

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

In the Matter of:

CLAIMANT

v.

TRI-COUNTIES REGIONAL CENTER

OAH No. 2019110251

DECISION

Thomas Y. Lucero, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on September 21 through 24, 2020. The matter is governed by the Lanterman Act, that is, the Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code sections 4500 through 4885.

Donald R. Wood, Attorney at Law, represented Tri-Counties Regional Center. Wendy R. Dumlao, Attorney at Law, represented claimant. The names of claimant and her family are omitted to protect their privacy.

Oral and documentary evidence was received. The record was held open for each party's closing brief by October 13, 2020. Both served timely, the Service Agency's is marked Exhibit 24, claimant's is marked Exhibit EE, for identification.

The record was closed and the matter was submitted for decision on October 13, 2020.

Motion to Admit Exhibit 23

1. On October 2, 2020, the Service Agency sought to move into evidence a version of the January 3, 2020 Neuropsychological Evaluation by Hilda Chalgujian, Ph.D. The motion, the supporting declaration of Mary Ellen Thompson, the Service Agency case manager who attended the Fair Hearing, and Dr. Chalgujian's evaluation, are marked collectively Exhibit 23 for identification. Claimant filed an October 6, 2020 opposition marked Exhibit DD for identification. The Service Agency's motion is denied as set out below.

2. As Ms. Thompson declared, the Service Agency received Dr. Chalgujian's evaluation and months later received a revised version from claimant's mother. Dr. Chalgujian's revised evaluation is the Service Agency's Exhibit 12, admitted into evidence at the Fair Hearing. Ms. Thompson explains that the Service Agency was dealing with a massive amount of documents during times made difficult by the pandemic, so that by mistake the Exhibit 23 evaluation was left out of the exhibit packet that the Service Agency served on claimant before the hearing. Ms. Thompson points out that the two versions of the evaluation seem identical, except page 14's list of diagnoses under "Axis I: Major Psychiatric Disorders." In the Exhibit 23 version, "Autism" is last on the list of diagnoses, whereas it is first on the list in Exhibit 12.

3. Dr. Chalgujian's diagnoses follow the format recommended by the Diagnostic and Statistical Manual of Mental Disorders, fifth edition (DSM-5), widely recognized as authoritative by psychologists. The Service Agency urges that the change in the list of diagnoses is significant under the DSM-5, quoting page 23: "The

principal diagnosis is indicated by listing it first, and the remaining disorders are listed in order of focus of attention and treatment.” Excerpts from the DSM-5, not including page 23, are Exhibit 14. Dr. Chalgujian was cross-examined on the revision of her evaluation. The Service Agency argues that the revision by Dr. Chalgujian, who testified that the order of diagnoses was not significant the DSM-5 notwithstanding, suggests that parents had influence over Dr. Chalgujian’s opinions.

4. In opposing the motion, claimant urges that the Service Agency had adequate time to consider which documents it would offer into evidence and offering the Exhibit 23 evaluation after the Fair Hearing is prejudicial as claimant did not see the evaluation before the Fair Hearing and had no chance to discuss it during the hearing.

5. Denial of the Service Agency’s motion is appropriate on several grounds: (i) Dr. Chalgujian’s Exhibit 23 evaluation, not extensively revised, has limited evidentiary value, (ii) the Service Agency’s evidence of revision is in the record, and (iii) prejudice is likely given claimant’s inability to examine witnesses regarding the evaluation further.

STATEMENT OF THE CASE

Now 19 years old, claimant is unable to live independently, heavily reliant on parents, who were her foster parents for a year and adopted her at four and a half years old. Claimant demonstrates many deficits, cognitive and otherwise. She was diagnosed in early childhood with several psychiatric disorders. In late 2018 was claimant’s first diagnosis of autism. Autism is the name of the disorder in the Lanterman Act, but the DSM-5 evaluates it as a range or spectrum of disabling

characteristics, hence Autism Spectrum Disorder (ASD), two names used interchangeably in this decision. A second psychologist later diagnosed autism. Several Service Agency professionals evaluated claimant's eligibility for services on different occasions in 2019, including her observation at school. They concluded claimant is ineligible for services under the Lanterman Act and has no condition, ASD or any other, that qualifies her for services.

ISSUE

The main issue is whether claimant is eligible for services under the Lanterman Act by reason of ASD. There are several subissues, including:

- A. Whether psychiatric disorders, diagnosed in early childhood, obscure ASD in claimant.
- B. Whether before 2018, professionals misdiagnosed claimant, in part because ASD is difficult to discern in a girl's early years, the more so as girls may mask or camouflage symptoms.
- C. Whether claimant, while not eligible under the first four Lanterman Act categories of (i) intellectual disability, (ii) cerebral palsy, (iii) epilepsy, or (iv) autism, may be eligible under the fifth category, that is, under subdivision (a) of section 4512 of the Lanterman Act, claimant has "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 not including "other handicapping conditions that are solely physical in nature."

SUMMARY OF DECISION

Claimant did not meet her burden to show eligibility. She did not demonstrate that she has ASD. She did not show she is eligible under the Lanterman Act's fifth category. Claimant's evidence of masked or camouflaged symptoms was unconvincing. The professionals who diagnosed claimant with ASD were less convincing than those who found an ASD diagnosis inappropriate.

FINDINGS OF FACT

1. As shown in Exhibit C, Edward "Lalo" L. Perez, LCSW/MFT, Intake Service Coordinator for the Service Agency, advised claimant's parents in his September 18, 2019 letter that she was not eligible for services under the Lanterman Act. The Service Agency's Notice of Proposed Action to deny eligibility was effective on September 24, 2019. Claimant appealed the denial, that is, the eligibility decision and denial of services, in an October 21, 2019 Fair Hearing Request.

2. At the time of the Fair Hearing, claimant was 19 years old. She recently received her high school diploma. Her parents, foster parents when she was three and a half, adopted claimant when she was four and a half. Her parents also adopted claimant's older siblings. Mother works full time. Father stays at home with the children. The Superior Court of California, County of Ventura, approved claimant's parents as conservators in limited Letters of Conservatorship, Exhibit D, filed on November 8, 2019.

3. Claimant struggles with several disorders and deficits.

A. Before entering the foster care system, claimant suffered abuse as a child, its full extent unknown. Mother believes the biological parents trafficked claimant and her siblings for illegal drugs. To this day claimant sometimes panics when she meets strangers, especially older male strangers.

