

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

CLAIMANT

vs.

FRANK D. LANTERMAN REGIONAL CENTER,

Service Agency

OAH No. 2019070428

DECISION

Jeremy Cody, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on December 11, 2019, in Los Angeles.

Claimant, who was not present, was represented by her father and mother.¹

Jessica T. Franey, Esq. represented Frank D. Lanterman Regional Center (Service Agency).

¹ Claimant and her parents are identified by titles to protect their privacy.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on December 11, 2019.

ISSUE

Does claimant have a developmental disability making her eligible for regional center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act)?

EVIDENCE

Documentary: Service Agency's exhibits 1-11; claimant's exhibits C1-C9, C11 and C12.²

Testimonial: Caroline Garabedian; Michele Johnson; DaVonna Jenkins; Jennifer Martinez, Psy.D.; claimant's father; and claimant's mother.

² At the hearing, both parties submitted numbered exhibits. For the convenience of the record, claimant's exhibits shall be referenced with a "C" prefix (e.g., C1, C2, etc.). Page numbers in the Service Agency's exhibits refer to bates-stamped page numbers.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant is a 17-year-old girl. Claimant's father and mother seek eligibility for claimant for regional center services on the basis of autism or a fifth category condition.

2. In a letter, dated June 7, 2019, the Service Agency informed claimant's parents of its determination that claimant is not eligible for regional center services. According to the letter, the Service Agency relied on a psychological assessment of claimant conducted by its consultant, Jennifer Martinez, Psy.D., in making its eligibility determination. The Service Agency concluded that claimant does not have a developmental disability as defined in the Lanterman Act, which is required for eligibility. In the letter, the Service Agency cited Welfare and Institutions Code section 4512 and California Code of Regulations, title 17, sections 54000 and 54001 regarding the definition of "developmental disability." (Ex. 2.)

3. On June 27, 2019, claimant's parents filed a Fair Hearing Request on claimant's behalf which appealed the eligibility denial and requested a hearing. Claimant's father and mother are claimant's authorized representatives.

Claimant's Background

4. Claimant lives at home with her parents as an only child. The family has lived in the same house, located in the Los Angeles metropolitan area, for claimant's entire life.

5. Claimant's mother reports that she took no medications or drugs during her pregnancy. Claimant was born through vaginal delivery with the umbilical cord wrapped around her neck. Her skin color was purple and she was removed from her parents "to be heated." Claimant's parents reported that claimant was late in meeting most of her milestones. She walked at 18 months.

6. Claimant attended regular classrooms at elementary school, middle school, and high school until ninth grade. In 10th and 11th grades, claimant enrolled in an educational program that allowed her to be educated at home. In 12th grade, claimant moved to a charter school that had a flexible schedule with classes beginning at 10:30 a.m. and personalized learning with one-to-one instruction. In June 2019, claimant graduated from high school with a grade point average of 3.65. In September 2019, claimant started attending Glendale Community College while living at home.

7. Claimant's parents testified regarding claimant's development through elementary school. Claimant's father submitted his hearing notes into evidence which summarized claimant's academic progress and emotional difficulties. Claimant's father wrote that in elementary school, claimant was academically successful but she felt that she did not "fit in." (Ex. C12.) Claimant showed great anger and anxiety with her inability to complete certain types of homework.

8. In January 2014, when claimant was 11 years old and in the 6th grade, claimant's parents referred claimant to Beth A. Coleman, a licensed psychologist, for a psychological assessment. The reason for the referral, as reported by the psychologist, was for an Attention Deficit/Hyperactivity Disorder (ADHD) screening "due to a history of difficulty making connections, difficulty learning and retaining knowledge, forgetfulness, inattention and rigidity." (Ex. C1, p. 1.) Dr. Coleman conducted a clinical interview of claimant with her parents present and administered the following tests:

Connors 3 – parent and teacher forms; Connors Continuous Performance Test (CPT-II); and Gilliam Asperger’s Disorder Scale (GADS).

