BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

vs.

SAN GABRIEL/POMONA REGIONAL CENTER, Service Agency.

OAH No. 2019120941

DECISION

Administrative Law Judge Diane Schneider, State of California, Office of Administrative Hearings, heard this matter on November 10, 2020, by videoconference.

Claimant was represented by his mother. Claimant was not present at hearing.

San Gabriel/Pomona Regional Center, the service agency, was represented by Daniel Ibarra, Fair Hearing Specialist.

The record closed and the matter was submitted for decision on November 10, 2020.

ISSUE

Is claimant eligible for regional center services because he suffers from autism and is substantially disabled by this condition?

FACTUAL FINDINGS

Introduction

1. Claimant is nine years old. He lives with his parents, his fraternal twin sister, and his twelve-year-old sister. Claimant applied to San Gabriel/Pomona Regional Center (SG/PRC) for regional center services on July 2, 2019, on the basis of autism. SG/PRC issued a Notice of Proposed Action on November 14, 2019. The Notice of Proposed Action set forth SG/PRC's determination that claimant was not eligible for regional center services because he did not have a substantially handicapping developmental disability as defined by the Lanterman Developmental Disabilities Services Act (Act) .[1] On December 13, 2019, claimant appealed.

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[1] SG/PRC's Notice of Proposed Action refers to "autism spectrum disorder" as a handicapping condition under the Act. The Act, however, uses "autism" in its list of conditions that are considered developmental disabilities. (Welf. & Inst. Code, § 4512, subd. (a).) The diagnosis of "autism spectrum disorder" is found in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5). These terms, however, were used interchangeably by the experts, and are used interchangeably for the purpose of this Decision.

2. Claimant contends that he is eligible for services because he suffers from Autism Spectrum Disorder (ASD) and is substantially disabled by this condition.

DSM-5 Criteria for Autism Spectrum Disorder

3. The DSM-5 was published by the American Psychiatric Association in 2013.

4. The diagnostic criteria for ASD set forth in the DSM-5, at pages 50 and 51, are:

> A. Persistent deficits in social communication and social interaction across multiple contexts, as manifested by the following, currently or by history:
>
> 1. Deficits in social-emotional reciprocity, ranging, for example, from abnormal social approach and failure of normal back-and-forth conversation; to reduced sharing of interests, emotions, or affect; to failure to initiate or respond to social interactions.
>
> 2. Deficits in nonverbal communicative behaviors used for social interaction, ranging, for example, from poorly integrated verbal and nonverbal communication; to abnormalities in eye contact and body language or deficits in understanding and use of gestures; to a total lack of facial expressions and nonverbal communication.
>
> 3. Deficits in developing, maintaining, and understanding relationships, ranging, for example, from

difficulties adjusting behavior to suit various social contexts; to difficulties in sharing imaginative play or in making friends; to absence of interest in peers.

B. Restricted, repetitive patterns of behavior, interests, or activities, as manifested by at least two of the following, currently or by history:

1. Stereotyped or repetitive motor movements, use of objects, or speech (e.g., simple motor stereotypies, lining up toys or flipping objects, echolalia, idiosyncratic phrases).

2. Insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior (e.g., extreme distress at small changes, difficulties with transitions, rigid thinking patterns, greeting rituals, need to take same route or eat same food every day).

3. Highly restricted, fixated interests that are abnormal in intensity or focus (e.g., strong attachment to or preoccupation with unusual objects, excessively circumscribed or perseverative interests).

4. Hyper- or hyporeactivity to sensory input or unusual interest in sensory aspects of the environment (e.g., apparent indifference to pain/temperature, adverse response to specific sounds or textures, excessive smelling

or touching of objects, visual fascination with lights or movement).

C. Symptoms must be present in the early developmental period (but may not become fully manifest until social demands exceed limited capacities, or may be masked by learned strategies in later life).

D. Symptoms cause clinically significant impairment in social, occupational, or other important areas of current functioning.

