BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

vs.

WESTSIDE REGIONAL CENTER

OAH No. 2020011042

DECISION

Eileen Cohn, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on June 17, 2020 by telephone. Claimant was represented by her father, who was accompanied to the hearing by claimant's mother.[1] Westside Regional Center (WRC or Service Agency) was represented by Candace Hein, Fair Hearing Coordinator.

Oral and documentary evidence was received, and argument was heard. The record was closed and the matter was submitted for decision on June 18, 2020, to allow the WRC an opportunity to file its exhibit list, which it did.

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

ISSUE

Is Claimant eligible for services as in individual substantially disabled by autism pursuant to the Lanterman Developmental Disabilities Service Act (Lanterman Act)?

EVIDENCE

Documentary: WRC's exhibits 1-7.[2]

Testimonial: Kaely Shilakes, Psy.D.; Claimant's father.

SUMMARY

Claimant was diagnosed with autism by Naz Bagherzadeh, Psy.D., a licensed psychologist retained by the WRC to conduct an initial evaluation. There was a disagreement with this diagnosis by Wilhelmina Hernandez, M.D., who evaluated claimant on behalf of the WRC's multidisciplinary team of which she was a member. The WRC conceded that Dr. Bagherzadeh may be correct that claimant meets the diagnostic criteria for autism under the Diagnostic and Statistical Manual, Fifth Edition (DSM-5). Nevertheless, the multidisciplinary team determined claimant was not eligible because she could not show she had substantial functional limitations in three or more of the areas of major life activities required for eligibility under the Lanterman Act.

Claimant provided substantial evidence of her functional limitations in three or more areas of major life activities through her father's testimony and the exhibits. As

[2] Exhibit 7 was a copy of the relevant statute and was marked only.

such, claimant met her burden of proof that she is eligible for WRC services under the category of autism, and her appeal is granted.

Parties and Jurisdiction

1. On November 18, 2019, the WRC provided claimant with a Notice of Proposed Action (NOPA), stating that the multidisciplinary team determined that claimant is not eligible to receive services from the regional center. The reason "for this decision is that [claimant] is not substantially handicapped by intellectual disability, cerebral palsy, epilepsy, autism spectrum disorder[3] or other conditions similar to intellectual disability as reference[d] in the California Welfare and Institution[s] Code Section 4512 and Title 17 of the California Administrative Code Section 54000." (Ex. 2.)

2. Claimant timely appealed the WRC's decision. "We are in disagreement with the Regional Center because [claimant] is substantially handicapped by autism." To resolve the dispute, claimant provided: "We want to find her eligible to receive Regional Center services starting with ABA [applied behavioral analysis]." (Ex. 2.)

3. All jurisdictional requirements have been met for this matter to proceed to hearing.

[3] The term "autism" will be used interchangeably with autism spectrum disorder throughout this decision.

Claimant's Background

4. Claimant is seven years of age, and lives with her younger sister, parents and grandparent.

5. At the time of her intake evaluation with the WRC, on July 26, 2019, she had been diagnosed with Other Specified Neurodevelopmental Disorder, Oppositional Defiant Disorder (ODD), Attention Deficit Hyperactivity Disorder (ADHD), and Other Health Impairment (OHI), and had been receiving mental health services since four years of age. At the time of her intake interview, claimant was receiving individual psychotherapy every two weeks and follow up consultation with a psychiatrist every three months. (Ex. 3.)

6. At the intake interview, parents reported deficits in self-care, including difficulties with toileting, brushing her teeth, bathing, awareness of danger, problems with elopement, and lack of awareness of "stranger danger." They also reported claimant's challenges socializing and engaging with peers and others, behavioral issues in school, including poor frustration tolerance, talking out of turn, grabbing and hitting, and daily emotional outbursts during her school day of up to 10 minutes. Claimant's parents reported: unusual behaviors, including repetitive body movements such as jumping and sucking her thumbs, licking objects and people, engaging in self-talk; difficulty transitioning from one activity to another; being a picky eater and smelling her food; sensitivity to noises; and perseverating by repeatedly talking about the same thing. (Ex. 3.)

7. Claimant attends public school in her local school district. She receives special education services. As of her intake interview in 2019, she was made eligible for special education as a student with OHI, and received speech and language services

and occupational therapy services as part of her individual education program (IEP) dated May 14, 2019. (Ex. 3.)

8. Based on claimant's difficulties in the areas of social and communication skills, and her behavioral challenges, WRC's intake coordinator referred claimant for a psychological evaluation to determine whether she qualified for WRC services under the category of autism. (Ex. 3.)