B. Early in her childhood claimant was diagnosed with four psychiatric disorders: (i) Post Traumatic Stress Disorder (PTSD), Reactive Attachment Disorder (RAD), Attention Deficit Hyperactivity Disorder (ADHD), and Bipolar Disorder. These diagnoses are not in dispute and were noted in several evaluations, described below, by witnesses, both those called by claimant and those called by the Service Agency.

C. By 2018, before her ASD diagnosis, claimant's psychiatric disorders were treated with medications. As described on page 2 of a January 15, 2020 Speech and Language Consultation Report, Exhibit E, by Anita C. Boxer, M.A., CCC/SLP, claimant's medications: (i) Seroquel, (ii) Lamictal, (iii) Abilify, (iv) Clonidine, and (v) Nexplanon.

D. Besides medications, claimant's psychiatric disorders were managed with years of counseling, provided both by Ventura County Behavioral Health (VCBH), and separately by John M. Aliapoulios, M.D., a psychiatry specialist. A limited number of Dr. Aliapoulios's notes on his treatment of claimant are page 1 of Exhibit 10. Other records of Dr. Aliapoulios were excluded on a motion by claimant.

E. Claimant has mild hearing loss. As Ms. Boxer noted on page 2 of her Exhibit E report, "in 03/2015 an audiological evaluation was conducted by Carol Servin, Au.D., FAAA of the Ventura County Office of Education . . . [which] confirmed a bilateral mild high frequency sensorineural hearing loss (8000 Hz: Left Ear, 3000-4000

Hz: Right Ear). There was normal middle ear function bilaterally with some ear drum retraction. [Claimant] is reported to have excellent word recognition at conversational levels. She does not wear hearing aids.”

F. Ms. Boxer also noted at page 2 of her report claimant’s “visual convergence problems. She wears eye glasses at all times.”

Witnesses Called by Claimant

4. Claimant called expert witness Pegeen Cronin, Ph.D., concerning claimant’s evaluation and issues affecting a clinician’s diagnosis of ASD. Page numbers below refer to Dr. Cronin’s December 20, 2018 Independent Examiner Evaluation – *Psychological* (IEE-P), Exhibit G, which Service Agency personnel reviewed before determining claimant ineligible for services under the Lanterman Act.

A. Dr. Cronin, whose C.V. is Exhibit AA, is a licensed clinical psychologist.

i. From 1997 to 2004, Dr. Cronin was the Assistant Director, Autism Evaluation Clinic, Department of Child Psychiatry, UCLA Semel Institute for Neuroscience and Human Behavior, where from 2004 to 2012, she was the Clinical Director. She has been in private practice since 2013.

ii. Dr. Cronin has been an investigator for research and treatment of ASD, including Principal Investigator from 2003 to 2012 in Understanding Autism, UCLA Center for Autism Research and Treatment (CART).

iii. Among her professional activities are Dr. Cronin’s consultations every year since 1999, including for several school districts in California and neighboring states.

iv. Dr. Cronin's bibliography includes peer-reviewed research papers. She has presented dozens of lectures. Since 2003 she has provided training on the frequently administered test, ADOS (Autism Diagnostic Observation Schedule, the second edition of which, the ADOS-2, is current, and includes more than one testing module).

v. Dr. Cronin has extensive experience examining and treating children with RAD, ADHD, and Bipolar Disorder. She has little experience with PTSD.

B. The IEE-P describes claimant when she was 17 years and one month old.

i. Claimant Interviews: Dr. Cronin's interviews with claimant, described on page 13, were for two and a half hours on August 10, 2018 and one hour on November 8, 2018. Dr. Cronin found claimant "friendly, eager, alert, and cooperative In her eagerness she often offered information and talked about enjoyable experiences." Claimant expressed aspirations, such as "better interacting with other people." She talked about a book she had read and her work, over several years, with VCBH psychologist Brian Gray, Ph.D. In response to the Mini International Neuropsychiatric Interview (MINI), claimant demonstrated some self-awareness, such as that others could consider her hyperactive if she failed to take her medications.

ii. Parent Interviews: The claimant interviews described above are described in three paragraphs on page 13. They are preceded by parent interviews described on pages 4 through 12.

a. Dr. Cronin states that she followed the "Autistic Spectrum Disorders Best Practice Guidelines for Screening, Diagnosis and Assessment" (ASD Guidelines, Exhibit W) published by the Department of Developmental Services

(DDS) in administering to parents the Autism Diagnostic Interview-Revised (ADI-R). Dr. Cronin did not report ADI-R scores. Dr. Cronin wrote on page 5, however, that the results demonstrated “social communication disabilities and repetitive behaviors” not sufficiently explained by other difficulties, such as Bipolar Disorder and “indicated the classification of autism.” Dr. Khoie thought omission of these scores, like Dr. Cronin’s omission of ADOS-2 scores, was suspicious.

b. The parents listed many types of maladaptation.

1) They said that claimant does not “filter what she has heard or know what is important.”

2) They gave Dr. Cronin a list of language difficulties, such as claimant’s “repetitive questions about simple routines” On page 7 Dr. Cronin lists claimant’s repetitive questions as stereotyped or repetitive speech, deeming them significant to ASD diagnostic criteria.

3) As Dr. Cronin wrote on page 6, claimant was said not to “demonstrate any natural reciprocal social conversation.”

4) The parents listed deficits in nonverbal communicative behaviors, such as mood changes, noted on page 7, that remain cryptic despite parents’ questions.

5) The parents listed several indicators of claimant’s deficits in developing and maintaining relationships appropriate to her developmental level.

6) Dr. Cronin wrote that claimant has excessive resistance to change and ritualized behaviors, such as playing with water in the

shower, to such an extent she must be prompted to wash herself. As an example of highly restricted, fixated interests, Dr. Cronin notes claimant's focus on Barbie dolls and, as an example of several unusual interests, her need to touch everything. Dr. Cronin notes a heightened startle response, including to school bells, which, however, was not observed when the Service Agency's Staff Psychologist, Tammy Brandt, Psy.D., observed claimant at school.

7) Self-injury is noted, as when claimant hits her head in different places with an open hand or bangs her head.

c. Dr. Cronin administered to parents the Vineland Adaptive Behavior Scales-Third Edition (VABS-3). Claimant's scores were low, averaging less than one percentile, in each of three Domains: (i) Communication, (ii) Daily Living Skills, and (iii) Socialization. Notable on pages 11 to 12, under the Interpersonal Relationships subdomain, which Dr. Cronin seems to rename Social Skills, is that "Parents observed [claimant] has a 'complete lack of social perception,' and it is the same as it was when [claimant was] 3 years old and began living with them." Dr. Brandt testified that Dr. Cronin did not properly use or interpret the results of the VABS-3.