E. These disturbances are not better explained by intellectual disability (intellectual development disorder) or global development delay. Intellectual disability and autism spectrum disorder frequently co-occur; to make comorbid diagnoses of autism spectrum disorder and intellectual disability, social communication should be below that expected for general developmental level.

Early Development

5. Claimant was born four weeks early, by way of C-section, due to his mother's hypertension during the end of her pregnancy.

6. The evidence regarding the extent to which claimant timely reached developmental milestones was somewhat inconsistent. The psychological assessment performed by Psychology Resource Consultants on behalf of claimant reports that claimant had reached developmental milestones such as crawling, walking, talking and

toilet training, at an average age compared to his peers. SG/PRC psychologist Deborah Langenbacher, Ph.D., however, describes claimant's developmental milestones as delayed. Claimant's mother reports that as a baby, claimant responded favorably to new situations and people, and that he was easily fed, soothed and trained. Claimant's medical and health history is unremarkable for significant accidents, surgeries or injuries.

Difficulties at School

7. Claimant was enrolled at the Foothill Christian School for kindergarten and first grade. According to claimant's mother, claimant began developing problems in kindergarten. He was aggressive and had problems interacting socially. Claimant did not initiate social contact with his peers, and he did not make any friends. Claimant's reaction to invitations from his peers to join in socially was mixed: at times, he responded positively, and at other times, he was uncomfortable joining. On other occasions, he lost his temper easily; he pushed and hit other students; his attention was poor; and he had a low frustration tolerance.

8. Claimant engaged in sensory seeking behaviors at school. He kept a piece of Velcro under his table at school, which he touched to regulate his behaviors. He could not sit for a long time and fidgeted with crayons and other objects. He had difficulty with self-regulation in that he became distressed if touched by others or if the environment was noisy.

9. Claimant's mother was advised by the school that claimant could not continue first grade unless he was accompanied by a one-to-one aide. Claimant's parents could not afford to pay for an aide, so his mother took on that role. She "shadowed" claimant at school between 8:00 a.m. and 3:00 p.m., beginning in

November 2018 until the end of the 2019 school year. During this period, claimant's mother observed that he had tremendous difficulty with transitions, and he easily felt that his space was "invaded" by others; he could not follow the directions of his teachers, for example, to stop coloring or sit still; and he felt the urge to rub his head on other students. Claimant was labeled as a "bad kid" by other students and was treated differently by them. Claimant's mother felt hurt when she watched claimant struggle at school.

10. As a result of claimant's problems, he was referred to Charles Imbus, M.D., at the Neurology Clinic at Children's Hospital, Los Angeles (CHLA), in January 2019. Dr. Imbus diagnosed claimant with "anger reaction" and prescribed a low dose of Prozac. Claimant stopped taking Prozac after about three months because he developed side effects described as "facial, opening of the mouth, and squinting."[2]

11. On March 28, 2019, school counselor Maribeth Henry, M.A., M.F.T., conducted a school observation. She observed self-stimulating behaviors such as hand shaking, head jerking (front to back), hand tapping, and turning his body and head to the right consistently and then returning to forward position. Henry also observed that claimant's transitions in the academic setting were delayed between three and five minutes.

12. Henry noted, however, that claimant's transitions to physical education and recess were smooth and appropriate, and he behaved in a largely appropriate

[2] According to claimant's mother, claimant's current doctor at CHLA, Dr. Callahan, agrees with the diagnosis of autism and has advised claimant's mother to pursue ABA (Applied Behavior Analysis) services.

manner. In physical education, claimant performed very well when asked to march, run and side-step. Claimant did struggle when asked to jump, and he became distressed when he could not jump consistently. During recess, he played well on his own and with his peers. Claimant, however, became agitated and anxious when recess was called to end. He ran to Henry and stated that he needed his mother or his "shadow," and asked her if she was his shadow. Claimant's teacher was able to calm him down.

13. Henry noted two incidents after claimant returned to the classroom. One involved a birthday party for a classmate where donuts were served. Claimant was unaware of his peers and was totally focused on eating the donut and methodically picking up each bit of sugar that fell to the ground. The other incident occurred when claimant had difficulty transitioning to work on math.