9. Dr. Coleman concluded, based on her clinical interview and the results of the Connors 3 and CPT-II assessment tests, that claimant suffered from an attention-related deficit. As to Asperger’s Scale Results using GADS, Dr. Coleman reported that the results were inconclusive. While the parental responses indicated a strong possibility of Asperger’s Disorder, the teacher’s responses suggested a very low probability that claimant suffered from the disorder.³ Dr. Coleman suggested that claimant’s symptoms could be more reflective of claimant’s anxiety “about her performance, her ability to do her school work, and getting consequences when she is unable to follow through.” (*Ibid.*)

10. Dr. Coleman concluded her diagnostic impressions with a diagnosis of ADHD with an unspecified anxiety disorder and a note to rule out Asperger’s Disorder. She recommended that if claimant continued to struggle with her symptoms at home, she should be evaluated by a child psychiatrist to determine if she would benefit from medication to decrease symptoms of ADHD and anxiety. (*Id.*)

11. The following month, in February 2014, claimant was referred by her parents to her school district for a full psycho-educational evaluation. The purpose of the assessment was to discover claimant’s learning strengths and weaknesses, and to

³ Dr. Coleman noted that “[w]hile [claimant’s] parents reported a substantial amount [*sic*] of problems in the areas of social interaction, restricted patterns of behavior, cognitive patterns, and pragmatic skills, these concerns were not observed in the school environment by [claimant’s] teacher.” (Ex, C1, p. 8.)

assist the Individualized Education Program team in determining claimant's eligibility and need for special education services.

12. On May 20, 2014, the school district issued a "Psycho-Educational Multidisciplinary Assessment" of claimant. (Ex. 9, p. 160.) The assessment included classroom and field observation of claimant, an interview of claimant by a school psychologist, as well as tests designed to measure claimant's processing and cognitive abilities, social-emotional/behavior development and adaptive skills. The assessment team found that claimant's intelligence, including her planning and executive functioning abilities, were within the average range. Claimant's academic skills were found to be in the high average range for her age. Claimant's visual and auditory processing skills, communication skills and adaptive skills were each found to be age appropriate. Claimant had elevated scores in inattention and hyperactivity on the tests, but these were not observed in the classroom or playground. The report recommended referring claimant to the school district's Individualized Education Program (IEP) Team for an assessment of whether claimant was eligible for Special Education services.

13. In middle school, at 13-14 years of age, claimant continued to have difficulty making friends, and continued to spend many hours each night completing her homework. In the middle of 8th grade, claimant left middle school for home schooling, under which her academic performance improved. Claimant was on the swim team at the YMCA, practicing three to four days per week. She completed in swim competitions. In 9th grade, at the age of 14, claimant returned to public school, but continued to feel left out and friendless. In the last few weeks of 9th grade, claimant had such debilitating panic attacks that she had to be picked up in the middle of the school day. Claimant reported to her parents that she found it hard to

concentrate or think, and that she felt she was not in control of her wild mood swings that overcame her several times during the day. Claimant began asking to see a therapist or psychologist and her parents began looking for psychiatric help.

14. Claimant's parents testified regarding claimant's ongoing struggle with anxiety, depression, panic attacks and suicidal thoughts. During the summer and fall of 2017, at age 15, claimant began seeing a psychologist and was prescribed various medications at different times, including Prozac, Seroquel, Abilify, Lamictol, Buspar and Vyvanse. Her panic attacks and anxiety worsened and she began to have suicidal thoughts. From the fall of 2017 until the fall of 2018, claimant continued home schooling while she continued to suffer from anxiety, panic attacks and manic mood swings. Her anxiety increased over the fall of 2018 and in December 2018, claimant attempted suicide and was briefly hospitalized. Claimant continued to take various medications, particularly Seroquel (to reduce anxiety) and melatonin (to help her sleep), while she battled debilitating anxiety and wide mood swings. In 2019, claimant attended 12th grade at Futures Academy, which had a flexible schedule and required only a few hours per day on campus with one-to-one teaching. During claimant's entire senior year of high school, her panic attacks and mood swings continued and, according to her father, she was anxious and depressed most of the time.