C. Dr. Cronin administered to claimant the ADOS-2, but the IEE-P omits claimant's scores.

i. Explaining the scores' omission, Dr. Cronin wrote on page 14: "Scores are derived to determine whether there are diagnostic indicators for ASD. The ADOS-2 manual instructs examiners to avoid including scores in reports because the specific scores may not be interpreted as intended and therefore not helpful to the individual being evaluated (ADOS-2, 2012, p. 213)."

ii. Dr. Cronin described “results” on page 15: “[Claimant] demonstrated symptoms consistent with a diagnosis of autism spectrum disorder including deficits in make-believe and imaginative thinking, reciprocity, repetitive speech, and difficulties with flexibility beyond her own ideas and assertions.”

iii. Dr. Khoie asked Catherine Lord, Ph.D., who developed the ADOS and ADOS-2, about omitting scores. Dr. Lord wrote Dr. Khoie a September 21, 2020 email, Exhibit 21: “We have moved to recommending that people can, but don’t have to report the comparison scores, given their clinical judgment of whether it would be helpful, we recommend not reporting raw scores but if you have previous scores you can certainly comment about behaviors that have changed in the text. Does that make sense?”

D. Record Review: Dr. Cronin reviewed extensive records, especially educational records from every year since claimant was nine years old.

i. Extrapolating from the records, Dr. Cronin noted on page 21 that claimant’s “genetic history [that] predispose[s] her to not only bipolar illness and likely inherited learning disabilities.” Dr. Cronin continues: “[P]renatal exposure wreaks havoc on [claimant’s] social emotional development and cognitive abilities, specifically the inconsistencies evident in [claimant’s] cognitive abilities, educational progress, social development, and independent adaptation. Early on individuals exposed to alcohol are often noticed as socially eager and diagnosed with attention deficit hyperactivity disorder [(ADHD)]. This has also been true for [claimant].”

ii. Dr. Cronin wrote, on pages 21 and 22, that claimant’s “early standardized tests measured as age-appropriate, sometimes higher,” while she struggled with schoolwork, so that “[claimant’s] anxiety was considered the cause of

the inconsistent picture of her true abilities in educational settings and in her work product.” Dr. Cronin disagreed that anxiety was the cause, writing in bold type that “[claimant’s] brain struggles to filter pertinent from irrelevant information.” Dr. Cronin summarized: “[claimant] continues to demonstrate social disabilities consistent with the diagnosis of [ASD].” On page 25 Dr. Cronin again refers in boldface type to claimant’s difficulty in discriminating between pertinent and irrelevant information, which Dr. Cronin states is evident in cognitive testing results. On page 26 Dr. Cronin has a similar comment: “This is one of [claimant’s] core learning difficulties across people and settings, the inability to tease out relevant from irrelevant information to process it efficiently.”

iii. OWLS-2, CASL, TAWF, D-KEFS: Dr. Cronin notes the results of several tests administered claimant in 2015: (i) the Oral and Written Language Scales, Second Edition (OWLS-2), (ii) the Comprehensive Assessment of Spoken Language (CASL), and (iii) the Test of Adolescent/Adult Word Finding (TAWF). Dr. Cronin states on page 25 that claimant’s “abilities measured in the very low or borderline range.” Dr. Cronin describes the results as indicative of deficits, similar to 2018 results from subtests Dr. Cronin selected from the Dells-Kaplan Executive Functioning Scales (D-KEFS). She writes that “it seems that the 2015 report at times does not capture that these deficits profoundly impact [claimant’s] abilities across settings.” Dr. Cronin deems claimant better at expressive than receptive language. She notes that claimant’s expressive language is “highly repetitive.” In any event, she writes that “it is typical of individuals on the autism spectrum to demonstrate significantly better” at expressive than receptive language.

E. In a section on page 28 of the IEE-P, Dr. Cronin has general comments on girls with ASD who “receive a late or no diagnosis. . . . McLennan et al.

(1993) noted that girls with ASD often appear to fare better than boys at an early age because they tended to be less disruptive, imitate typical kids, and seek out social contact, albeit in more idiosyncratic ways." Dr. Cronin continues in boldface type: "Recently it has been reported that severity of symptoms in girls is not evident until later in childhood and gets worse in adolescence with severity similar to boys by that time (Mandy et al., 2018)."

F. Q-CAT: Dr. Cronin states on page 13 that she administered the Questionnaire of Camouflaging Autistic Traits (Q-CAT). "Results indicated that [claimant] demonstrates heightened masking skills such as monitoring her body language or facial expressions to appear relaxed" Exhibit CC is a collection of recent news articles about masking and camouflaging by girls with ASD. The articles show that the topic is currently bruited, but they have very slight evidentiary value. Dr. Brandt took exception to Dr. Cronin's administration of the Q-CAT, testifying that the test has not gained acceptance in the psychological profession and should not be considered reliable.

G. Dr. Cronin did not observe claimant at school. She had teacher evaluations available to her.

H. Dr. Cronin's diagnosis is on page 32:

DSM-5 DIAGNOSES: Results from this evaluation substantiate that [claimant] meets the . . . DSM-5 criteria:

1. 299.0 Autism Spectrum Disorder associated with

(1) requiring substantial support for social communication and social interaction; and

requiring substantial support for restricted, repetitive behaviors,

(2) and identify language impairment with comprehensive speech and language evaluation.

By History:

2. Bipolar Disorder

3. Attention Deficit Hyperactivity Disorder – Combined Type

4. Reactive Attachment Disorder

5. Post-traumatic Stress Disorder

5. Hilda A. Chalgujian, Ph.D., prepared a January 3, 2020 Neuropsychological Evaluation, Exhibit 12. She concurred with Dr. Cronin, as described below.

A. Dr. Chalgujian's C.V., Exhibit BB, shows that she has been a licensed psychologist in private practice in California and a member of the International Neuropsychological Association since 1992. She started in the field as a trainee in 1986, was a psychology intern at Boston Veteran Medical Center until 1989, and was a post-doctoral fellow at two hospitals in Boston, Massachusetts from 1989 to 1990. She has been a research associate and a staff psychologist at Desert Psychiatric Association in Palm Desert, California. From 1990 to 2000, she was a consultant for Charter Behavioral Health Systems.

