BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

E.H., Claimant

v.

ALTA CALIFORNIA REGIONAL CENTER, Service Agency

OAH No. 2019080435

DECISION

Danette C. Brown, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on September 27, 2019, in Sacramento, California.

Claimant's mother,[1] A.E., represented claimant.

Robin M. Black, Legal Services Specialist, represented Alta California Regional Center (ACRC or service agency).

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[1] The initials of claimant and claimant's mother will be used in this decision to protect their privacy.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on September 27, 2019.

ISSUES

The issues submitted for decision are: (1) whether claimant is eligible to receive ACRC services and supports by reason of a diagnosis of autism; and (2) whether claimant is eligible to receive services and supports by reason of a diagnosis of epilepsy.

Jurisdictional Matters

1. Claimant received Early Intervention[2] services from ACRC between the ages of birth and three years. Claimant's Early Intervention services ended on claimant's third birthday on March 9, 2019. Claimant's eligibility for ongoing ACRC services was reviewed by ACRC's multidisciplinary team on June 24, 2019. The team determined that claimant did not meet the eligibility criteria for having a developmental disability pursuant to California Code of Regulations, title 17, sections 54000 to 54010, and the Lanterman Act (Welf. & Inst. Code, § 4512, subds. (a) & (l).)

2. On June 25, 2019, ACRC issued a Notice of Proposed Decision notifying claimant that she was determined to be ineligible for ACRC services. On August 5, 2019, claimant requested a Fair Hearing and an informal meeting with ACRC to discuss

[2] Early Intervention is a system of coordinated services that promotes the child's growth and development and supports families during the critical early years. (https://www.altaregional.org/post/early-intervention-services.)

claimant's ongoing eligibility. On August 20, 2019, an informal meeting took place with claimant's mother A.E., Early Intervention staff, and ACRC staff. On September 20, 2019, ACRC issued its Informal Meeting Fair Hearing Decision sustaining its determination that claimant was not eligible for ongoing ACRC services on the basis of autism and epilepsy. The matter was set for hearing in accordance with Welfare and Institutions Code section 4712.

Background

3. ACRC referred claimant to be evaluated by Jennifer Alford, Ph.D., to assess claimant for autism spectrum disorder (ASD), after claimant's Early Intervention services with ACRC ended. Dr. Alford did not find a diagnosis of ASD, making claimant ineligible for ACRC services. Claimant was thereafter evaluated by Kaiser Permanente's Karen Fagerstrom, Psy.D. for ASD. Dr. Fagerstrom diagnosed claimant with ASD. The evaluations and findings of Drs. Alford and Fagerstrom are set forth below.

4. A.E. believes claimant is eligible for ongoing ACRC services based upon a recent diagnosis of ASD by Dr. Fagerstrom. A.E. disagrees with Dr. Alford's assessment. Claimant has also been recently diagnosed with epilepsy. A.E. asserts that claimant's diagnoses of ASD and epilepsy are developmental disabilities which meet the eligibility requirements for ACRC services under the Lanterman Act. (*Ibid.*)

May 18, 2019 Psychological Evaluation by Jennifer Alford, Ph.D.

5. Dr. Alford is the Director of Pediatric Psychology, Director of Training, and a Pediatric Neuropsychologist at Sutter Medical Foundation in Sacramento, California. Dr. Alford owns Pacific Brain and Behavior, a private practice in clinical neuropsychology focusing on pediatrics. Dr. Alford has been a vendored psychologist

for ACRC since May 2019. All of Dr. Alford's work consists of completing psychological assessments. She performs 20 to 25 assessments per month.

6. On May 18 and 28, 2019, Dr. Alford evaluated claimant for ACRC services. The specific purpose of Dr. Alford's evaluation was to determine whether claimant met the current Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-5) criteria for ASD. Dr. Alford wrote a Psychological Evaluation Report, and testified at hearing consistent with the contents of her report.