14. Henry referred claimant for a psychological evaluation due to his problems at school. On April 30, 2019, claimant attended his first in a series of nine meetings at Psychology Resource Consultants for a psychological assessment. The assessment is discussed below, beginning with Factual Finding 39.

Special Education Assessment and Homeschooling

15. After claimant completed first grade in 2019, the school advised claimant's mother that claimant could not return because the school was ill-equipped to manage claimant's behavior issues. The school recommended that claimant's mother arrange for an IEP assessment at the local public school. At hearing, claimant's mother explained that claimant had been assessed for special education services, and was found to qualify based upon a diagnosis of autism.

16. Claimant has been homeschooled since the fall 2019, when he entered the second grade. He is currently in the third grade.

Social and Emotional Issues

17. Claimant's mother volunteered at their church so that claimant could attend church programs. She explained that she "pulled him out" after claimant became overstimulated and acted out in anger.

18. Claimant often misunderstands social cues and misinterprets the words and behaviors of his family members. This is particularly true of his relationships with his siblings. If claimant believes that someone has lied to him, rejected him, or is making fun of him, he will become angry. In these situations, he has pushed, bitten or hit others. His mother needs to stay close by to provide constant prompting. She reports that while claimant's behaviors are variable, every day something angers him. Claimant's mother calms him down when he is angry; this can take 30 minutes. Because claimant feels anxious at night, his mother sleeps on his bedroom floor every night to allay his anxiety.

19. Claimant has difficulty making eye contact. In the past two years, claimant has only made one friend.

Sensory Issues and Repetitive Behaviors

20. Claimant is sensitive to loud noise and becomes nervous when he is in an auditorium full of people or if he is at a theater. He covers his ears at church when music is playing, and he covers his ears when he hears a loud siren. At a cousin's birthday party, claimant hid under the side of a couch because he could not stand the noise.

21. Claimant is bothered by his twin sister's breathing or if her toes are "pointing the wrong way." Claimant is also bothered by the sound of people chewing

at the dinner table. For this reason, the family eats with the television on to "drown out" the chewing noises.

22. Claimant often wants his mother to rub his arms, toes, and hair. Before claimant falls asleep, he needs his mother to caress his face. He also likes soft blankets at night.

23. Claimant's mother reports that when claimant is excited, he will run, flap his hands, and make a screeching sound. She has also noticed that when claimant plays on his own, he appears to be comforted by jerking his head from side to side. Claimant's mother also reports that claimant will line up his toys, and will usually line up the same type of toy.

Adaptive Functioning

24. Claimant can make snacks for himself. He can dress himself. He is able to independently take care of his hygiene such as brushing his teeth and washing, but he requires prompts to do so. His mother must remain in the bathroom to supervise. Claimant does not like anyone to touch his hair except for his parents.

25. Claimant is a picky eater. He does not like textured or mushy foods such as mashed potatoes, bananas, or cream of wheat.

26. Claimant has safety awareness in that he will hold the hand of his parent in the community. He can use a cell phone, identify money and make simple purchases, although he must rely on the store clerk to give him the correct change. Claimant enjoys being outside; he especially likes fishing and swimming.

Cognitive Abilities

27. Claimant's cognitive functioning is within the average range of abilities, as compared to his peers. Claimant's academic skills are consistent with his cognitive abilities.

SG/PRC Eligibility Assessment

28. The SG/PRC assessment team, consisting of psychologist Deborah Langenbacher, Ph.D., and speech therapist Judith Aguilera, M.A., evaluated claimant's eligibility for services on October 10, 2019. The team issued a report with their findings, dated November 11, 2019. Dr. Langenbacher testified at hearing regarding the bases for her opinion that claimant was not eligible for services.

29. Dr. Langenbacher has been a staff psychologist with SG/PRC for 23 years. During this time, she has conducted numerous autism assessments. In performing her assessment, she reviewed claimant's records, including the report prepared by Patricia A. Engert, Ph.D.; she observed claimant's play; and she interviewed claimant's mother. Dr. Langenbacher also administered the Autism Diagnostic Observation Schedule-2, Module 3 (ADOS-2), the Childhood Autism Rating Scale-2HF (CARS-2HF), and the Adaptive Behavior Assessment System-3 (ABAS-3). The assessment lasted about two hours, and claimant's mother was present for the entirety of the assessment.