15. In November 2017, a Psychoeducational Evaluation was conducted by a team⁴ assembled by the school district to assess claimant's cognitive functioning, processing abilities, academic achievement, and social-emotional functioning. The

⁴ The team consisted of school psychologist Nathalie Vaganay, a special education specialist, an assistance principal, an independent study teacher, the school nurse, and claimant's mother and father. (Ex. C2, p. 1.)

purpose of this assessment was to determine if claimant qualified for special education services and to establish claimant's current level of development. (Ex. C2, p. 1.) The evaluation noted that claimant had been diagnosed with ADHD in 6th grade, and with a major depressive disorder in 7th and 8th grade. In 9th grade, claimant began to experience panic attacks and self-harm behaviors that led to suicidal thoughts and a suicide attempt in October 2017. At the time of the assessment, claimant was taking daily anti-depressant medication and attending counseling once a week.

16. The Psychoeducational Evaluation consisted of various tests of cognitive assessment and auditory processing, as well as parent and teacher interviews, health screening results and a review of academic records. Tests that were administered included: Behavior Assessment System for Children – 3rd Edition (BASC-III); Connors; GARS-3, and Scales for Assessing Emotional Disturbance – 2nd Edition. Claimant, her parents and her teacher all completed rating forms for Connors assessment and all three raters placed claimant in the "at risk/clinically significant" range for hyperactivity and impulsivity, inattention and ADHD. In its conclusion, the evaluation determined that claimant appeared to meet eligibility criteria for special education under the designation of Emotional Disturbance and Other Health Impairment. (Ex. C2, p. 17.)

17. On November 16, 2017,⁵ the school district's IEP team, having reviewed the Psychoeducational Evaluation, found that claimant qualified for special education

⁵ The Service Agency entered into evidence an updated IEP, issued on September 19, 2018, which states that the initial IEP meeting to determine eligibility took place on November 16, 2017. (Ex. 10, p. 175.) The initial IEP was not offered into evidence, nor was any evidence offered to explain why it took the school district three

services as a student with an Emotional Disturbance (ED) due to issues stemming from major depressive episodes and anxiety disorder. Claimant was given a second diagnosis of Other Health Impairment (OHI) due to her ADHD-like behaviors. The updated IEP stated, in September 2018, that “these behaviors manifest in her inability to focus and stay on track with her schoolwork, which is affecting her ability to make progress in the General Education setting.” (Ex. 10, p. 189.)

18. On October 23, 2017, claimant began treatment with Dr. Linda Woodhall, a licensed psychiatrist. The treatment sessions have continued regularly for the past two years, and are ongoing.

19. During 2017 and 2018, claimant’s anxiety and depression continued and claimant was involuntarily hospitalized in psychiatric wards on three occasions due to suicidal ideation and attempts. On September 11, 2017, claimant had only suicidal ideation. On October 24, 2017, and December 4, 2018, claimant attempted suicide by taking Tylenol pills. Claimant also made several emergency room visits due to her panic attacks, “agitated behavior/thoughts” and “suicidal threats.” (Ex. C12, p. 3.)

20. In September 2018, claimant was referred by her parents for psychological testing to Adewale Psychological Services (Adewale) in Pasadena. On October 29, 2018, a written Psychological Assessment was issued by Jody Adewale, Psy.D., a clinical psychologist, and Lloyd W. Davis, M.S., a psychological assistant. The assessment was based on a parental interview to collect family and educational history, and the following assessments: Mental Status Exam; Psychiatric Diagnostic

years from the issuance of its Psycho-Educational Multidisciplinary Assessment (Factual Finding 12) in 2014, to issue the IEP.

Interview-Revised (PDI-R); Comprehensive Executive Functioning Inventory (CEFI); Rating Scale of Impairment (RSI); and the Autism Spectrum Rating Scales (ASRS).

21. On September 24, 2018, Mr. Davis administered the ASRS, a parent-report-based test. Claimant's ASRS scales were found to be in the "elevated" range for unusual behaviors, social/emotional reciprocity, atypical language, behavioral rigidity, sensory sensitivity and attention. Mr. Davis concluded: "This pattern of scores indicates that [claimant] has symptoms directly related to the DSM-5 diagnostic criteria, and is exhibiting many of the associated features characteristic of Autism Spectrum Disorder." (Ex. 7, p. 56.)