Evaluations

9. Dr. Bagherzadeh was retained by the WRC to assist in its eligibility determination of claimant, specifically, whether she meets the criteria for autism. Dr. Bagherzadeh evaluated claimant over a period of three days, August 24, 2019, September 6, 2019 and October 1, 2019.

10. Dr. Bagherzadeh conducted an appropriate and comprehensive evaluation. During the hearing, the WRC's expert and Chief Psychologist, Dr. Shilakes, agreed that Dr. Bagherzadeh used a wide variety of appropriate assessment tools in her evaluation. Dr. Bagherzadeh prepared a detailed report of her review of family history, in-office interviews with claimant and her parents, record reviews, school observation, and two in-office assessments and observation sessions. She also administered standardized formal and informal assessments, including what is a highly-recognized and recommended assessment for autism, the Autism Diagnostic Observation Scale, Second Edition (ADOS-2).

11. At the time of Dr. Bagherzadeh's assessment, claimant was attending first grade at a public elementary school in her local school district and receiving special education services with placement in a special education classroom. Her parents reported she was bullied due to being "different" and "has meltdowns when she is

disappointed." Her behaviors include "fighting, throwing chairs, and yelling" in response to bullying, according to parent reports. (Ex. 4.)

12. Claimant met the criteria for autism, in Dr. Bagherzadeh's administration of the ADOS-2.

> The ADOS-2 is a semi-structured, standardized assessment tool used for measuring communication, social interaction, and play or imaginative use of materials. The activities allow the examiner to observe and note behaviors that are identified as characteristic of autism spectrum disorders. On Module 3 (Child/Adolescent), [Claimant] combined Social Affect and Restricted and Repetitive Behavior score met the Autism Spectrum cut-off.

(Ex. 4.)

13. To assess claimant's adaptive functioning in communication, daily living skills, socialization and motor skills, Dr. Bagherzadeh administered the Vineland Adaptive Behavior Scales, Third Edition – Comprehensive Interview Form (Vineland-3). Claimant's score, which was obtained from responses provided by her parents, in the domains of communication, socialization and daily living skills, fell within the Low Range.

(A) In the area of communication, claimant's deficits included her inability to follow instructions on two related or unrelated items, respond to questions that use "when," identify all alphabet letters, write alphabet letters using the correct orientation, or read at least 10 words.

(B) In the area of daily living skills, claimant's deficits include not being able to: wipe or blow her nose using a tissue, button large buttons in the correct button holes, change clothing that has become dirty, put clothes in the proper place to be washed, remove dirty shoes or wipe them on a mat before entering the residence, use proper manners, when eating in public, or say all seven days of the week in order when asked.

(C) In the area of social skills, claimant's deficits include: not reaching out to a familiar person when they hold their hand out; check that parent or someone familiar is nearby; protect herself by moving away from others who might be trying to hurt her; play with others at a simple outdoor group games with no score; look or move to a caregiver when approached by an unfamiliar person; recover quickly from a minor setback or disappointment.

14. Dr. Bagherzadeh also observed claimant at school during recess. Claimant was involved in imaginary play on her own and when three boys joined her imaginary play. Dr. Bagherzadeh observed claimant engage in some interactions with the boys, especially when they showed interest in her play, but also observed claimant "appeared more interested in her play than socializing with other children." Dr. Bagherzadeh did not observe claimant "initiate social contact with any of her classmates." (Ex. 4.)

15. Dr. Bagherzadeh administered a standardized assessment of cognitive ability, the Wechsler Preschool and Primary Scales of Intelligence, Fourth Edition (WPPSI-IV). Claimant's full scale score of cognitive ability fell within the average range, including her individual scores on verbal comprehension, visual spatial, fluid reasoning, working memory, and processing speed.

16. Based upon her assessment, Dr. Bagherzadeh concluded that respondent met the diagnostic criteria of autism under the DSM-5 "(299.00), Social Communication and Restricted, Repetitive Behaviors, Level 1, 'Requiring Support' without accompanying intellectual impairment, with accompanying minor language impairment." (Ex. 4, p. 12.) In her report, Dr. Bagherzadeh interposed her observations with the DSM-5 criteria (emphasis included):

> 1. Persistent deficits in social communication and social interaction across multiple contexts, as manifested by the following, currently or by history (examples are illustrative, not exhaustive; see text):
>
> 1. Deficits in social-emotional reciprocity, ranging, for example, from abnormal social approach and failure of normal back-and-forth conversation; to reduced sharing of interests, emotions, or affect; to failure to initiate or respond to social interactions. **Met. During the course of assessment [Claimant] presented with one-sided conversations. During the course of the school observation, she was not observed to initiate contact with other students, but engaged with her peers when they displayed interest in her play.**
>
> 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. **Met. [Claimant] presents with inconsistent eye contact. She also does not present with a full range of facial expressions.**