7. ASD is a neurodevelopmental disorder that presents with persistent deficits in social communication as well as patterns of restricted interests, repetitive behaviors, and atypical sensory activities. In performing her evaluation of claimant, Dr. Alford administered assessment tests, conducted behavioral observations, reviewed claimant's records, and interviewed A.E. Dr. Alford described claimant's presenting problems as demonstrated speech and language delays, and significant fluctuations in mood and behavior. Claimant currently receives interventions through Easter Seals and the Sacramento City Unified School District. By way of family history, Dr. Alford noted:

- Bipolar Affective Disorder (diagnosed) – both of [claimant's] grandmothers (maternal and paternal) and her grandfather (paternal)

- Schizophrenia (diagnosed) – in [claimant's] grandfather, uncle and two first cousins (maternal)

- Autism Spectrum Disorder - [claimant's] 1/2 brother

- Partial trisomy 11[3] in both [claimant's] father and grandmother (paternal; discovered in genetic testing after [claimant's] partial trisomy was discovered)

- [Claimant's] mother and father are first cousins (each parent's mothers are sisters).

BEHAVIORAL OBSERVATIONS

8. During behavioral observations, Dr. Alford observed "no overt fine or gross motor difficulties," and no "visual inspection, restricted range of interests or other repetitive behaviors were noted." Claimant's mood was appropriate for the setting, and was engaged and cooperative. Dr. Alford observed an "episode" triggered by hunger and fatigue, when claimant "pushed all of the bristle blocks and crayons off of the table and onto the floor. She began to cry and was inconsolable." Claimant said "bye" while leaving the office. Dr. Alford noticed that claimant was visibly upset, but did not observe "atypical social exchanges, or restricted or repetitive behaviors . . . during behavioral dysregulation."

[3] Partial Trisomy 11[q] is a rare chromosomal disorder in which the end (distal) portion of the long arm (q) of the 11th chromosome appears three times (trisomy) rather than twice in cells of the body. Although associated symptoms and findings may vary, the disorder is often associated with delayed growth, mental retardation, distinctive abnormalities of the skull and facial region, and other features. (https://rarediseases.org/rare-diseases/chromosome-11-partial-trisomy-11q/.)

WECHSLER TEST RESULTS

9. Dr. Alford administered the Wechsler Preschool and Primary Scale of Intelligence, Fourth Edition (WPPSI-IV) to assess claimant's cognitive ability. The WPPSI-IV provides subtests and composite scores representing intellectual functioning in specific cognitive domains, as well as a composite score representing general intellectual ability. Claimant's overall intellectual ability, represented by claimant's full scale IQ, was in the average range. Claimant's scores "were unitary across domains measures, with no significant discrepancies . . . ." Additional domains, such as verbal comprehension, visual spatial skills, and working memory fell in the average range.

AUTISM DIAGNOSTIC OBSERVATION SYSTEM TEST RESULTS

10. Dr. Alford administered the Autism Diagnostic Observation System, Second Edition (ADOS-2), Module 2 to assess claimant's communication, social interaction, play, and restricted and repetitive behaviors. ADOS-2, Module 2 is administered to children younger than five years old to observe responses to "social presses that are sensitive to behaviors correlated with the presence of ASD. Regarding claimant's communication, Dr. Alford observed claimant's expressive language was adequate, with "no odd intonation or stereotyped speech." Claimant directed "sounds and vocalizations purposefully" and "regularly gestured." Claimant's eye contact was "well-modulated," accompanied by vocal requests. Observing claimant's reciprocal social interaction, Dr. Alford observed claimant immediately engage with available toys, interested in some and not others, which was not atypical behavior in comparison to her same age peers. Claimant's reciprocal social interaction "was easy throughout." In looking for restricted and repetitive behaviors, Dr. Alford noted that "overall, [claimant] played symbolically and imaginatively with a wide variety of

toys . . . no items became items of persisting and restricted interest . . . she was able to be redirected without a significant impact to mood or cooperation . . . ."

11. Dr. Alford determined that claimant's "overall test score on the ADOS-2, Module 2 algorithm (younger than 5 years) was not consistent with an ADOS-2 Classification of Autism Spectrum." Claimant's overall score of 3 did not meet the Autism Spectrum Cut-Off score of 7, or the Autism Cut-Off score of 10.