22. The Adewale assessment concluded that claimant had severe impairment in areas of "social, emotional, educational, and family skill development." (Ex. 7, p. 56.) The report noted that RSI scores revealed "considerable impairment" in school/work, social and mobility areas and the PDI-R revealed "psychological impairments in several classification areas." The report noted that claimant met the criteria for Bipolar I Disorder and Phobic Disorder, but "these were ruled out due to the results revealed on the ASRS." (*Id.* at p. 57.) The Adewale's diagnostic impressions included Autism Spectrum Disorder (ASD) and severe Panic Disorder, and noted to rule out Bipolar Disorder. (*Ibid.*)

SERVICE AGENCY'S PSYCHOLOGICAL ASSESSMENT

23. In early 2019, claimant's parents approached Service Agency with a request for regional center services and supports for claimant, based on the parents' belief that claimant was suffering from the developmental disability of ASD.

24. On February 9, 2019, Assessment Coordinator Kay Kwak, LCSW, conducted an interview with claimant and her parents at claimant's home. Ms. Kwak

prepared a Psychosocial Assessment report that summarized the information provided during the interview and made recommendations to the Service Agency. At the time of the interview, claimant was 16 years old, had displayed depressive and anxiety symptoms, and had been involuntarily hospitalized three times due to suicidal ideation and attempts. Ms. Kwak was aware that claimant had received an IEP on November 16, 2017, which had deemed claimant eligible for special education services based on a diagnosis of Emotional Disturbance and Other Health Impairment due to ADHD-like behaviors. (Ex. 5, p. 19.) From her discussion with claimant's parents, Ms. Kwak learned that claimant was suspected of possibly suffering from autism spectrum disorder, emotional disturbance, attention deficit hyperactivity disorder (ADHD) and/or other health impairments.

25. From the intake interview, as well as from Ms. Kwak's own observation of claimant, Ms. Kwak obtained information about claimant's current functioning. Ms. Kwak found that claimant was able to communicate her wants and needs by using complete sentences. Ms. Kwak wrote that claimant "currently uses her language to answer questions, inform, clarify information, seek information, state feelings, and opinions in simple sentences." (Ex. 5, p. 19.) Ms. Kwak noticed that claimant's tone of voice was "flat." Ms. Kwak also noted that claimant has no problem with her fine motor skills: claimant can independently dress herself, take a shower, wash her hair, and walk, run and jump without assistance. Ms. Kwak noted that claimant can independently complete basic living tasks. For example, claimant can make simple purchases in a market, order food in restaurants, make fried eggs by herself when feeling hungry, and move around the community using Uber or Lyft services. Ms. Kwak reports that claimant has difficulty in establishing and maintaining reciprocal relationships with peers and difficulty making close friends. The parents reported that claimant wants to have a friend but does not know how to initiate or develop friendship. The parents

also reported that claimant had no problem learning but had major problems with her attention. In her written Assessment, Ms. Kwak recommended that the Service Agency conduct a psychological assessment of claimant and have her case presented to the Service Agency's Multidisciplinary Assessment Team for an eligibility determination.

26. In February 2019, Jennifer Martinez, Psy.D., a licensed psychologist, performed a psychological evaluation of claimant at Service Agency's request, in order to "determine current levels of social, cognitive, and adaptive functioning and to rule out or substantiate a diagnosis of Autism Spectrum Disorder." (Ex. 6, p. 24.) As part of her assessment, Dr. Martinez conducted a clinical interview of claimant and her father and made behavioral observations of claimant that formed the basis of her professional opinion in this matter. Dr. Martinez also reviewed records from the school district, particularly, the 2014 Psycho-Educational Multidisciplinary Assessment and the 2017 IEP for claimant. Dr. Martinez administered the following tests: Wechsler Adult Intelligence Scale, Fourth Edition (WAIS-IV); Childhood Autism Rating Scale, Second Edition (CARS-2ST); Gilliam Autism Rating Scale, Third Edition (GARS-3); Autism Diagnostic Interview (ADI-R); Adaptive Behavior Assessment System, Third Edition (ABAS-3); and Vineland Adaptive Behavior Scales, Third Edition (VABS-III). Dr. Martinez prepared a written report of her findings and conclusions.

27. With respect to claimant's cognitive and intellectual functioning, WAIS-IV subtests are drawn from four areas of cognitive ability: verbal comprehension, perceptual reasoning, working memory, and processing speed. Claimant scored in the borderline range for perceptual reasoning and processing speed; in the average range for verbal comprehension and the low average range for working memory. Claimant's overall score was Low Average. This led Dr. Martinez to diagnose claimant as

“Borderline Intellectual Functioning” in the summary section of her Psychological Assessment.