B. Dr. Chalgujian interviewed claimant and her parents, She noted on page 3 that Dr. Cronin had evaluated claimant and documented "repetitive behaviors

including rocking her body, delays and deficits [including] in social behavior and peer relationships . . . notable for a façade of cheeriness, social naïveté, and poor perception of social cues . . . consistently documented since the time she was young. . . . social delays and deficits . . . in excess of her psychiatric diagnoses Therefore, Dr. Cronin diagnosed” ASD.

C. Dr. Chalgujian administered over a dozen tests, but none specifically for ASD. Examining claimant’s mental status, Dr. Chalgujian found, as she wrote on page 6, that “overall intellectual functions were in the below average range compared to her age group Her presentation was immature and child like.” Regarding receptive and expressive language functions, Dr. Chalgujian wrote on page 9 that claimant’s “spontaneous speech was adequate for conversational purposes. She was fluent and articulate, and prosody and comprehension were intact. She demonstrated good vocabulary during spontaneous speech. There were no clear paraphasic errors [such as the production of an unintended sound within a word]. Expressive vocabulary was also assessed with the Vocabulary Subtest of WAIS-IV, and her ability to orally define words was in the average range.”

D. Summarizing on page 10, Dr. Chalgujian found claimant’s “overall intellectual functions were . . . below average compared to her age group.

E. Dr. Chalgujian wrote on page 13 of “core defining features of autism . . . : 1. Impairment in socialization; 2. Impairment in verbal and non-verbal communication; and 3. Restricted and repetitive pattern of behaviors.” She found that claimant had all three.

i. On social impairment, Dr. Chalgujian wrote on page 13 that claimant “does not demonstrate any natural social conversation. . . . She does not have

friends. . . . When with other children, and engaged in a fun activity, she tends to remain off to the side to play for example with water, if swimming, and pouring and sifting with her hands if she can't find something to use." This comment is very similar to that on page 6 of Dr. Cronin's IEE-P: "Even when among other children such as swimming, [claimant] will prefer to remain off to the side to play with water, pouring and sifting with her hands if she cannot find something to use." Dr. Chalgujian did not write or testify that she observed claimant with peers or while swimming.

ii. On impairment in communication, Dr. Chalgujian wrote on page 13, that claimant "presents very animated yet superficial, which does not reflect her internal state." Dr. Cronin's IEE-P stated at page 7: "She presents as very animated yet remains "superficial," and does not appear to reflect her internal state. These near identical observations of Dr. Chalgujian and Dr. Cronin seem to repeat another from the previous paragraph of Dr. Chalgujian's evaluation: "She can be chatty, but superficial, and she is not comprehensible." Dr. Cronin wrote on page 6 of her IEE-P: "While she is often identified as "chatty," she is not comprehensible" The observation on lack of friends in the previous paragraph is essentially repeated on page 13: "[Claimant] never had a best friend or group of friends." Immediately following this observation: "[Claimant] has a significant history of repetitive questions across time and place. She has a long history of always taking something with her, and with any belonging she has she has to have them in certain order. She adheres to a variety of specific routines and struggles significantly with any changes, even around the house. If she is not part of the action or decision, she becomes anxious with tantrums and melt downs." Dr. Chalgujian's observations here conflate all three of the "core" features, social, communicative, and behavioral, she distinguished and identified as demonstrating ASD. They also largely repeat, sometimes verbatim, comments in Dr. Cronin's IEE-P.

iii. On restricted and repetitive behaviors, Dr. Chalgujian comments on page 13: "She also plays with water while showering and must be prompted and monitored to complete the hygiene tasks." Dr. Chalgujian does not use quotation marks, but her comment is a verbatim quotation from Dr. Cronin's IEE-P, page 8. If Dr. Chalgujian observed any repetitive or restricted behaviors, she borrowed phrases from the IEE-P to describe them.

F. Unlike Dr. Cronin's IEE-P, Dr. Chalgujian's evaluation has no section on girls' masking or camouflaging ASD symptoms. Masking is however briefly mentioned in a preface on page 14 to Dr. Chalgujian's diagnosis: "Her presentation is consistent with Autism. Because symptoms change with development and may be masked by compensatory mechanisms, the diagnostic criteria is [*sic*] based on historical information, current symptoms, and testing. Her current presentation causes significant impairment in her adjustment and achievements." Dr. Chalgujian does not explain her quoted conclusion, how "presentation causes . . . impairment," She goes on to diagnoses on page 14:

DIAGNOSTIC IMPRESSION

AXIS I MAJOR PSYCHIATRIC DISORDER

Autism

Neurocognitive Impairment, namely memory disorder

Bipolar Affective Disorder

Attention Deficit Disorder with Hyperactivity.

AXIS II PERSONALTY/DEVELOPMENTAL DISORDERS

Disorder of Arithmetic

AXIS III MEDICAL DISORDERS

As per history

AXIS IV PSYCHOSOCIAL STRESSORS

Moderate

AXIS V PSYCHOSOCIAL FUNCTIONING

Poor

6. Claimant called as a witness Ms. Boxer, whose January 15, 2020 Speech and Language Consultation Report, Exhibit E, is noted above.

A. Ms. Boxer has been a speech pathologist in private practice since 1994. In her pediatric specialty practice, a certified nonpublic agency (NPA) for the State of California contracted to several school districts, the primary emphasis is on preschool and early school age children with ASD. Ms. Boxer worked as a teacher in the late 1960's and early 1970's. She is licensed in speech pathology, has a certificate of clinical competence from ASHA, the American Speech-Language-Hearing Association, and a clinical or rehabilitative services credential from the State of California, Commission on Teacher Credentialing.

B. Ms. Boxer noted claimant's history of hearing loss, as documented in part by a March 2015 audiological evaluation by Carol Servin, Au.D., FAAA, of the Ventura County Office of Education. As noted previously, Ms. Boxer notes on page 2 that claimant reportedly had "excellent word recognition at conversational levels . . . [did] not wear hearing aids." Similar to Dr. Servin's, Exhibit I is a report of Audiologist Melissa Garafalo-Culmer, Au.D., following her re-evaluating claimant's hearing on March 27, 2019. Her impression was: "Normal mild sensorineural hearing loss notch at 4k Hz right. Normal hearing left. Overall consistent results with 2015 testing. Improved results compared to 2/20/2019 findings." Among recommendations was: "Continue current classroom accommodations."

C. In preparation for claimant's evaluation, Ms. Boxer was aware that claimant had been diagnosed with several disorders, including ASD by Dr. Cronin, had counseling, which was discontinued, for several years at VCBH, and was receiving private psychiatric services.