ADAPTIVE BEHAVIOR ASSESSMENT SYSTEM TEST RESULTS

12. Dr. Alford administered the Adaptive Behavior Assessment System, Third Edition (ABAS-3) to assess claimant's adaptive skills. "The focus of the test is on adaptive behavior, 'the collection of conceptual, social, and practical skills that have been learned by people in order to function in their everyday lives' (American Association of Intellectual and Developmental Disabilities), which the individual displays without the assistance of adults." This test required responses from A.E., who indicated concerns with claimant's "conceptual (functional academics, and self-direction), social (leisure, social skills), and practical (community use, home living, health and safety, and self-care) skills." A.E. indicated that claimant frequently acted out against other children in social settings, "stare[d] off" and was anxious in new social situations, was not aware of environmental dangers, and could not provide self-care. Claimant scored extremely low on this test based upon A.E.'s responses.

TEST SUMMARIES

13. Claimant's overall intellectual ability was well-developed, falling in the average range. Claimant's language skills, consisting of receptive and expressive language, were intact, and her receptive vocabulary fell within the average range. Dr. Alford had no concerns with claimant's sustained attention, noting claimant's behavior

fell within normal limits for claimant's age. Claimant's adaptive skills fell significantly below age expectations, reflecting A.E.'s concerns. Dr. Alford summarized that as a result of qualitative observations, and formal and measured observations of claimant's social and communication abilities, claimant's "social/communication and play behaviors were mostly typical when compared to same age peers."

DIAGNOSTIC IMPRESSION

14. The DSM-5 provides A and B Diagnostic Criteria for ASD. Under the A Criteria, the following three deficits must be present: (1) deficits in social-emotional reciprocity; (2) deficits in nonverbal communicative behaviors used for social interaction; and (3) deficits in developing, maintaining, and understanding relationships. Under the B Criteria, two of the four criteria must be met: (1) stereotyped or repetitive motor movements, use of objects, or speech; (2) insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior; (3) highly restricted, fixated interest that are abnormal in intensity or focus; and (4) hyper or hyporeactivity to sensory input or unusual interest in sensory aspects of the environment.

15. Dr. Alford opined that claimant did not possess the three deficits under the A Criteria, nor did claimant meet two out of the four B Criteria. Thus, Dr. Alford concluded that claimant "does not meet criteria for Autism Spectrum Disorder." Her Diagnostic Impression was as follows:

Current: No Diagnosis

Rule out: Seizure Disorder

Monitor: Mood Dysregulation (presence of Bipolar or other disorder as she grows)

(Italics in original.)

16. As additional considerations, Dr. Alford noted that given claimant's rare chromosomal condition – Partial Trisomy 11q, "it remains unclear as to any influence this chromosomal difference may have on [claimant's] emotional regulation." In addition, Dr. Alford suggested that due to claimant's "episodes" of "increased tone in arms and legs, fluttering of [claimant's] eyes, drooling and urinary voiding, . . . regularly disrupted sleep, A.E. should discuss concerns with [claimant's] pediatrician or another specialist to rule out seizure activity."

June 7, 2019 Kaiser Diagnosis of Autism Spectrum Disorder

17. Claimant disputes Dr. Alford's diagnosis, and relied on a report by Karen Fagerstrom, Psy.D., Clinical Psychologist, Autism Spectrum Disorder Clinic, Kaiser Permanente Rancho Cordova Medical Center. Dr. Fagerstrom did not testify at hearing, but her report was admitted in evidence.

18. Like Dr. Alford, Dr. Fagerstrom administered assessment tests, interviewed A.E., performed behavioral observations, and reviewed claimant's family and medical history. Dr. Fagerstrom identified claimant's presenting problems as reported by A.E. as delayed speech, deficits in social skills, poor eye contact, sound sensitivities, and a fascination with spinning fans. A.E. was also concerned with claimant's lack of awareness of environmental dangers. A.E. also reported concern with claimant's tantrums and upsets.

