant] has trouble falling asleep at night and cries a lot in the middle of the night. His school also has a hard time getting him down for a nap.

[Claimant] tantrums 4-5x/day. This has lessened since he began preschool and therapy. [Parent] reported he gets upset and there is not always an apparent trigger. He yells, cries, throws himself on the floor, and is aggressive. He will hit, kick, and bite. He also engages in self-injurious behaviors of throwing himself against the wall and picking at his face. . . . [Claimant] does not display any repetitive behaviors and is not sensitive to any sounds or textures. He puts inedible objects in his mouth and has to be supervised. He has eaten about half of a foam ball as well as star decals that were put on the wall. [Claimant] does not typically maintain eye contact and looks down. However, if he is mad, he will look at you and give a mad stare. [Claimant] does not have any safety awareness and runs into the street. His hand has to be held at all times. [Claimant] has a short attention span of about two minutes. He is hyperactive and is always running around. He cannot sit still. [Claimant] inappropriately touches himself. He puts his

hands in his pants or rubs himself on top of his clothes. He stares at his brother when he is getting dressed and foster parents now keep him and brother separate when dressing.

(Ex. 10.)

15. With respect to social and behavioral issues, she noted:

[Claimant] does not play well with other children and is aggressive. He hits, kicks, throws sand in the sandbox, and grabs toys from them. He does not know how to share or take turns.

(Ex. 10.)

16. With respect to communication, the social assessment notes:

[Claimant] has few words he consistently uses on his own. He says no, yes, and thank you. The family cannot understand anything he otherwise says. He is working on repeating words. He does not point or use simple signs, nor does he lead by the hand. [Claimant] is able to identify the colors green, blue and red, as well as recognize a circle. He can receptively identify his eyes and mouth. He hums along with the ABC song and may say a few letters, but then skips the ones he cannot pronounce. He can count to six. [Claimant] sometimes responds to his name being called, depending on who is calling him. He typically does not follow one-step directions. He is starting to respond to

> "come here" but only gets about halfway. He is learning to color and scribbles. He is more right-handed dominant but still uses both hands, and uses a palmer grasp. [Claimant] has been demonstrating aggressive behaviors at school including kicking, punching, throwing sand, pulling children off the bike, and grabbing toys from his peers.

(Ex. 10.)

17. On April 3, 2019, Anna Levi, Psy.D (Levi), a Clinical psychologist, conducted an assessment to determine Claimant's then-current levels of functioning and rule out ASD. Levi administered the Wechsler Preschool and Primary Scale of Intelligence-Fourth Edition (WPPS-IV), Autism Diagnostic Observation Schedule-2 (ADOS-2)-Module 2, Autistic Diagnostic Interview-Revised (ADI-R) and the Adaptive Behavior Assessment System-3 (ABAS-3). Levi's assessment revealed that Claimant's overall intellectual functioning is in the high borderline range, and his adaptive, practical and social skills are in the moderate deficit range. Claimant's score on the ADOS-2 was below the cut-off for ASD, showing minimal to low level of ASD symptoms. On the ADI-R, Claimant's communication score was within the ASD range, but all other scores were below the cut-off for ASD. Levi also observed Claimant during the assessment. She noted Claimant attempts to share interests and makes appropriate eye contact. According to Levi, Claimant's "problems are centered around limited language skills." (Ex. 12.) Levi ruled out diagnoses of ASD and Intellectual Disability and instead diagnosed Claimant with Language Disorder. She recommended intensive speech therapy and redirection from chewing inappropriate items. (Ex.12.)

18. Claimant's local school district completed a multi-disciplinary team assessment report which included input and assessment by School Psychologist, Aylin

Derkrikorian, Special Education Teacher, Erin Oleson, Speech and language Pathologist, Nicole Bumgarner,, Adapted Physical Education specialist, Heather Nottingham, and District Nurse, Collette Sims, RN. The testing occurred on April 24, 2019 and May 6, 2019. The assessment included a review of records, observation, parent interview and administration of assessment tools including the Brigance Early Childhood Screen III , 3-5 year olds (Brigance), Differential Ability Scale, Second Edition (DAS-II)-Early years, Developmental Assessment of Young Children, Second Edition (DAYC-2) Social Emotional and Adaptive Behavior, Curriculum, Assessment, Resources, and Evaluation –Revised (CARE-R2), and the Test of Gross Motor Development (TGMD2).