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. **Met. [Claimant] presented with imaginative play during the course of the assessment sessions. However, she displays considerable deficits understanding the nature of relationships.**

2. Restricted, repetitive patterns of behavior, interests, or activities, as manifested by at least two of the following, currently or by history (examples are illustrative, not exhaustive; see text):

1. Stereotyped or repetitive motor movements, use of objects, or speech (e.g., simple motor stereotypes, lining up toys or flipping objects, echolalia, idiosyncratic phrases). **Met: According to her father, [Claimant] occasionally produces repetitive sounds**.

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). **Met: [Claimant] is reportedly inflexible when faced with routine changes. She also reportedly is rigid when it comes to her play, and will make her younger sister follow specific steps during their play**.

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). **Met: [Claimant] is reportedly preoccupied with "babies." When she sees "real babies she will want to grab them" and she "likes to act like a baby for attention." She also frequently talks about babies, states that she wants a "baby brother." [Claimant] was also observed to speak in a "baby voice" multiple times during the course of the assessment.**

4. Hyper-or hypo-reactivity 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). **Met: [Claimant] displays sensitivity to some smells. During her second appointment, she stated that the waiting area smelled like "poo." [Claimant] reportedly mostly eats "softer foods." She also**

reportedly sometimes puts toys and objects in her mouth. Lastly, [claimant] reportedly has a [high] pain [] tolerance.

3. 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). **Met. According to her parents[,] symptoms have been present since early childhood.**

4. Symptoms cause clinically significant impairment in social, occupational, or other important areas of current functioning. **Met. [Claimant's] symptoms appear to cause her significant impairment in multiple areas of functioning**.

5. These disturbances are not better explained by intellectual disability (intellectual developmental disorder) or global developmental delay. **Met. [Claimant's] IQ is in the average range.**

(Ex. 4, pp. 10-11.)

Substantial Disability

17. The WRC convened its multidisciplinary team which included Dr. Shilakes, Ari Zelden, a medical doctor-neurologist, Soryl Markowitz, a licensed clinical social worker and specialist in autism behavior, Rita Eagle, Ph.D. a consulting psychologist

and Dr. Hernandez.[4] One of the team members was a specialist in autism. The multidisciplinary team concluded that claimant's diagnosis of autism was correct but, nevertheless she was not substantially disabled under the Lanterman Act. They recommended she continue receiving support from the school district and her mental health providers. (Ex. 5.)

18. Dr. Hernandez conducted an evaluation for the multidisciplinary team which consisted of her observations of claimant during a visit with her in a clinical setting and a school observation. (Ex. 6.) Dr. Hernandez did not testify and her qualifications as an assessor and experience with autism are unknown. The multidisciplinary team also disagreed with Dr. Hernandez's analysis of the DSM-5 criteria for autism and her conclusion that claimant did not meet the DSM-5 criteria. As such, Dr. Hernandez's report, was given less weight than the more robust report of the Dr. Bagherzadeh, a contractor with the WRC who was specifically retained by the WRC to conduct a comprehensive evaluation.

19. Dr. Hernandez's observations of claimant in the clinical setting and at school were apparently given weight by the multidisciplinary team when they determined that claimant did not meet the criteria for autism. Dr. Hernandez observed claimant in a one-to-one setting where claimant could play with toys alone and exchange words with Dr. Hernandez. Dr. Hernandez observed claimant exchanging a storyline for play, read a book, speak in full sentences and openly responded to questions with "adequate" insight. (Ex. 6.)

[4] The signatures on the multidisciplinary team form were not fully legible, or clearly signed by everyone named. (Ex. 5.) Dr. Shilakes testified about the attendees.

20. Dr. Hernandez also observed claimant at school during recess: "She needed frequent redirection during the classroom observation. Her eye contact was brief given her brief encounters directly involved in engaging others. She wished to engage others and approached them by screeching at them and then trying to whisper something to their ears. She maintained appropriate personal boundaries towards others." (Exh. 6.) Dr. Hernandez reports in a second paragraph, that is somewhat more generous with claimant's social skills, that claimant was in a stable mood, interacting with classmates by chasing them and pretending to capture them. She appeared to capture the interest of one classmate who was seen to be interested in what claimant was saying about how to play. She observed claimant transition well to the classroom after recess. Dr. Hernandez attributed problems, without elaborating on the basis of knowledge about claimant's classmates, to claimant's interactions to difficulties engaging with lower-functioning and less social classmates, not claimant.