D. Ms. Boxer reviewed claimant's school records. They showed, as Ms. Boxer wrote, page 3, "a long history of language and language processing difficulties," for which interventions of several kinds have been applied, such as vocabulary expansion emphasizing semantic material related to her curriculum. Ms. Boxer notes, among other things, that a speech pathologist was in attendance at a Ventura County Special Education Local Plan Area (SELPA) IEP meeting requested by parents, which took place in September 2019.

E. When she tested claimant, as Ms. Boxer wrote on page 3, there was no "oppositional behavior Eye contact was adequate and overall pragmatic skills were variable in a one-on-one setting with an adult. [Claimant] freely engaged with the clinician in conversation and was able to initiate, change and terminate topics."

F. On November 13, 2019, Ms. Boxer observed claimant in her high school economics class. Claimant checked her work with peers and offered help to others. She observed claimant speak to another student after class, join a cafeteria line, greet her caser manager, Ms. Forrester, warmly on her way to join friends, and then chat with them as they all ate. The economics teacher told Ms. Boxer that, in or out of class, she had no behavioral issues with claimant, one of several students in the class with IEP's.

G. Ms. Boxer developed a language profile for claimant, measuring her receptive and expressive vocabulary. She tested claimant in semantics, syntax, morphology, as well as auditory comprehension and abstract language skills, among others.

i. Ms. Boxer described on pages 9 and 10 how, in tested social communication skills, claimant “had difficulty appreciating the reciprocal nature of both conversational and expository interactions. . . . [V]erbal narratives . . . were linguistically simple in sentence construction, both syntactically and factually. [Claimant] demonstrated adequate syntactic and grammatical skill in her spontaneous speech. She was able to formulate complex sentences, many containing subordinate clauses. However, there was little use of . . . descriptive terminology This was not the case in [claimant’s] more rehearsed responses . . . [which included] complex and elaborate sentences. . . . Her performance suggests that she is able to formulate sentences of greater complexity when afforded more time”

ii. To this sort of processing difficulty might be compared another, as revealed by the Social Context Appraisal subtest of the Pragmatic Judgment Index. As Ms. Boxer observed on page 12: “It measures the awareness of social context cues and the ability to understand the intent of others . . . and making judgments about social context when situational cues change. [Claimant] evidenced particular difficulty . . . often unable to attend to more than one aspect of a social situation at a time. She tended to focus on the actions and the participants while often disregarding the social context and nonverbal cues This inattention often resulted in [claimant’s] misinterpretation of the actions and motives of the participants.”

H. Ms. Boxer’s findings included, on page 13, that claimant had “a receptive-expressive language disorder. [Claimant] clearly possesses the skills for basic

language function, yet many of these do not meet the standards of grade-level linguistic competency in academic and social settings.” Referring to Dr. Cronin’s ASD diagnosis, Ms. Boxer wrote on page 14: “The current speech/language evaluation concurs with this diagnosis. . . . [Claimant] has . . . a rigid and inflexible manner of thinking . . . [which] can result in resistance to change and the misguided expectation of repetition and sameness.”

I. At the Fair Hearing, Ms. Boxer pointed out that in many tested areas, claimant’s performance was more than 1.5 standard deviations below the mean, not less, as the SVUSD interpreted the test scores. A notable example is claimant’s Core Pragmatic Score Composite (CPSC), made up of scores from all six component subtests of the Clinical Assessment of Pragmatics (CAPs). CAPs was administered, as stated on page 11, “to further examine [claimant’s] pragmatic skills in a more realistic format” As Ms. Boxer wrote on page 13, claimant’s CPSC was below 79, which is in the poor range “and designates an insufficient comprehension of social context, deficits in the detection of paralinguistic signals and deficits in the use and participation in appropriate meaningful social interchanges.”

7. Melissa Hanner, M.Ed., RBT, provided claimant in-home ABA services.

A. Ms. Hanner has worked with children for over a decade, starting when she was a kindergarten aide. Most of her ABA clients have had ASD. She has also worked with children diagnosed with ADHD, Downs Syndrome, cerebral palsy, and related disorders.

B. Sunderlin Behavioral Interventions, in its November 9, 2019 Progress Report, Exhibit L, “determined that comprehensive ABA services continue to be appropriate. . . .” The report recommended a combined total of 14 ABA hours per

week, including eight hours of direct treatment, parent training with and without claimant, and one and a half hours of social skills training. The report was signed by Yrenka Sunderlin, MS, BCBA, Executive Director, and Ms. Hanner as Case Supervisor.

C. Ms. Hanner wrote notes, Exhibit M, during her meetings with claimant from August 2, 2019, to July 30, 2020, as claimant's Case Supervisor at Sunderlin Behavioral Interventions. The Executive Director of the company, Yrenka Sunderlin, M.S., B.C.B.A., wrote Progress Reports, Exhibit L, based on Ms. Hanner's observations and work with claimant. Among Ms. Hanner's duties was to attend IEP meetings. For claimant she attended two meetings, one on November 22, 2019, the other on February 4, 2020, as shown in Exhibit O. Ms. Hanner was critical of the school district's work at these meetings because, though there was much talk of cooperation, Ms. Hanner found it difficult to contact the district's Behavior Analyst. This caused Ms. Hanner difficulty in keeping track of claimant's progress, a key part of her duties.

D. It took more than one session for Ms. Hanner to notice certain behaviors. An example is an instance of self injury. Claimant was pinching and scratching her legs beneath the table, which Ms. Hanner noticed only after mother pointed out marks on claimant's legs. Slowly Ms. Hanner came to notice that claimant used language that was "almost scripted." She would ask the same question many times. It was hard for Ms. Hanner to draw out free flowing conversation with claimant. If claimant had tantrum-like behavior, it was of low intensity. Instead of loudness or conduct like slamming doors, claimant might stomp her feet or be silent or tearful when upset. According to her August 16, 2019 note, Exhibit M, father told Ms. Hanner that after she left, claimant had screamed obscenities toward neighboring homes. Ms. Hanner observed no similar conduct. As the August 28, 2019 note states, "The client

demonstrated the ability to apply coping skills when she became frustrated with a class assignment.”