30. In the background section of her report, Dr. Langenbacher writes that claimant was assessed by a developmental pediatrician at CHLA, who initially diagnosed claimant with ADHD and prescribed Prozac. The medical records submitted by SG/PRC into evidence reflect that claimant was seen by a doctor in the Neurology Clinic, Dr. Imbus, in January, March and April 2019. The records submitted into

evidence from these visits do not reflect that claimant was diagnosed with ADHD. As mentioned previously, Dr. Imbus diagnosed claimant with anger reaction.

31. When Dr. Langenbacher administered the ADOS-2, claimant mentioned that some of the materials were familiar to him. Dr. Langenbacher thought that claimant's comment likely referred to the administration of the ADOS-2 in June 2019, when he was evaluated by Psychology Resource Consultants. Dr. Langenbacher noted that while she administered the ADOS-2, claimant was in "constant motion"; he spoke rapidly; he exhibited creativity in his play; his eye contact was inconsistent; his attention was limited; and although he engaged easily, he grew frustrated as the questions became more challenging. Dr. Langenbacher observed that although claimant was preoccupied with two spinning toys, he did not exhibit any other unusual behaviors. Although reports indicated that claimant sometimes flapped his hands, this was observed only once during his evaluation, and it did not appear to be stereotypic.

32. Dr. Langenbacher remarked that claimant could identify his emotions and the emotions of characters in a picture book. Additionally, claimant was able to relate a picture of a resort to his own experience of swimming on a beach. He was able to talk about things that made him happy and frustrated, but he was resistant to talk about his fear. Although claimant could identify interpersonal difficulties that he experienced with his siblings, he lacked insight into his role in these conflicts.

33. Dr. Langenbacher did not note any idiosyncrasies in claimant's speech, and he used a number of descriptive and conventional gestures. Claimant appeared to enjoy some of his interactions with Dr. Langenbacher. Claimant was able to offer spontaneous comments on the feelings of others; he was responsive to Dr. Langenbacher's social overtures; he directed facial expressions towards her; and he engaged in reciprocal conversation with her.

34. Claimant's communication skills were evaluated by way of an interview with claimant's parent, ADOS-2 testing, and direct interactions with claimant. Claimant's receptive and expressive language skills were found to be in the normal range for his age. In the area of pragmatics, Dr. Langenbacher opined that claimant showed some traits that are consistent with ASD in that his "[u]se of gestured and verbal language, and his comprehension of such for social interaction was moderately-severely disordered for his age." For example, when speaking with others, claimant tended to ramble, without awareness of the listener's interest or insight into how his behaviors impacted others; at other times, he changed topics inappropriately and interrupted others. Dr. Langenbacher also found that claimant's speech production was "mild-moderately disordered secondary to reduced intelligibility and articulation errors." For example, when claimant spoke, his intelligibility was mildly delayed for his age.

35. Claimant's adaptive skills were evaluated using the ABAS-3, which was scored based upon information provided by claimant's mother. Claimant's mother reported mild deficits in all areas (conceptual skills, social skills, and practical skills).

36. In order to find claimant eligible for regional center services, he would need to meet the diagnostic criteria for autism spectrum disorder in the DSM-5. Dr. Langenbacher concluded that while claimant has what she described as mild traits of ASD, he did not meet the criteria for ASD. In explaining the reasons for her conclusion, Dr. Langenbacher noted that claimant received a score on the ADOS-2 that was below the "cut off" score necessary to support a diagnosis of ASD. She also based her conclusion on other factors: She thought that claimant demonstrated an ability to initiate contact with others and respond to social overtures. Dr. Langenbacher did not observe stereotyped motor movements or language on the part of claimant. Dr.