28. With respect to ASD, Dr. Martinez relied on the ADI-R, GARS-3, and CARS-2ST:

(A) On the ADI-R, a semi-structured clinical interview for caregivers of children to help diagnose whether an individual has autism, Dr. Martinez based her findings on information learned from claimant’s father, as well as her direct observation of claimant in two interview sessions. Dr. Martinez focused on claimant’s behaviors in three content areas: (1) quality of social interaction; (2) communication and language; and (3) repetitive, restricted and stereotyped behavior. Dr. Martinez noted that claimant displayed appropriate eye contact and her speech was within normal limits for tone, volume, rate and prosody. Claimant’s conversational speech was adequate and her thought process was linear. Claimant was able to follow simple directions or answer yes/no questions. She was able to follow a basic conversation with prompting and follow-up questions. Claimant displayed emotion and her affect was congruent with her mood. For example, during the first interview, claimant was in an irritable mood and her affect was congruent to her mood; when claimant’s mood improved during the second interview, her affect changed appropriately to reflect her change of mood. In the end, Dr. Martinez concluded that claimant’s scores were not consistent with a classification of ASD. (Ex. 6, p. 30.)

(B) On the GARS-3,⁶ Dr. Martinez found that claimant’s scores in the six sub-scales of measurable behaviors (repetitive behaviors, social interaction, social

⁶ The GARS-3 is a parent-report-based test designed to identify individuals 3 through 22 years of age who have severe behavioral problems that may be indicative

communication, emotional response, cognitive style, and maladaptive speech) placed claimant in the "Very Likely of an Autism Spectrum Disorder Category." (Ex. 6, p. 30.)

(C) On the CARS-2ST,⁷ in which a clinician directly observes the claimant, then uses a standard rating scale to rate items indicative of autism, claimant's total score placed her in the "Minimal-to-No symptoms of ASD" range. (Ex. 6, p. 29.)

29. With respect to adaptive functioning, Dr. Martinez administered ABAS-3 and VABS-III with the goal of measuring claimant's functioning in various adaptive skill areas. "Adaptive functioning" refers to "practical everyday skills required in order to function and negotiate environmental demands." (Ex. 6, p. 31.) These include skills needed to effectively and independently care for oneself and interact with others. As to ABAS-3, claimant achieved composite scores in the conceptual and social domains in the Low range, and in the practical domain⁸ in the Extremely Low range. On the

of autism. The GARS-3 is divided into six sub-scales that describe specific, observable, and measurable behaviors.

⁷ The CAR-2ST, an autism screening instrument, includes 15 items addressing functional areas such as: relating to people, imitation, emotional response, body use, object use, adaption to change, visual response, listening response, taste, fear or nervousness, verbal and nonverbal communication, activity level and level and consistency of intellectual response.

⁸ The Practical domain is comprised of three subdomains: personal, domestic and community. The personal subdomain "expresses claimant's level of self-sufficiency in areas such as eating, dressing, washing, hygiene and health care." (Ex. 6, p. 32.) The domestic score reflects how well an individual performs household tasks such as

VABS-III, with claimant's father and claimant reporting, claimant's Domain Standard Scores in the domains of communication and socialization were in the "adequate" range, and in the domain for daily living skills were in the "moderately low" range. Claimant also scored in the moderately low range in the "receptive" subdomain which refers to "understanding and responding appropriately to information from others." (*Id.* at p. 32.)

30. Dr. Martinez concluded that claimant did not meet the DSM-5 diagnostic criteria for ASD because claimant's condition or symptoms failed to meet "Criterion A" (persistent deficits in social communication and social interaction across multiple contexts), as defined in the DSM-5. For a diagnostic finding of ASD, the DSM-5 requires that all three benchmarks of Criterion A must be met: (1) deficits in social-emotional reciprocity; (2) deficits in nonverbal communicative behaviors; and (3) deficits in developing, maintaining and understanding relationships. As detailed below, Dr. Martinez found that claimant did not meet two of the three benchmarks of Criterion A. Specifically, claimant was found not to have persistent deficits in social communication and social interaction across multiple contexts:

(A) Dr. Martinez determined that claimant did not have deficits in social-emotional reciprocity because, during her interview with him, claimant was able to have a back-and-forth conversation; she showed a range of emotions; and she initiated responses while commenting on things, situations and emotions. In addition, claimant clarified by restating with different words when she was not fully understood.

chores and food preparation. The community score measures the individual's functioning outside the home, including safety, using money, travel, etc. (*Ibid.*)

(B) Dr. Martinez determined that claimant did not have persistent deficits in nonverbal communicative behaviors used for social interaction because, during the evaluation, claimant was able to sustain social eye contact; she showed a range of emotions and both her affect and mood were congruent. Although claimant's father said she often speaks in a flat tone, during the evaluation with this clinician, claimant was able to communicate clearly and her tone of voice evidenced appropriate inflection of speech. Claimant's father told Dr. Martinez that claimant "shows sympathy for others when they are sad or upset, understands sarcasm, and laughs in response to funny comments or jokes. [Claimant] also states when she feels happy, sad, scared, or angry, and apologizes if she hurts the feelings of others." (Ex. 6, p. 34.)

31. Dr. Martinez testified that although she found claimant had met the requirements of the DSM-5 criteria B, C, D and E, a diagnosis of ASD could not be given where, as here, claimant failed to meet all three benchmarks of criterion A.

32. In the conclusion of her report, Dr. Martinez wrote: "Although [claimant] has a longstanding, history of difficulties in social situations and repetitive patterns of behaviors, she does NOT have deficits in social-emotional reciprocity or nonverbal communication behaviors. Therefore, a diagnosis of autism spectrum disorder (ASD) is unsubstantiated. In fact, [claimant's] impairments may be better explained by her constellation of mood disorders as opposed to a neurodevelopmental disorder." (Ex. 6, p. 33.)

33. Dr. Martinez diagnosed claimant as having "Borderline Intellectual Functioning" based on her measurements of claimant's cognitive functioning in the "low average" range. (Ex. 6, p. 33.) At the hearing, however, Dr. Martinez withdrew this diagnosis. She testified that some time after her report was issued, she received copies of claimant's academic report cards from grades 6 to 12, which showed that claimant

had achieved a B-plus or A average during her entire middle school and high school education. (Ex. C3.) In light of this evidence, Dr. Martinez testified that she wanted to withdraw her diagnosis of "Borderline Intellectual Functioning" as she now believes, based on this newly received evidence, that claimant's intellectual functioning is either "average" or "above average." Dr. Martinez testified that claimant's prior low cognitive scores could be attributed to claimant having a poor attitude on the day she took the tests, or the effect of a psychiatric condition such as severe anxiety or depression, or the effects of medication that claimant was taking that may have affected her cognitive abilities on that particular day. Dr. Martinez testified that this change in her diagnosis does not alter her professional opinion that claimant does not suffer from ASD.

34. Dr. Martinez testified further that based on the new evidence regarding claimant's academic achievement, in her professional opinion, claimant does not suffer from either an intellectual disability or a disabling condition closely related to intellectual disability or requiring treatment similar to that required for individuals with intellectual disability.

CLAIMANT'S EVIDENCE AND ARGUMENT

35. Claimant's mother and father testified at the hearing. They continue to believe that ASD is the correct diagnosis for claimant. Claimant's parents felt frustrated after reading Dr. Martinez's report because they believe the psychologist put too much emphasis on her own observations of claimant which she made during two interview sessions. The parents noted that Dr. Martinez spent "only two or three hours" with claimant whereas they have spent "a lifetime" (i.e., claimant's lifetime) observing their daughter's symptoms and limitations. They noted that claimant has learned how to

mimic "normal" behavior when dealing with adults; therefore, one or two sessions with claimant would not necessarily reveal her limitations and ASD-related symptoms.

36. Claimant's parents testified that claimant has always struggled with making friends and "fitting in," but the parents believe that claimant's underlying disassociation from reality, as evidenced by her ritualistic play with Barbie dolls at a young age, has been the real cause of her difficulty in making close friends. They believe that ASD provides the explanation of many of her deficits. Claimant's mother notes that autism runs in her family as she has an aunt and three cousins who have ASD and bipolar disorders.