19. Dr. Fagerstrom noted that claimant's parents were "together but live in separate homes." Claimant's parents are related, as their mothers are sisters. Dr. Fagerstrom noted the family's extensive psychiatric history. A.E. did not have any psychiatric diagnoses, but her maternal family relatives have a history of: attention deficit hyperactivity disorder (ADHD); anxiety; bipolar disorder; depression; intellectual disability; learning problems; mood disorder; obsessive-compulsive disorder; panic disorder; and substance abuse. Claimant's biological father has a history of: learning problems and substance abuse. Claimant's paternal family relatives and siblings have similar histories as claimant's maternal relatives. At the time of claimant's evaluation by Drs. Alford and Fagerstrom, claimant had not yet been evaluated for seizures.

20. Dr. Fagerstrom administered the ADOS-2, ABAS-3, and the Achenbach System of Empirically Based Assessment (ASEBA) tests. She also assessed intellectual development using the Mullen Scales, and developmental functioning using the Developmental Profile 3 (DP-3). The tests are described below.

ADOS-2 AND ADOS-2, MODULE 2

21. During the ADOS-2, Dr. Fagerstrom noted that claimant had difficulty requesting play items and instead stood in front of the examiner, made eye contact and unusual repetitive vocalization that sounded like an unusual laugh. Claimant seemed to want control of items during the assessment, rather than engage in back and forth play. Claimant was cooperative in clean-up, used sentences and phrases during book activity, but rarely responded to the examiner's direct questions, and rarely engaged in back and forth conversation. Dr. Fagerstrom provided in her report a table of standard scores, t-scores, scaled scores, percentiles, and range, but it was difficult to discern the scores attributed to claimant absent Dr. Fagerstrom's testimony to explain claimant's ADOS-2 scores in comparison to standard scores.

22. Dr. Fagerstrom assessed claimant using ADOS-2, Module 2, which is used for children that use phrase speech but are not verbally fluent. Dr. Fagerstrom noted: "It is important to recognize that the ADOS-2 is an instrument designed to assist with diagnostic impressions, which suggests that the ADOS-2 Classification may differ from the overall clinical diagnosis." Dr. Fagerstrom provided no other explanation in her report for this statement. She provided an extensive list of her observations of claimant's behaviors, such as:

> Regularly used utterances with 2 or more words, (e.g. "more please", "I wanna try," "you can't catch me" . . .
>
> Displayed occasional echoing
>
> Spontaneously used several descriptive gestures that were communicative
>
> Appropriately used eye contact . . . combined with other nonverbal and verbal communication
>
> Directed some facial expressions to the examiner . . .
>
> Showed definite enjoyment . . .
>
> Spontaneously showed toys or object to another . . .
>
> Used clearly integrated eye contact to direct another person's attention . . .
>
> Followed examiner's shift in eyes and face as a cue to look toward a target object

Made slightly unusual quality of attempts to initiate social interaction . . .

Showed responsiveness to most social contexts, but they were social awkward . . .

Used some reciprocal social communication, but this was reduced in frequency

Sometimes felt awkward or stilted

Spontaneously played with a variety of toys

No unusual sensory interests or sensory-seeking behaviors

Displayed mannerisms that occurred frequently and during at least two different tasks or activities (e.g., finger mannerism, hand flapping, arching back with arms behind back, rocking side to side)

Self-injurious behavior not observed

Displayed an unusually routinized activity (e.g., lined up puzzle pieces, lined up cars)

No overactivity observed

No tantrums, aggression, negative, or disruptive behavior observed

No anxiety observed

Dr. Fagerstrom then concluded that with respect to the ADOS-2, Module 2, claimant's "classification fell within the autism spectrum range. The comparison score indicated a low level of Autism Spectrum symptoms. Results indicate that [claimant] demonstrated symptoms of [ASD] during the ADOS-2 administration." It is not known what symptoms Dr. Fagerstrom identified as ASD symptoms during the test, or what she meant when stating that "the comparison score demonstrated a low level of ASD symptoms."

ABAS-3

23. Dr. Fagerstorm evaluated claimant's daily living skills using the ABAS-3. The ABAS-3 is a parent report questionnaire evaluating claimant's functional skills necessary for daily living without supports. A.E. completed the ABAS-3 questionnaire. Based on her responses, claimant fell within the "extremely low to borderline" range of functioning when compared to similar-aged children.