E. Ms. Hanner observed progress in claimant’s communication skills. As Ms. Hanner testified, claimant did well one-on-one, when Ms. Hanner was contriving conversations. Ms. Hanner also believed that claimant mastered the skill known as theory of mind, the ability to attribute mental states to ourselves and others. Claimant’s skill in this area was basic, however. Claimant would assume, because information was known during an ABA session, that her parents knew the information too, without being specifically informed. Thus claimant discussed going to her high school homecoming, and assumed parents approved, though they knew nothing of her plans. As Ms. Hanner stated, “putting herself in others’ shoes” was difficult for claimant. Claimant struggled with generalization.

F. Ms. Hanner met one of claimant’s friends. She saw claimant interacting with other students in friendly ways. Ms. Hanner observed, however, that interactions with other students seemed limited and short lived. Ms. Hanner acknowledged that she is not qualified to diagnose, but she has worked with many children with ASD, male and female, and from experience believes that girls are able to mask ASD symptoms. Ms. Hanner believes claimant has such an ability or tendency.

G. Ms. Hanner acknowledged on cross-examination that claimant sometimes lied, but very mildly, such as white lies about having done homework.

8. Mother’s testimony included factual assertions found in the experts’ evaluations.

A. As set out in her C.V., Exhibit Y, mother has been employed as a Program Specialist by the Ventura County Office of Education since 2008. Among her

duties is to assist teams in developing IEP's. She works extensively with VCBH. For the 2019 academic year, mother was also the principal at a Ventura County school, where she directed and supervised programs for students with disabilities. She was principal at Triton Academy in the 2009 academic year. Before that she worked for several years in the Las Virgenes Unified School District in Calabasas and Camarillo, California, as a teacher at elementary schools. Her work has brought her into daily contact with students with ASD and other disabilities and with those who teach, counsel, and treat them.

B. Mother was forthcoming and articulate. There was no apparent effort on her part to exaggerate or distort. It is clear that she is a caring parent, deeply concerned that her daughter, now an adult, will face great difficulty if she tries at some point to live independently. Mother did not think claimant should receive a high school diploma, explaining that claimant was able to complete her studies only with close and constant prompting and other assistance. The same is true, in mother's view, of claimant's daily life. But for a detailed checklist parents provided her, Exhibit V, claimant is apt to ignore or be unaware of all manner of basic life activities. The checklist has dozens of activities divided into 14 columns describing different activities. For example, the first column entitled "Shower," has nine boxes to check, to make sure that claimant remembers: "Rinse body," "Rinse hair," "Wash hair," "Soap on cloth," and so on.

C. From her years of experience in working with children with ASD, girls and boys, mother believes that girls with ASD are often late to be diagnosed, or misdiagnosed, or not diagnosed at all, because of their ability, much better than boys', to mask or camouflage their symptoms.

Witnesses Called by Service Agency

9. The Service Agency's Intake Service Coordinator, Mr. Perez, having conducted claimant's intake interview on June 25, 2019, prepared an Intake Assessment, Exhibit B.

A. Mr. Perez received his Master's Degree in Social Work in 1973, and that year began working for the Service Agency. He has been in charge of intake for several thousands of people and recalled evaluating claimant. Currently he conducts intake for approximately 25 people per month, He estimated that 85 to 90 percent of his intake work has been concerned with ASD. He has experience with and often considers the fifth category under Lanterman Act section 4512.

B. Claimant's intake interview lasted 75 to 90 minutes. Mr. Perez, who spoke to father and claimant, had reviewed school and medical records and was aware of claimant's psychiatric disorders, reports of difficulties at school and severe anxiety, and her recent ASD diagnosis. Mr. Perez would have preferred seeing a psychological evaluation of claimant from early childhood, but none was available.

C. Claimant greeted Mr. Perez and made good eye contact. Generally, her nonverbal presentation was normal. She likewise had no trouble answering questions, such as about school and self-care. Her motor skills seemed good. Mr. Perez noted that claimant had participated in sports like track at school. He noted records indicating that she self-advocated at times. He saw no evidence of stereotypies or other symptoms of ASD.

D. Mr. Perez acknowledged that anxiety, much emphasized during the intake assessment, can be a secondary symptom of ASD. Mr. Perez's recommendations took into account Dr. Cronin's recent report and parental concerns,

not just anxiety but also, among other things, reports of tantrums lasting up to an hour. A further assessment was among his recommendations. But to Mr. Perez, as he testified, claimant did not appear to have ASD or any condition that would make her eligible for services.

10. Staff Psychologist Brandt and Staff Physician Robert E. Nopar, M.D., prepared the Service Agency's August 22, 2019 Psychological/Medical Evaluation, included in Exhibit 7.

A. Dr. Brandt and Dr. Nopar had Mr. Perez's intake assessment and Dr. Khoie's evaluation. They also had Dr. Cronin's recent ASD diagnosis as set out in her IEE-P. They had also read the May 20, 2019 Sunderlin ABA report, Exhibit 11, the April 17, 2018 Simi Valley Unified School District (SVUSD) Multidisciplinary Psychoeducational Evaluation, in Exhibit 8, and the Individualized Education Program (IEP) dated March 15, 2019, also in Exhibit 8. Before making specific recommendations or conclusions, they wrote that they planned (i) review of a psychoeducational assessment, (ii) inquiry to claimant's VCBH therapist, Dr. Gray, and (iii) a school observation.

B. Dr. Brandt wrote an addendum to the joint evaluation describing the results of the three planned activities noted in the previous paragraph.

i. The most recent psychoeducational assessment included earlier assessments, which showed declines in language skills. Claimant was testing in the low average range in receptive language and the average range on measures of expressive language. Dr. Brandt noted that overall cognitive skills were measured in the low average range with deficits in visual and auditory processing. Claimant was eligible for special education services under the category, Other Health Impairment

(OHI). On cross-examination Dr. Brandt noted that comments from claimant's teachers were conflicting, some indicating that claimant was struggling in many ways, others noting that she seemed well adapted. Dr. Brandt pointed out that the results of standardized tests should be considered to even out or explain differing individual perspectives.

ii. Dr. Brandt spoke to Dr. Gray, who had worked with claimant for five years before transfer from the clinical setting. He was concerned with regulating moods, decreasing tantrums, and connecting thoughts, feelings, and behaviors. He had recently worked on claimant's being able to identify feelings, recognize facial and social cues, make friends, and understand social or personal boundaries. He did not report restricted or repetitive behaviors. Her predominant difficulty was anxiety. He had not considered ASD. A physician, presumably Dr. Aliapoulios, listed PTSD as claimant's primary DSM-5 diagnosis.

iii. On September 12, 2019, Dr. Brandt observed claimant for approximately 45 minutes, including the lunch break, at school. Dr. Brandt also spoke to SVUSD Program Specialist Kendall Forrester, who had worked with claimant for several years. Ms. Forrester told Dr. Brandt, and testified to the same effect at the hearing, that claimant's presentation that day was typical. She seemed confident and happy, not anxious as before when she spoke to Dr. Brandt.