21. Dr. Hernandez offered more observations in her analysis of the DSM-5 categories, and her determination that claimant did not meet the criteria, which were not clearly reflected in her written school or clinical observations. Again, without an opportunity to clarify the foundation for her observations by her testimony during hearing, the weight given to her observations are limited by the contradictions within her own report, between her report and that of the report of Dr. Bagherzadehdah and father's testimony and observations. Father's testimony and insights were given the most weight because they were consistent over time and were grounded in not just two sessions, but his long-term experience as claimant's caregiver. In one area, criteria A1, below, Dr. Hernandez's report of claimant's language delays were consistent with the deficits father observed.

(A) With regard to her deficits in social-emotional reciprocity, criteria A1, Dr. Hernandez was confident that claimant was able to initiate and respond to social interaction "well." However, she also states that language delays "were significant and make it difficult for others to understand her." (Ex. 6.)

(B) With regard to her the deficits in nonverbal communication, criteria A2, Dr. Hernandez reports that claimant could communicate with gestures and to follow a gaze, but also said she had "brief eye contact" which she dismissed as "related to her busy nature." (Ex. 6.)

(C) With regard to her deficits in developing, maintaining, or understanding relationships, criteria A3, Dr. Hernandez reports that [claimant] does struggle to maintain a conversation; however, she has the desire to maintain social interaction. She did not seem to have difficulties in making friends or understanding of peer relationships and friendships. (Ex. 6.)

(D) Based upon her two observations, Dr. Hernandez also found claimant did not meet criteria B (restricted repetitive patterns of behavior, interests or activities.) She had not observed claimant to exhibit aggressive behaviors toward others, did not demonstrate fixed interests, or problems with transitions. She reported her observations of the absence of hyper-or hypo reactivity contradicted parents' observations of claimant's sensitivities to noise or her own observation of claimant "jumping in place." (Ex. 6.)

22. Dr. Shilakes testified about the conclusions reached by the multidisciplinary team. She reported that four members observed Dr. Hernandez's clinical interview with claimant from behind a one-way window, although there is nothing in Dr. Hernandez's report or the multidisciplinary team form that states the

observations were made or the specific opinions of other members of the team. Dr. Shilakes attempted to limit the weight of Dr. Bagherzadeh's report by noting that psychologist's observations were earlier than the observations of Dr. Hernandez, and that different assessors can reach different conclusions. She acknowledged that despite Dr. Hernandez's conclusion that claimant did not have autism, the team acknowledged that she does.

23. Dr. Shilakes explained that despite claimant's diagnosis of autism, the multidisciplinary team concluded that she did not demonstrate significant functional limitations in three of the seven categories of major life specified by the Lanterman Act and required for eligibility. (1) self-care; (2) receptive and expressive language; (3) learning; (4) mobility; (5) self-direction; (6) capacity for independent living; and (7) economic self-sufficiency. Dr. Shilakes explained that the last two categories, (6) and (7) are irrelevant due to claimant's age. Based on the evidence, (4) mobility, is also not relevant to claimant.

24. Dr. Shilakes defined the functional categories as applied by the multidisciplinary team. Self-care includes activities of daily living, including bathing, toileting, eating and dressing. Receptive and expressive language includes the ability to both understand language and express it. Learning includes not only cognitive functioning, but the ability to analyze concepts, academic performance, and understanding of subject areas. Self-direction, a large category, includes social and emotional functioning, such as social skills and can also include her rigidity in play, fixation on certain items, including darker topics, her difficulty in making friends, and father's reports of her being bullied at school.

25. Dr. Shilakes reported that based upon the observations reported by Dr. Hernandez the multidisciplinary team determined claimant only demonstrated significant functional limitations in the area of self-direction.

26. Claimant's father disagreed, and based upon his observations, which were largely confirmed in Dr. Bagherzadeh's report, above, claimant did meet the criteria for at least three of the five relevant categories.

(A) Claimant demonstrates significant functional limitations in the area of self-care for her age. In addition to what parents reported in the intake interview and on the Vineland above, father testified during hearing that claimant does not dress herself; she requires directions to get started, and then stops half way. She cannot brush her hair and does not tolerate others brushing her hair; she screams and cries.