Langenbacher noted that claimant's mother did not report any concerns about claimant until he was in kindergarten. Dr. Langenbacher would have expected signs or symptoms of ASD to present at an earlier age. She also noted that CHLA did not evaluate claimant for ASD or refer him for such an evaluation. Dr. Langenbacher thought that if there had been a concern on the part of claimant's doctor at CHLA that claimant had ASD, claimant would have been referred for such an evaluation. Dr. Langenbacher, however, agreed that claimant exhibits reluctance to initiate contact with his peers and that he has difficulties coping with transitions. She also agreed that claimant has "differences" in sensory processing.

37. Dr. Langenbacher also opined that claimant exhibited symptoms consistent with ADHD, such as inattention (being easily distracted, inability to sustain attention) and impulsivity or hyperactivity (difficulty remaining seated, fidgeting); and she thought that claimant's inconsistent eye contact stemmed from his inattention. Dr. Langenbacher also suggested that claimant exhibited behaviors that were consistent with anxiety.

38. Dr. Langenbacher recommended that claimant be further evaluated for anxiety and ADHD, and that he receive mental health services to address these conditions. She also thought that claimant might benefit from occupational and speech therapy, which she thought would be available through claimant's school district and/or from his health insurance.

Claimant's Psychological Assessment

ASSESSMENT TEAM AND TESTS PERFORMED

39. At Psychology Resource Consultants, claimant was assessed by a team comprised of Patricia A. Engert, Ph.D., Jennifer S. Lee-Dick, Psy.D., and Jessica Poulsen,

M.A. Claimant's assessment was conducted over nine visits between April 30, 2019, and May 31, 2019. A psychological evaluation was issued on June 11, 2019,[3] which diagnosed claimant with autism spectrum disorder and major depressive disorder recurrent episode, moderate.

40. Claimant's mother was not present during the assessment. During testing, claimant needed constant support to stay engaged. The assessment included a clinical interview, review of claimant's records and the administration of the following tests: Achenbach Child Behavior Check List (CBCL), Achenbach Teacher Report Form (TRF), Autism Diagnostic Observation Schedule-2, Module 3 (ADOS-2), Behavior Rating Inventory of Executive Functioning 2, Parent Form (BRIEF 2-Parent), Behavior Rating Inventory of Executive Functioning 2, Teacher Form (BRIEF 2-Teacher), Development Neuropsychological Assessment – Second Edition (NEPSY-2) (selected tests), House-Tree-Person, Gilliam Asperger's Disorder Scale (GADS), Wechsler Individual Achievement Test-Third Edition (WIAT-III), Wechsler Intelligence Scale for Children-Fifth Edition (WISC-V), and Winnie Dunn Sensory Profile 2.

Dr. Lee-Dick's Diagnosis of ASD

41. Dr. Lee-Dick has worked with children with autism for 20 years. She became licensed as a clinical psychologist three years ago. She is in a private group practice at Psychology Resource Consultants, where her work includes providing family therapy and social skills training to individuals with autism. Dr. Lee-Dick is also vendored to provide services to regional center clients.

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[3] The evaluation report had Dr. Engert's name on the letterhead and was signed by each member of the team.

42. Dr. Lee-Dick performed the ADOS-2 testing and wrote the section of the evaluation pertaining to claimant's diagnosis of ASD. She found that claimant's scores on the ADOS-2 were above the autism "cut off," which indicated that he exhibits many symptoms associated with ASD. Dr. Lee-Dick wrote:

> He demonstrated several strengths in his social engagement and description of his feelings that are not typical of children on the autism spectrum (e.g., occasional use of social smiling, notable social interest, etc.). Despite these areas of strength, [claimant] demonstrated significant symptoms associated with the autism spectrum such as difficulty communicating, as well as perseverative thoughts and behaviors that [allow] him to meet the criteria for a formal diagnosis of Autism Spectrum Disorder.

43. Dr. Lee-Dick has also been claimant's individual therapist since July 2019. Dr. Lee-Dick testified at hearing regarding her observations of claimant during his assessment as well as during their individual therapy sessions. Her observations of claimant in these modalities formed the bases for her opinion that claimant meets the diagnostic criteria for ASD under the DSM-5 and is substantially disabled by this condition.