19. The school district assessments provided a broad profile of Claimant's abilities and skills. Claimant's scored in the low average range on measures of his cognitive ability. However, the assessor cautioned that Claimant's language deficits and the fact that he had more exposure to Spanish than English in his early years may impact the scores. Claimant scored in the low range for both receptive and expressive language skills and adaptive skills. Claimant's social emotional skills are in the low average range. Claimant performed in the above average range on tests of gross motor skills and was determined to have age-appropriate skills in this area.

20. As a result of the school district assessments, at Claimant's IEP dated May 8, 2019, he was made eligible for special education as a student with speech and language impairment. (Ex.13.) The IEP provides for specialized instruction in a preschool setting, transportation to and from the preschool and 60 minutes per week of speech and language therapy. The IEP contains goals in the areas of social/play, pre-vocational, pre-academic, and language. (Ex. 14.)

21. Neda Safavati, Psy. D., performed a psychological assessment of Claimant on July 1, 2019. As part of her assessment, she conducted a records review and clinical interview of Parent and clinical observations of Claimant. She also administered, the Conner's Early Childhood Rating Scale (Conners EC) and the Adaptive Behavior Assessment System, Third Edition (ABAS-3). Claimant received a score in the very elevated range on the Conners EC. His scores were especially high in the inattention, defiant/aggressive, repetitive behaviors and anxiety measures. On the ABAS-3, Claimant received an overall adaptive behavior score in the Extremely Low range. His scores were especially low in the conceptual domain, (a measure of behaviors needed to communicate with others, apply academic skills, and manage and accomplish tasks), the social domain, (a measure of behaviors needed to engage in interpersonal interactions, act with social responsibility and use leisure time) and the practical domain (a measure of behaviors needed to address personal and health needs, take care of home, classroom or work setting and function in a community). Dr. Safvati diagnosed Claimant with Reactive Attachment Disorder and also recommended evaluation by a speech and language pathologist and child-parent psychotherapy. (Ex. 19.)

Hearing Testimony

22. NLACRC staff psychologist Sandi Fischer provided credible testimony interpreting the results of the various assessments and reports which were presented at hearing. Although Dr. Fischer had never met Claimant, based upon the plethora of assessment data available at hearing, she opined that Claimant did not meet criteria for regional center services under any of the qualifying categories of diagnoses at this time. Dr. Fischer suggested that Parent monitor Claimant's progress and, if she sees no improvement, that he be reassessed at some later time after he had received

psychological counseling and speech therapy, and after he had time to adjust to his new environment.

23. Parent testified that she was not sure of the root of Claimant's deficits but was desperately seeking help for him. Parent is a trained social worker and is actively seeking resources for Claimant; she will follow up on all suggestions and resources.

LEGAL CONCLUSIONS

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

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

3. In order to be eligible for regional center services, a claimant must have a qualifying developmental disability. Welfare and Institutions Code section 4512, subdivision (a), defines "developmental disability" as:

> [A] disability that originates before an individual attains 18 years of age; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for that individual. . . . [T]his term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability, but shall not include other handicapping conditions that are solely physical in nature.

The eligibility categories of cerebral palsy and epilepsy are not at issue in this fair hearing. Only the eligibility categories of autism, intellectual disability, and the disabling condition closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability, also known as the fifth category, will be addressed.

4. To prove the existence of a qualifying developmental disability within the meaning of Welfare and Institutions Code section 4512, a claimant must show that she has a "substantial disability." Pursuant to Welfare and Institutions Code section 4512, subdivision (*l*)(1):

> "Substantial disability" means the existence of significant functional limitations in three or more of the following

areas of major life activity, as determined by a regional center, and as appropriate to the age of the person:

(A) Self-care.

(B) Receptive and expressive language.

(C) Learning.

(D) Mobility.

(E) Self-direction.

(F) Capacity for independent living.

(G) Economic self-sufficiency.

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

(a) "Substantial disability" means:

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

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

(A) Receptive and expressive language;

(B) Learning;

(C) Self-care;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living;

(G) Economic self-sufficiency.

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

7. In addition to proving that he suffers from a "substantial disability," a claimant must show that his disability fits into one of the five categories of eligibility set forth in Welfare and Institutions Code section 4512. The first four categories are specified as: epilepsy, cerebral palsy, autism and intellectual disability. The fifth and last category of eligibility is listed as "Disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with intellectual disability." (Welf. & Inst. Code, § 4512.)