C. Dr. Brandt's addendum stated in summary on page 9 that claimant's PTSD, RAD, ADHD, and prenatal substances exposure "are strong factors that lead to her heightened anxiety and social deficits (which were not apparent across settings). . . . Based on this assessment, I do not believe that [claimant] presents with autism spectrum disorder. I do not believe that ASD is the logical diagnosis to account for her current presentation at it discounts her significant history. While she does

present with social and learning issues, they are not the result of a developmental disability but rather of experience.

D. Dr. Brandt and Dr. Nopar recommended that the Service Agency deny eligibility, concluding that claimant met none of the five eligibility criteria of Lanterman Act section 4512, subdivision (a).

E. Dr. Brandt recalled that parents were critical of her and Dr. Nopar's report. At parents' request, Dr. Brandt changed certain parts of the report because parents believed they had been misquoted or their concerns were misrepresented. Dr. Brandt could not recall what items were changed.

11. Kathy Khoie, Ph.D., evaluated claimant on August 2, 2019.

A. Dr. Khoie, a licensed psychologist whose C.V. is included in Exhibit 20, received her Ph.D. in Psychology in 2002. She volunteered at the UCLA Neuropsychiatric Institute in 1996 and 1997 and gained experience in psychological treatment at a number of facilities in the following years. In 2001 and 2002, she completed a psychology internship at Children's Institute International. She has been a staff psychologist at clinics in Southern California. Since 2007 she has been in private practice performing psychological assessments, including assessments of developmental disability and ASD for the Service Agency since 2016.

B. Dr. Khoie's August 2, 2019 Psychological Evaluation, Exhibit 13, was prepared at the Service Agency's request. Dr. Khoie had Mr. Perez's Intake Assessment, the 2019 IEP, and Dr. Cronin's IEE-P. Parents also provided information before the evaluation. Dr. Khoie found claimant's social presentation pleasant. Presented with several tests, claimant was cooperative. Dr. Khoie evaluated her cognitive skills as average. Claimant's speech was fluent and functional and nonverbal

gestures were integrated. Overall she was friendly and socially engaging, including in reciprocal social communication. As Dr. Khoie wrote on page 3, “[a]t times, her social skills appeared young.” Dr. Khoie observed no restricted or repetitive behaviors.

C. Dr. Khoie administered subtests from the Wechsler Adult Intelligence Scale, fourth edition (WAIS-IV) to assess intellectual functioning skills. Claimant was quick to respond and her scores were in the average range. Dr. Khoie noted that 2019 IEP scores showed low average cognitive skills based on the WISC-V and KBIT. Dr. Khoie concluded that claimant did not present with intellectual disability.

D. To assess communication, Dr. Khoie administered the Adaptive Behavior Assessment System, third edition (ABAS-3) Parent Form. Dr. Khoie’s analysis on page 5 was that claimant’s “overall adaptive behavior . . . conceptual adaptive behavior . . . social adaptive behavior . . . [and] practical adaptive behavior can be characterized as lower functioning than that of almost all individuals her age. However, these reports appeared to underestimate [claimant’s] adaptive functioning abilities.”

E. Like Dr. Cronin, Dr. Khoie administered the ADOS-2, Module 3. Dr. Khoie provided the resulting scores, based on which she concluded that the scores did not suggest ASD. On the other hand, as Dr. Khoie noted, the ADI-R administered to the parents indicated ASD symptoms in: (i) reciprocal social interaction, (ii) communication, and (iii) restricted repetitive behaviors. On page 5, Dr. Khoie wrote that “[b]ased on the current evaluation results, [claimant] does not meet the full DSM-5’s criteria for ASD as evident by the lack of . . . symptoms” In her interview with Dr. Khoie, claimant was friendly and interactive, telling of her plan to become a CNA, a certified nursing assistant. Dr. Khoie found that claimant did not have symptoms of persistent deficits in social communication and interaction across multiple contexts or restricted, repetitive patterns of behavior, interest or activities.

F. Dr. Khoie also found, as she wrote on page 10: "Based on the results of this evaluation, such as, her subtests scores, review of school records and her presentation, [claimant] does not present with intellectual disability.

G. Dr. Khoie recommended a school observation for more information.

H. As set out on page 10 of Dr. Khoie's evaluation:

DIAGNOSTIC IMPRESSION

Based on her current evaluation, behavioral observation, clinical interview, and review of records, the most appropriate diagnoses are as follow:

Rule Out Autism Spectrum Disorder

F43.10 Posttraumatic Stress Disorder (by history)

F94.1 Reactive Attachment Disorder (by history)

12. Steven M. Graff, Ph.D., the Service Agency's Clinical Director, has been overseeing eligibility determinations for some 24 years. A former Chairperson of the Association of Regional Center Agencies (ARCA) Psychologists Group, he is the current Chairperson of the ARCA Clinical Directors Group. Dr. Graff reviewed the documentation available to the Service Agency regarding claimant and discussed eligibility with others at the Service Agency. Dr. Graff did not himself examine or meet claimant. As Dr. Graff testified, and as stated in a January 27, 2020 letter, Exhibit 18, Mary Ellen Thompson, M.S., LMFT, Fair Hearing Manager at the Service Agency, wrote parents that Dr. Graff sought permission for Service Agency personnel to observe

claimant both at home and school. Dr. Brandt was granted permission for the school observation, but the in-home observation was not permitted. Based on interviews and the documentation available to the Service Agency, Dr. Graff concurred in the decision to deny eligibility.

13. It was evident from the testimony of Drs. Cronin, Chalgujian, Khoie, Nopar, and Brandt that each was conversant with ASD diagnostic criteria in DSM-5 and other pertinent publications, including:

A. Exhibit 14: a "Comparison of the Diagnostic Criteria for Autism Spectrum Disorder Across DSM-5, DSM-IV-TR, and the Individuals with Disabilities Education Act (IDEA) Definition of Autism, published by Colleen M. Harker, M.S., and Wendy L. Stone, Ph.D., University of Washington READi Lab (Research on Early Autism Detection and Intervention), September 2014.

B. Exhibits 15 and W, the "Autism Spectrum Disorders, Best Practice Guidelines for Screening, Diagnosis and Assessment" published in 2002 by the California Department of Developmental Services.