Deficits in Social Communication and Social Interaction

44. Dr. Lee-Dick noted that claimant exhibited a number of deficits in social communication and social interaction across multiple settings. Claimant struggles with social-emotional reciprocity. He has difficulty developing relationships with others. He engages in abnormal social approaches and does not adequately engage in normal

back-and forth conversation. He speaks quickly, rambles on about preferred topics, and has difficulty talking about "nonpreferred" topics. Claimant's eye contact is poorly modulated. Although claimant was able to engage in conversation with Dr. Lee-Dick about his family and school and he demonstrated some insight into his feelings, his responses to questions were short, lacked detail, and lacked awareness of the thoughts and feelings of others. Claimant's verbal and nonverbal communications were poorly integrated, and his sharing of emotions and interests was reduced.

45. Dr. Lee-Dick explained that claimant tends to "miss the whole picture," and his interactions with Dr. Lee-Dick "generally consisted of talking at her rather than to her." Claimant has difficulties managing his experience of the world as unpredictable and overstimulating. Because he does not know how to regulate himself and cope effectively in interpersonal situations, he may act out by disobeying rules or by attacking others. Claimant realizes the he is missing parts of communication and interactions, and as a result feels badly about himself.

Restricted, Repetitive Patterns of Behavior

46. According to Dr. Lee-Dick, claimant also demonstrated restrictive, repetitive patterns of behaviors, interests, and activities. For example, claimant has vocal and motor tics, as exhibited by his mouth movements, guttural/coughing noises and knuckle cracking. He also has a hypersensitivity to sound and touch, as exhibited by his need for Velcro under his table at school, and being bothered by certain noises, such as the sound of his shoe. Additionally, claimant perseverated on his "droid" and at times showed difficulty shifting away from this topic of conversation.

Symptoms Causing Significant Impairments in Functioning

47. Dr. Lee-Dick opined that the challenges that claimant faces by reason of his ASD cause "significant disruption" in his life at home and school, and he therefore requires "immediate support." Claimant needs prompts to take care of his personal hygiene. His mother must sit in the bathroom to ensure that he bathes properly. Additionally, Dr. Lee-Dick explained that claimant's symptoms from ASD cause him so much anxiety that he requires his mother, who Dr. Lee-Dick describes as his "anchor," to sleep in his room at night. Claimant's difficulties with expressive communication and social interactions have caused him significant problems in that he does not pick up social cues, he growls when he gets frustrated, and he cannot express himself. The problems were so pronounced at school that he was not allowed to return for second grade. Claimant suffers from emotional dysregulation, he has difficulty sitting still and staying engaged, and he requires external supports to keep him motivated and on task. These symptoms make it difficult for him to learn. Claimant's emotional dysregulation and his impairments in perspective-taking render it difficult for claimant to stay on task, make safe choices and exert self-control. Although there is some variability in claimant's behaviors, when he becomes emotionally dysregulated, he loses control and acts out by biting and hitting his peers.

Dr. Lee-Dick's Observations During Claimant's Therapy

48. Claimant began therapy with Dr. Lee-Dick in July 2019. She estimates that claimant has attended 15 to 20 therapy sessions. Dr. Lee-Dick has helped claimant improve his social and communication skills by working with claimant to increase his eye contact, build his reciprocal communication skills, and engage in socially appropriate communications with his peers. Dr. Lee-Dick believes that regional center

services could also help claimant improve his social and communication skills and decrease his negative behaviors in these realms.

49. Dr. Lee-Dick has also provided support in therapy to help lessen claimant's anxiety and suicidal thoughts. Dr. Lee-Dick explained that claimant's anxiety and suicidal thoughts stem from his ASD symptoms in that claimant is aware that he doesn't "get" social relationships and that things are not "clicking" with others, yet he does not have the tools to help himself. Dr. Lee-Dick further explained that claimant feels badly about himself, leading to depression, and at the same time, he feels angry, leading to his acting out against others. Both of these psychological processes, internalizing and externalizing his feelings, stem from claimant's impaired social and communication skills. Dr. Lee-Dick also commented that claimant's sensory-seeking behaviors stem from sensory dysregulation and are a way for claimant to anchor and comfort himself.