MULLEN SCALES

24. Dr. Fagerstrom assessed claimant's intellectual development using the Mullen Scales. Dr. Fagerstrom noted that the Mullen Scales are a measure of cognitive functioning for infants and preschool children from birth through 68 months. She determined that claimant's scores fell within the average range of functioning when compared to similar-aged children. She noted that claimant's attention and concentration appeared "within normal limits" and that claimant was generally cooperative and put forth effort on assessment tasks.

DP-3

25. Dr. Fagerstrom additionally assessed claimant's developmental functioning using the DP-3, which measures development in five areas: (1) physical; (2) adaptive behavior; (3) social-emotional; (4) cognitive; and (5) communication. The DP-3 assesses children from birth through 12 years, 11 months, and is based on a parent or caregiver's report of their observations. Claimant's scores in all five areas indicate that her developmental functioning is delayed, and that her cognitive functioning is below average.

ASEBA

26. Dr. Fagerstrom assessed claimant's competencies, strengths, adaptive functioning, and possible areas of concern such as claimant's behavioral, emotional, and social problems using the ASEBA. This assessment is a "multi-informant system that includes a series of questionnaires." In relation to the DSM-V, the responses produced "Clinically Significant" results in the areas of: depression; anxiety, autism spectrum problems; attention deficit hyperactivity problems; and oppositional defiant problems.

DSM-V CRITERIA

27. Dr. Fagerstrom concluded that claimant met all three deficits under Criteria A, and all four deficits under Criteria B. She wrote, "The results of this evaluation are *suggestive* of Autism Spectrum Disorder (ASD)." (Italics and Emphasis added.) Dr. Fagerstrom's clinical impression was as follows:

> Based upon observed behaviors throughout this evaluation and behaviors reported by [claimant's] mother, [claimant]

> meets DSM-5 criteria for a diagnosis of ASD. [Claimant] presented friendly at times and somewhat aloof at times. She appears to be functioning in the Average range of intelligence. The adaptive profile suggested a reported score within the Extremely Low to Borderline range of functioning. There is a reported history of a lack of interest in peers. Her diagnosis is not accompanied by an intellectual impairment or a language impairment. As part of this evaluation, a referral was made for a formal speech and language therapy evaluation to determine any deficits.

Dr. Fagerstrom's diagnostic impressions were as follows:

> F84.0 Autism Spectrum Disorder
>
> Requiring support for deficits in social communication;
>
> Requiring support for restricted, repetitive behaviors;
>
> Without accompanying intellectual impairment;
>
> Without accompanying language impairment.

28. Dr. Fagerstrom made recommendations as a result of claimant's ASD diagnosis, including contacting the local school district to share the results of Dr. Fagerstrom's evaluation to establish placements, needed services, and Individualized Education Program (IEP) goals.

August 20, 2019 Informal Meeting Addressing ASD and Epilepsy

29. After receiving and reviewing Dr. Alford's Psychological Evaluation Report and the Sacramento City Unified School District's Preschool Assessment Team Report finding that claimant was not eligible for special education services[4], ACRC determined that claimant did not have a developmental disability under the Lanterman Act, and issued a Notice of Proposed Decision. A.E. requested an informal meeting, which was held on August 20, 2019. At the meeting A.E. provided information supporting her position that claimant has ASD, consisting of: (1) a two-page evaluation summary from Dr. Fagerstrom; (2) a cover page for the Robla District Play Pals Preschool Enrollment Packet; and (3) an In Home Support Services (IHSS) Health Care Certification Form. However, she did not provide ACRC with Dr. Fagerstrom's report diagnosing claimant with ASD.

30. A.E. did not agree with Dr. Alford's findings because she claimed that Dr. Alford told her that Kaiser would do a more intensive autism evaluation than Dr. Alford, and that Dr. Alford did not note this conversation in her report. A.E. also disagreed with Dr. Alford's findings because claimant presented differently during Dr. Alford's evaluation than claimant typically did. Despite acknowledging that claimant has very strong eye contact and good social skills, particularly with siblings, A.E. asserted that claimant continued to have severe tantrums symptomatic of ASD.