(B) Claimant did score in the average range on the assessment of her receptive and expressive language. Nevertheless, claimant suffers demonstrable deficiencies in understanding her peers, which were not evident in observations involving adult interactions. Claimant's father described during the hearing the situation where claimant was told by a peer to step aside and did not respond, but did respond to the teacher using a hand motion to tell her to step back. Claimant understood the gesture from an adult, her teacher, but not the student. It was too late, however, and her peer still hit her over the head with a chair. As claimant's father described, claimant just made "no connection" when her peer repeatedly and angrily told her to get out of the way. From the incident, claimant understood the hand signal from the adult but not the verbal communication from the other student. Dr. Shilakes attributed claimant's inability to get out of the way of her peer to her deficits in self-direction, unless, claimant "truly" did not understand what the other student was

communicating, and if so, it would be a receptive language issue. Claimant's father pointed out, however, claimant was compliant when she understood the teacher's hand signal. Dr. Bagherzadeh also reported claimant's inability to understand peers. Based upon the weight of the evidence, claimant has significant difficulties understanding communication from her peers which can be attributed to a weakness in receptive language as well as self-direction.

(C) Claimant also has functional limitations in expressive language. Her father confirmed that her speech and language interventions at school are focused on her deficiencies in pragmatic language. Dr. Hernandez also reported in finding 21(A) claimant's "significant" language delays which make it difficult for others to understand her.

(D) Claimant also has functional limitations in the area of learning, regardless of her average scores on the assessment of her cognitive ability. Claimant cannot count passed 15, mixes upper case with lower case letters, is "way" behind in phonics, and is overall well below average in school.

27. Dr. Shilakes and Dr. Hernandez largely attributed much of claimant's functional limitations to claimant's other diagnoses. However, Dr. Shilakes admitted that there is co-morbidity between diagnoses.

28. Claimant's father provided candid and heartfelt testimony about claimant's deficits, and shared his hard-fought efforts to get services for claimant, who may not demonstrate the same characteristics as a young boy with autism. He has seen her make progress with the right services, and particularly hopes she can obtain applied behavioral analysis (ABA) services.

LEGAL CONCLUSIONS

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

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

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

> [A] disability that originates before an individual attains 18 years of age; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for that individual. . . . [T]his term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also

include disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability, but shall not include other handicapping conditions that are solely physical in nature.

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

> 'Substantial disability' means the existence of significant functional limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person:
>
> (A) Self-care.
>
> (B) Receptive and expressive language.
>
> (C) Learning.
>
> (D) Mobility.
>
> (E) Self-direction.
>
> (F) Capacity for independent living.
>
> (G) Economic self-sufficiency.

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

> (a) 'Substantial disability' means:
>
> (1) A condition which results in major impairment of cognitive and/or social functioning, representing sufficient impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential; and
>
> 2) The existence of significant functional limitations, as determined by the regional center, in three or more of the following areas of major life activity, as appropriate to the person's age:
>
> (A) Receptive and expressive language;
>
> (B) Learning;
>
> (C) Self-care;
>
> (D) Mobility;
>
> (E) Self-direction;
>
> (F) Capacity for independent living;
>
> (G) Economic self-sufficiency.

6. California Code of Regulations, title 17, section 54001, subdivision (b), provides, in pertinent part, that the "assessment of substantial disability shall be made

by a group of Regional Center professionals of differing disciplines," and the "group shall include as a minimum a program coordinator, a physician, and a psychologist."

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

8. In this case, the only eligibility criterion at issue relates to "substantial disability" and whether Claimant has significant functional limitations in three or more of the areas of major life activity specified in Welfare and Institutions Code section 4512, subdivision (l), and California Code of Regulations, title 17, section 54001, subdivision (a)(2). WRC stipulated that Claimant has significant functional limitations in the area of self-direction. Thus, Claimant needs only to establish significant functional limitations in two other areas in order to meet the eligibility requirements under the Lanterman Act. Claimant has met her burden by a preponderance of the evidence that she has significant functional limitations in at least three of the seven areas. (Factual Findings 6, 9-16,21(A), 24-27).

9. Based on the foregoing and the totality of the evidence, claimant not only has the qualifying developmental disability of autism, but she established by the preponderance of the evidence her condition is substantially disabling and is eligible for regional center services under the Lanterman Act. (Factual Findings 1-24; Legal Conclusions 1-8.)

10. Any evidence or argument not specifically addressed in this decision was deemed not persuasive, not supported by the evidence, and/or unnecessary to the ultimate disposition of this appeal.

ORDER

Claimant's appeal is granted. Claimant is eligible for regional center services under the category of autism pursuant to the Lanterman Developmental Disabilities Service Act.

DATE:

EILEEN COHN
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.