37. Claimant's parents argued that several experts' evaluations support their position that claimant suffers from ASD, including the 2014 psychological evaluation of Dr. Coleman (Factual Findings 10-12), the 2018 psychological evaluation of Adewale (Factual Findings 20-22), and a 2019 letter from Dr. Woodhall (Factual Findings 18 and 38-39).

38. Dr. Woodhall's one-page letter, dated December 10, 2019, is addressed "To Whom It May Concern." (Ex. C11.) In the letter, Dr. Woodhall states her conclusion that claimant meets the criteria for ASD, and lists all three benchmarks of DSM-5 category A and three benchmarks in category B. No analysis is included in the letter; only the bare conclusion. Dr. Woodhall does not state whether her opinion is based on any objective or subjective testing, structured interviews, review of other evaluations of claimant, family history or interviews with the parents. Claimant's father testified that on the day before the hearing, he contacted Dr. Woodhall and told her he needed a letter to present at the hearing in support of his position that his daughter suffered from autism. The doctor then provided claimant's father with the one-page letter. Dr. Woodhall did not testify at the hearing.

39. Dr. Woodhall's professional opinion is noteworthy, given that this psychiatrist has spent dozens of hours in sessions with claimant over the past two years. Yet, as Dr. Woodhall failed to provide any detailed impressions, raw data, methodology or background to her conclusions, her letter has little persuasive force.

40. Claimant's parents had disagreed with Dr. Martinez's diagnosis of claimant having "borderline intellectual functioning." The parents felt vindicated when Dr. Martinez withdrew that diagnosis after reviewing claimant's superior academic grades from middle school and high school. (Factual Finding 33.) Claimant's father opined that if Dr. Martinez could be so wrong about that diagnosis, the psychologist could be wrong in her opinion that claimant does not have ASD. Finally, the parents noted that the fact that claimant may have other disorders, such as ADHD or bipolar disorder, does not rule out a diagnosis of ASD, as an individual may have multiple disorders. In the parent's opinion, claimant's recent diagnoses of panic disorder, emotional disturbance or other psychiatric disorders, do not explain claimant's life-long struggle to make friends and adapt to social situations, and well as her struggle to maintain her equilibrium in various settings outside the home. Based on their years of experience with claimant's symptoms and limitations, the parents are apprehensive about their daughter's ability to cope with and plan for her future life as an independent adult.

41. None of the psychological evaluations entered into evidence made specific findings as to whether claimant's disability is "substantially disabling" as defined by the Lanterman Act and by the California Code of Regulations. (Welf. & Inst. Code § 4512, subd. (1)(1), and Cal. Code Regs., tit. 17, § 54001.) However, findings regarding adaptive behavior were interspersed throughout the assessments. Based on the totality of findings, claimant appears to function without major impediments in the

areas of self-care, mobility, learning, expressive language, and economic self-sufficiency.

42. Claimant functions less effectively in terms of her capacity for self-direction and independent living; nevertheless, she perseveres. Claimant's parents note, as evidence that claimant lacks self-direction, that for much of her life, claimant has overslept and needed to be awakened in order to go to school. The Service Agency notes, as evidence that claimant is self-directed, that claimant is attending college at age 17, and that she interacts on her own with her college's Office of Students with Disabilities. Claimant demonstrated a single-minded, self-directed ambition to succeed academically over a period of years despite suffering debilitating bouts of anxiety, panic and depression. Claimant's superior academic record is evidence of sustained self-direction.

43. On the issue of whether claimant has significant functional limitations in terms of independent living, the record is mixed. Claimant's parents remain skeptical that claimant will have the ability, without major intervention, to live independently. Tests administered by Dr. Martinez suggest that claimant may have deficits in the area: ABAS-3 scores for claimant in the "practical" domain were in the "extremely low" range; and VABS-III measurements for "daily living skills" were in the "moderately low" range. (Ex. 6, pp. 31-32.) However, the Service Agency points to findings made in Ms. Kwak's Psychosocial Assessment, in which she noted claimant's ability to order food in restaurants, travel using Uber or Lyft, and cook simple meals for herself. (Factual Finding 25.) On balance, the preponderance of the evidence does not establish that claimant has "significant functional limitations" in the area of independent living.

SUMMARY OF EVIDENTIARY FINDINGS

44. There is no indication that claimant has ever had or been diagnosed with seizures or cerebral palsy. Nor does the evidence support a finding of eligibility based on a diagnosis of ASD, intellectual disability, or a condition similar to intellectual disability or one that requires treatment similar to that required by an individual with intellectual disability.