C. Exhibit 16, the "Association of Regional Center Agencies [(ARCA)] Clinical Recommendations for Defining 'Substantial Disability' for the California Regional Centers," approved by the ARCA Board of Directors in August 2013.

Eligibility under the Fifth Category

14. There was relatively little discussion by the experts of claimant's eligibility under the fifth category. Such evidence as was presented to support eligibility under the fifth category was unconvincing.

15. There was no detailed discussion of claimant's IQ. On page 31 of the SVSUD Multidisciplinary Psychoeducational Evaluation, Exhibits 8 and O, claimant's Full Scale IQ Score is stated to be 79, Very Low. None of the psychologists who testified at the hearing suggested that a person like claimant with an IQ in that range is intellectually disabled. There was no substantial evidence that claimant requires treatment or services similar to an individual who has an intellectual disability.

PRINCIPLES OF LAW

1. To be eligible for services under Lanterman Act section 4512, subdivision (a), a claimant must establish substantial disability, which (i) must be attributable to one of the five categories described above, (ii) must originate before the claimant turns 18, and (iii) must continue indefinitely. Under Lanterman Act section 4512, subdivision (j)(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 service agency, 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."

2. Claimant has the burden of proof.

A. An applicant seeking to establish eligibility for government benefits or services bears the burden of proof. (See, e.g., *Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits].)

B. Regarding eligibility, "the Lanterman Act and implementing regulations clearly defer to the expertise of the DDS and RC [regional center] professionals and their determination as to whether an individual is developmentally

disabled." (*Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, 1129.) In *Mason*, the court focused on the claimant's expert witnesses and whether their opinions "sufficiently refuted" those expressed by the regional center's experts that the claimant was not eligible. (*Id.* at p. 1136-1137.)

C. Under Evidence Code section 115, the standard of proof in this case is the preponderance of the evidence, "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, italics in original.)

ANALYSIS

1. The Lanterman Act provides no specific definition of the neurodevelopmental condition of "autism." The Act's implementing regulations, California Code of Regulations, title 17, section 54000 et seq., likewise lack such a definition. The DSM-5, however, provides ASD as the single diagnostic category for the various disorders previously considered autism. Consequently, a person diagnosed with ASD should be considered someone with the qualifying condition of "autism" under the Lanterman Act.

2. Claimant did not present evidence showing she has intellectual disability, cerebral palsy, or epilepsy. The focus of her evidence was ASD, little of which was pertinent to the fifth category.

3. Claimant's contention that she has ASD depends very heavily on Dr. Cronin's opinion and parents' reports. Dr. Chalgujian added quantity, but little of quality, to claimant's evidence. (See *Glage v. Hawes Firearms Co.*, *supra*, 226 Cal.App.3d at 324-325.)

4. Dr. Cronin devoted much more of her evaluation to what parents reported than what she learned from her interview with or testing of claimant. Dr. Chalgujian makes it even more apparent that both she and Dr. Cronin relied heavily on parental reports. It is entirely appropriate, in principle, for experts considering ASD to rely on parents. The testimony and conclusions of Drs. Cronin and Chalgujian are subject to significant doubt, however, because parents reported behaviors that others did not observe, or observed to be much less significant when the context or circumstances are considered. An example is Dr. Cronin's observation, repeated by Dr. Chalgujian, that claimant has no friends. Ms. Hanner contradicted them, testifying that she met one of claimant's friends. Ms. Hanner's testimony was the more convincing for two reasons: she was with claimant for several hours per week over an extended period when administering ABA services, and Ms. Hanner frankly acknowledged claimant's difficulties in socialization, suggesting she has a balanced perspective. Dr. Brandt likewise testified credibly that, from parent reports, she was expecting to observe that claimant would have great difficulty communicating with others and adapting to circumstances at school. Instead Dr. Brandt was surprised at how claimant chatted with other students, spoke to a teacher, greeted Ms. Forrester warmly, and easily navigated a high school's lunchtime routines.

5. Mother testimony was sincere and supported the testimony of the experts whom claimant called. But father, who did not testify, is the parent who stays with claimant and the other children during the work day. There is room for doubt

whether mother's knowledge of claimant's skills and activities is reliably objective and accurate. There is reason to question whether both parents' view is not affected by emotion. Parental emotion tends to serve children well, since parents like claimant's mother clearly care for their children's well-being. But emotion may also blunt a clinical analysis, which professionals, the psychologists who testified in this case in particular, must use as a sharp and unpleasant probe. To some extent any doubt in this regard may be not so much a temptation toward exaggeration or distortion of facts, as a parent's being averse to recollection of anything negative that might affect a matter like eligibility for services. Mother's testimony may be helpfully compared to Ms. Hanner's. Neither is a psychologist. Both have spent hours, days, and months caring for claimant. But Ms. Hanner's testimony was slightly different, somewhat more clinical and objective.

6. There are reasons to doubt claimant's experts beyond those outlined above. To some extent Dr. Cronin's evaluation resembles Dr. Chalgujian's methods, emphasizing a quantity of descriptions of claimant's difficulties of many kinds, rather than a well-organized and persuasive presentation, written or oral.

7. In the particular matter of masking and camouflaging of ASD symptoms, especially by girls, Dr. Cronin's evidence was not well supported or persuasive. Even if masking and camouflaging is to be considered a proven scientific theory, there was little in Dr. Cronin's evidence to indicate it was true of claimant specifically. It is significant that many professionals who examined and treated claimant for years, including her psychiatrist, Dr. Aliapoulios, did not find or consider ASD. Mother has worked with many children with ASD, moreover, and she did not raise the possibility of ASD until claimant was 17 years old. The fair inference is that there were no substantial ASD symptoms to consider.

8. The weight of the evidence was against a finding of eligibility. The expert testimony brought by the Service Agency was the more convincing.

CONCLUSIONS OF LAW

1. Claimant is not eligible for services under the Lanterman Act by reason of ASD.

2. The evidence that claimant has ASD, but it has not been apparent for years because of her psychiatric disorders, was not convincing.

3. Claimant's evidence did not establish that before 2018, professionals misdiagnosed her, or that they failed to diagnose her ASD because she has been able to mask or camouflage symptoms.

4. The evidence was largely devoted to ASD. There was no significant evidence for claimant's eligibility under any of the Lanterman Act's other four categories.

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ORDER

Claimant's appeal is denied.

DATE:

THOMAS Y. LUCERO
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.