8. To establish the diagnosis of autism, the regional center must look to the criteria set forth in the DSM-5 to evaluate whether claimant met the criteria for a diagnosis of Autism Spectrum Disorder (299.0). The DSM-5 criteria are as follows:

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 . . . .
[Italics and bolding in original.]

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 stereotypies, 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 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 interest).

4. Hyper- or hyperactivity to sensory input or unusual interests 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 . . . .
[Italics and bolding in original.]

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.

(Ex. 23 DSM-5, pp. 50-51.)

9. The Lanterman Act and its implementing regulations contain no definition of the qualifying developmental disability of "intellectual disability." Consequently, when determining eligibility for services and supports on the basis of intellectual disability, that qualifying disability had previously been defined as congruent to the DSM-5 diagnostic definition of Intellectual Disability.

10. The DSM-5 describes Intellectual Disability as follows:

> Intellectual disability . . . is a disorder with onset during the developmental period that includes both intellectual and adaptive functioning deficits in conceptual, social and practical domains. The following three criteria must be met:
>
> A. Deficits in intellectual functions, such as reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience, confirmed by both clinical assessment and individualized, standardized intelligence testing.
>
> B. Deficits in adaptive functioning that result in failure to meet developmental and socio-cultural standards for personal independence and social responsibility. Without ongoing support, the adaptive deficits limit functioning in one or more activities of daily life, such as communication,

social participation, and independent living, across multiple environments, such as home, school, work, and community.

C. Onset of intellectual and adaptive deficits during the developmental period.

(Ex.24, DSM-5, p. 33.)

11. The DSM-5 notes the need for assessment of both cognitive capacity and adaptive functioning and that the severity of intellectual disability is determined by adaptive functioning rather than IQ score. (*Id.* at 37.)

Discussion

12. Claimant consistently displays cognitive skills in the high borderline to low average range and moderate deficits in adaptive skills on a variety of measures. Claimant's cognitive skills coupled with his moderate deficits in adaptive skills make him too high functioning to be considered Intellectually Disabled. Claimant does not meet the criteria under the DSM-5 for a diagnosis of Intellectual Disability, despite his adaptive deficits because his cognitive performance is much higher than could be achieved by someone with intellectual disability and his adaptive skills deficits, although important, are not severe enough to warrant a diagnosis of intellectual disability. Furthermore, no assessor diagnosed Claimant with Intellectual Disability. The assessors consistently referred to Claimant's speech and language disorder and his psychological issues as the main factors impacting his performance. Therefore, he does not qualify for regional center services under the category of intellectual disability. Additionally, Claimant has not provided sufficient evidence to establish that he demonstrates deficits in cognitive and adaptive functioning to such a degree and in such a manner that he qualifies under the fifth category of eligibility, i.e., a person suffering from

a condition similar to intellectual disability or requiring treatment similar to Intellectual Disability (Legal Conclusion 3.) There was no evidence that any recommended interventions or "treatments" were similar to that of an individual with intellectual disability. On the contrary, his interventions were primarily in the area of speech and language therapy and social emotional.

13. Similarly, Claimant did not meet the criteria for a DSM-5 diagnosis of Autism Spectrum Disorder (ASD). The evidence clearly established Claimant's language deficits and behavior issues. However, those factors alone are not sufficient to meet the diagnostic criteria. According to the DSM-5, Claimant must meet multiple factors to satisfy the criteria for autism, and he does not. Multiple assessors applied the DSM-5 in their observations and a testing of Claimant, using a wide variety of accepted psychological testing tools and not one assessor concluded that Claimant should be diagnosed with ASD or autism. Additionally, based upon the thorough review of records and her well-established experience and expertise, Dr. Fischer also concluded Claimant did not meet the diagnostic criteria for autism. As such, Claimant has not established that he is eligible for regional center services under the diagnosis of autism.

Disposition

14. The preponderance of the evidence does not support a finding that Claimant is eligible to receive regional center services because he does not qualify under any of the five categories of eligible disability. (Factual Findings 1-23 and Legal Conclusions 1-13.)

ORDER

Claimant's appeal is denied. Service Agency's determination that claimant is not eligible for services under the Lanterman Act is upheld.

DATE:

GLYNDA B. GOMEZ
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.