[4] The team did not opine on whether claimant demonstrated ASD symptoms during their assessment for special education services, nor did the school psychologist diagnose claimant with ASD.

31. Sindhu Philip, Psy.D., testified that she was present at the informal meeting. Dr. Philip has been a staff psychologist for ACRC for eight years, and sits on the multidisciplinary review team. She reviews approximately 1,000 assessments a year. Dr. Philip reviewed Dr. Alford's report and all available records pertaining to claimant. Dr. Philip opined that Dr. Alford's "diagnostic impression seems sound." Dr. Philip added that claimant saw two other developmental pediatricians, and neither made any reference to autism, stating, "one did not think [claimant] had autism, and the other made no reference at all."

32. Barbara Friedman, M.D., a full-time staff physician at ACRC, testified regarding claimant's July 2019 diagnosis of epilepsy. Dr. Friedman acknowledged that epilepsy is one of the conditions that ACRC serves. She was involved with claimant's Early Intervention Team, and participated in the informal meeting. At the meeting, A.E. told the team that claimant has not had any seizures since taking medication. Claimant is not yet on a full dose of anti-seizure medication, the medication is still being adjusted, and claimant may need another medication. Dr. Friedman opined at the meeting that claimant's behaviors could be related to the seizures, but she needed to speak with claimant's neurologist. She further mentioned in the meeting that not every individual with epilepsy is found eligible for ACRC services, in that the epilepsy must be substantially disabling, that is, not controlled by medication. At the time, Dr. Friedman had not reviewed all of claimant's medical records, and ACRC presumed that claimant's seizures would continue to be controlled by medication.

33. Without the benefit of Dr. Fagerstrom's report available to them, the multidisciplinary review team sustained ACRC's determination that claimant was not eligible for ACRC services, because the existing information and records did not establish that claimant had substantially disabling autism or epilepsy, or any of the

other disabling conditions under the Lanterman Act. The team remained open and willing to review additional information, and to have Dr. Alford and Dr. Philip complete an evaluation of claimant at school to see if Dr. Alford might potentially change her diagnostic impressions. ACRC believed that Dr. Alford's diagnosis was the most consistent with all of the information ACRC had obtained to that point.

34. After the informal meeting, ACRC requested releases from A.E. to discuss claimant with Dr. Alford, and for ACRC to share claimant's school district and Kaiser records with Dr. Alford. Claimant rescinded all releases on September 19, 2019, and wanted to proceed to hearing.

35. At hearing, Dr. Philip commented on the difference of opinion between Dr. Alford and Dr. Fagerstrom, opining that "there were some question marks about how all the [DSM-5] criteria were met," such as whether the observations were made in a clinical setting, and by whom.

36. At hearing. Dr. Friedman testified that she had reviewed claimant's medical records, showing that claimant started medication for seizures which had been resolved. Dr. Friedman did not find a disabling condition of epilepsy "so long as [claimant's] seizures are controlled." She opined that claimant's epilepsy had to be substantially disabling in three or more areas of major life activity[5], appropriate to the person's age. There was no evidence to establish that claimant's epilepsy affected any areas of major life activity.

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[5] The areas of major life activity are: (1) receptive and expressive language; (2) learning; (3) self-care; (4) mobility; (5) self-direction; (6) capacity for independent living; and (7) economic self-sufficiency.

Discussion

37. The testimony of Dr. Alford was compelling and persuasive. Dr. Alford specializes in pediatric neuropsychology, and is the Director of Pediatric Psychology at Sutter Medical Foundation. Dr. Alford clearly set forth the DSM-5 criteria for ASD, and explained the assessments she performed during her evaluation. She administered the WPPSI-IV and ADOS-2, which were objective in nature, and administered the ABAS-3, which appeared to be subjective in nature, as it relied on responses by A.E. Dr. Alford concluded that claimant's cognitive ability, attention skills, social and communication abilities fell in the average range when compared to same age peers. She further concluded that claimant did not meet the DSM-5 A and B Criteria for ASD.