Level of Support Needed

50. The DSM-5 rates the level of severity of ASD as levels one, two and three. Level one is deemed to require support; level two is deemed to require substantial support; and level three is deemed to require very substantial support. Dr. Lee-Dick opined that claimant's level of severity is at level one. Dr. Lee-Dick also termed claimant's condition as "high functioning ASD."

Recommendations for Services

51. The Psychology Resource Consultants' evaluation concluded with a list of 25 recommendations to address claimant's "limitations in maintaining behavioral and emotional regulation, as well as accurately reading and responding to social interactions." The recommendations include the following: Claimant's parents were

advised to seek special education services for claimant under the primary eligibility category of autism, due to claimant's diagnosis of ASD. Claimant's parents were also to facilitate claimant's participation in weekly therapy sessions with Dr. Lee-Dick and to participate in a weekly social skills program to improve his ability to engage in reciprocal interactions with peers.

Other Matters Regarding Claimant's Testing

52 Claimant's testing revealed that he had deficits in all three domains of executive functioning. The report noted that parent and teacher reports suggest that claimant has the most difficulties in emotional control, task monitoring and organization of materials. Claimant was found not to meet the diagnostic criteria for ADHD.

Additional Information Provided by Claimant's Mother at Hearing

53. Claimant's mother believes that claimant may have performed better on the SG/PRC assessment because she was present with claimant during testing and also because he was familiar with some of the tests due to his previous testing at Psychology Resource Consultants. She notes that the testing at Psychology Resource Consultants took place over many days, and she was not in the room during testing. For these reasons, she believes that the results of the Psychology Resource Consultants testing paint a more accurate picture of claimant's deficits.

54. Claimant's mother worries about claimant's safety. She worries that if he does not receive supports to address his ASD symptoms, he will be unable to understand appropriate behaviors and that his aggression might lead to more serious problems as he gets older.

Ultimate Factual Findings

CLAIMANT SUFFERS FROM ASD

55. While Dr. Langenbacher concluded that claimant's mild traits of ASD did not meet the diagnostic criteria for ASD under the DSM-5, Dr. Lee-Dick determined that claimant has ASD with a level one severity. For the reasons explained below, it is found that the testimony of Dr. Lee-Dick was more persuasive than the testimony of Dr. Langenbacher, and established that claimant meets the diagnostic criteria for ASD. (Factual Findings 42 through 50.) First, claimant's assessment at Psychology Resource Consultants was conducted over the course of nine visits, which provided the examiners with greater opportunities to observe claimant. (Factual Findings 39 to 40.) Second, claimant was on his own during the assessment at Psychology Resource Consultants, which allowed the examiners to assess how claimant responded to testing when he is not supported by his mother's presence. (Factual Finding 40.) Third, Dr. Lee-Dick's therapy sessions provided her with additional opportunities to gather data and insights regarding claimant's ASD symptoms and the extent to which this condition has impacted claimant's life. (Factual Findings 48 to 49.) Fourth, Dr. Lee-Dick's finding that claimant meets the diagnostic criteria for ASD was also corroborated by other evidence. The testimony of claimant's mother provided a wealth of examples of claimant's deficits in initiating and responding to social communications and social interactions, his hypersensitivity to sound and touch and repetitive behaviors, and his adaptive functioning impairments. (Factual Findings 17 through 26.) Dr. Lee-Dick's observations were also corroborated by the report of school counselor Henry. (Factual Findings 11 through 14.) The fact that claimant has been found eligible for special education services under the category of autism, and the testimony of claimant's mother that claimant's doctor at CHLA, Dr. Callahan,

agrees that claimant has ASD, also lend support to Dr. Lee-Dick's testimony. (Factual Findings 10 and 15.)