45. The evidence on the whole persuasively demonstrate that no eligible diagnosis can be confirmed at this time. Although there was some support for a diagnosis of ASD suggested by Adewale's and Dr. Martinez's ASRS results, more persuasive were the results of the ADI-R and CARS-2ST that Dr. Martinez administered and which did not confirm such a diagnosis. Additionally, the observations by school district assessors in the Psycho-Educational Multidisciplinary Assessment and the Psychoeducational Evaluation, which suggest that claimant's symptoms result from psychiatric disorders such as ADHD, panic disorder, anxiety, emotional disturbance, and/or depression, support the Service Agency's determination of ineligibility.

46. Nor is claimant eligible for services under the fifth category. Although claimant's scores on WAIS-IV appeared to indicate borderline intellectual functioning, Dr. Martinez withdrew this diagnosis after receiving outside evidence of claimant's superior academic record, and testified that she now believes, as do claimant's parents, that claimant's cognitive functioning is either average or above average. The evidence does not establish that claimant has a disabling condition closely related to intellectual disability or requiring treatment similar to that required for individuals with intellectual disability.

47. The preponderance of the evidence does not establish that claimant's condition is "substantially disabling" under the statutory definitions applicable to Lanterman Act cases. (Welf. & Inst. Code § 4512, subd. (1)(1), and Cal. Code Regs., tit. 17, § 54001.) Based on the totality of findings, claimant appears to function without major impediments in the areas of self-care, expressive language, learning, mobility, and self-direction. The evidence, while mixed, does not establish that claimant will be unable to live independently or be economically self-sufficient in the future due to functional limitations. Accordingly, the evidence has not established that claimant has significant functional limitations in three or more of the designated areas of major life activity.

48. In the future, if the parents have new assessments of claimant, they can forward those assessments to the Service Agency for consideration.

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 service agency decision. (Welf. & Inst. Code, §§ 4700-4716.) Claimant's parents requested a hearing, on claimant's behalf, to contest the Service Agency's proposed denial of claimant eligibility for services under the Lanterman Act; therefore, jurisdiction for this appeal was established. (Factual Findings 1-3.)

2. An applicant seeking to establish eligibility for government benefits or services, generally has the burden to prove by a preponderance of the evidence that she 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. Regarding eligibility for regional center services, "the Lanterman Act and implementing regulations clearly defer to the expertise of the Department of Developmental Services and regional center professionals' determination as to whether an individual is developmentally disabled." (*Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, 1127.) In *Mason*, the court focused on whether the applicant's expert witnesses' opinions on eligibility "sufficiently refuted" those expressed by the regional center's experts that the applicant was not eligible. (*Id.* at p. 1137.)

4. Claimant has the burden of proving by a preponderance of the evidence that her evidence regarding eligibility is more persuasive than the Service Agency's evidence.

5. To be eligible for services under the Lanterman Act, a claimant must establish that she is suffering from a substantial disability that is attributable to intellectual disability, cerebral palsy, epilepsy, autism or what is referred to as the "fifth category" of eligibility. (Welf. & Inst. Code, § 4512, subd. (a).) A qualifying condition must originate before one's 18th birthday and continue indefinitely thereafter (§ 4512.)

6. Claimant failed to establish by a preponderance of the evidence that she has an intellectual disability, cerebral palsy, seizure disorder, autism, or a fifth category

condition, that manifested when she was a young child and can be expected to continue indefinitely.

7. Claimant also failed to establish by a preponderance of the evidence that her disabling condition constitutes a "substantial disability" which results in significant functional limitations in at least three areas of major life activity. (Welf. & Inst. Code § 4512, subd. (1)(1); Cal. Code Regs., tit. 17, § 54001, subd. (a)(2).) Thus, even if claimant's condition were deemed to be an eligible developmental condition, it does not constitute a disability that is substantially disabling. (Factual Findings 24-34, 41-43, and 47.)

8. Cause does not exist to grant claimant's request for regional center services as set forth in Factual Findings 1 through 48 and Legal Conclusions 1 through 7.

ORDER

Claimant's appeal is denied.

DATE:

JEREMY CODY
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.