38. On the other hand, Dr. Fagerstrom did not testify at hearing, but her report was admitted in evidence. Dr. Fagerstrom's experience and background are unknown. Dr. Fagerstrom's ADOS-2 results could not be discerned from the table provided in her report. Her ADOS-2, Module 2 results fell within the ASD range, but she commented that claimant's comparison score "indicated a low level of Autism Spectrum symptoms." Without her testimony, it is difficult to understand what she meant. Dr. Fagerstrom also utilized subjective tests such as the ABAS-3 and DP-3, where claimant fell below the average in daily living skills and developmental functioning. The Mullen Scales revealed "normal limits" for intellectual development. The ASEBA resulted in "clinically significant" results in various areas, including "autism spectrum problems." However, Dr. Fagerstrom was not present to explain what those problems were. Dr. Fagerstrom wrote that the results of her evaluation were "suggestive" of ASD, then diagnosed claimant with ASD. More explanation was needed here.

39. Dr. Philip persuasively testified that "there were some question marks about how all the [DSM-5] criteria were met." Without Dr. Fagerstrom's testimony, her report alone did not support claimant's assertion that claimant has a disabling condition of ASD.

40. Similarly, claimant's July 2019 diagnosis of epilepsy, by itself, did not establish claimant for ACRC services. Dr. Friedman persuasively testified that epilepsy is one of the disabling conditions that ACRC serves. However, claimant's seizures were controlled by claimant's current medication. Dr. Friedman concluded that as long as claimant's seizures were controlled, there was no substantial disability of epilepsy. To make a finding that claimant's epilepsy is substantially disabling, claimant would have had to present evidence that the epilepsy impaired three or more areas of major life activity.

41. The evidence established that claimant is not currently eligible to receive ACRC services and supports by reason of a diagnosis of autism. The evidence further established that claimant is not currently eligible to receive services and supports by reason of a diagnosis of epilepsy.

LEGAL CONCLUSIONS

1. Under the Lanterman Developmental Disabilities Services Act, the State of California accepts responsibility for persons with developmental disabilities and an obligation to them which it must discharge. (Welf. & Inst. Code, § 4501.) As defined in the Act, a developmental disability is a disability that originates before age 18, that continues or is expected to continue indefinitely and that constitutes a substantial disability for the individual. Developmental disabilities include intellectual disability,

cerebral palsy, epilepsy, autism, and what is commonly known as the "fifth category" – a disabling condition found to be closely related to intellectual disability or requiring treatment similar to that required for individuals with an intellectual disability. (Welf. & Inst. Code, § 4512, subd. (a).)

2. In seeking government benefits, the burden of proof is on the person asking for the benefits. (See, *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits).) The standard of proof in this case is a preponderance of the evidence, because no applicable law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) Because claimant is requesting services and supports not authorized by ACRC, claimant bears the burden of proof.

3. "Substantial handicap" is defined by regulations to mean "a condition which results in major impairment of cognitive and/or social functioning." (Cal. Code Regs., tit. 17, § 54001, subd. (a).) Because an individual's cognitive and/or social functioning is multifaceted, regulations provide that the existence of a major impairment shall be determined through an assessment that addresses aspects of functioning including, but not limited to: (1) communication skills, (2) learning, (3) self-care, (4) mobility, (5) self-direction, (6) capacity for independent living and (7) economic self-sufficiency. (Cal. Code Regs., tit. 17, § 54001, subd. (b).)

4. It was not established that claimant has a developmental disability that originated before age 18 and that continues, and that constitutes a substantial disability for claimant. Claimant does not have autism. (Factual Findings 5 through 16, and 37 through 39, and 41.) Claimant has epilepsy, but it is controlled by medication and is not substantially disabling such that it impairs three or more areas of major life activity. (Factual Findings 4, 32, 36, 40 and 41.) Claimant is therefore not eligible to receive services through Alta California Regional Center.

ORDER

Claimant's appeal from the Alta California Regional Center's determination is DENIED. Claimant is not eligible for services under the Lanterman Act at this time.

DATE: October 7, 2019

DANETTE C. BROWN
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.