Claimant is Substantially Disabled by the Symptoms of ASD

56. The testimony of Dr. Lee-Dick and claimant's mother also established that claimant's ASD symptoms have caused significant functional limitations in self-care, learning, receptive and expressive language, and self-direction.[4] (Factual Findings 17 to 26, and 47 to 50.) The evidence also established that interdisciplinary services and supports are necessary to help claimant improve his social skills, communication skills, and reduce his negative behaviors.[5] (Factual Findings 48 and 51.) Against this background, claimant established that his ASD symptoms constitute a substantial disability for him within the meaning of Welfare and Institutions Code section 4512, subdivision (*l*).

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[4] By definition, Dr. Lee-Dick's diagnosis of ASD includes a determination that claimant's symptoms cause "clinically significant impairment in social, occupational, or other important areas of current functioning." (DSM-5, ASD Diagnostic Criteria "D.")

[5] The fact that claimant is diagnosed with a level one severity of ASD and is described as high functioning within the context of ASD does not abrogate claimant's need for supports; instead, it provides a larger diagnostic context to understand the severity of his symptoms.

LEGAL CONCLUSIONS

1. In a proceeding to determine whether an individual is eligible for regional center services, the burden of proof is on the claimant to establish that he or she has a qualifying developmental disability. The standard of proof required is preponderance of the evidence. (Evid. Code, §§ 115.) A preponderance of the evidence means "the evidence on one side outweighs, preponderates over, or is more than, the evidence on the other side, not necessarily in number of witnesses or quantity, but in its effect on those to whom it is addressed." (*People v. Miller* (1916) 171 Cal. 649, 652.)

2. The State of California accepts responsibility for persons with developmental disabilities under the Act. The Act is found at Welfare and Institutions Code[6] section 4500 et seq. The purpose of the Act is to rectify the problem of inadequate treatment and services for the developmentally disabled and to enable developmentally disabled individuals to lead independent and productive lives in the least restrictive setting possible. (§§ 4501, 4502; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.) The Act is a remedial statute; as such, it must be interpreted broadly. (*California State Restaurant Association v. Whitlow* (1976) 58 Cal.App.3d 340, 347.)

3. As defined in the Act, a developmental disability is a "disability which originates before an individual attains age 18, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual." (§ 4512, subd. (a).) The Act provides that the term "developmental disability" shall

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[6] All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

include intellectual disability, cerebral palsy, epilepsy, autism, and what is commonly referred to as the fifth category. (*Ibid.*) The fifth category includes "disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with intellectual disability." (*Ibid.*)

4. Under the Act, conditions that are solely psychiatric in nature, or solely learning or physical disabilities, are not considered developmental disabilities. (Cal. Code Regs., tit. 17, § 54000, subd. (c)(1), (2) & (3).) While claimant suffers from anxiety and depression, these conditions do not preclude claimant's eligibility for services under the Act since they exist in tandem with his developmental disability. Additionally, the evidence did not reveal that claimant had been diagnosed with ADHD. Such a diagnosis, however, would not impact claimant's eligibility for services unless it was claimant's sole disability, which is not the case here.

5. Pursuant to section 4512, subdivision (l), the term "substantial disability" is defined as "the existence of significant functional limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency." The term "substantial disability" is defined by title 17, California Code of Regulations, section 54001, subdivision (a), as a "condition which results in major impairment of cognitive and/or social functioning" that requires "interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential," and results in significant functional limitations in major life activities for the individual.

5. Claimant established that he suffers from ASD, and he is therefore eligible for services under the Act under the category of autism. (Factual Finding 55.)

His ASD symptoms have caused him significant functional limitations in the areas of self-care, receptive and expressive language, learning, and self-direction, and interdisciplinary services and supports are necessary to help claimant address his deficits. (Factual Finding 56.) For these reasons, he also established that this condition is substantially disabling. His disability originated before the age of 18 and is expected to continue indefinitely. (Factual Findings 1, 55 and 56.) Accordingly, claimant is eligible for regional center services.

ORDER

Claimant's appeal from the service agency's denial of regional center eligibility is granted. Claimant is eligible for regional center services.

DATE:

DIANE SCHNEIDER

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.