

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

In the Matter of:

CLAIMANT,

VS.

NORTH LOS ANGELES COUNTY REGIONAL CENTER,

Service Agency.

OAH No. 2020011047

DECISION

Laurie R. Pearlman, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter telephonically on June 3, 2020.

Claimant's mother (Mother) represented Claimant.¹ Monica Munguia, Fair Hearing Representative, represented the North Los Angeles County Regional Center (Service Agency or NLACRC).

¹ Titles are used to protect the privacy of Claimant and her family.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on June 3, 2020.

ISSUE

Is Claimant eligible to receive services and supports from the Service Agency under the Lanterman Developmental Disabilities Services Act (Lanterman Act)?

EVIDENCE

Documents: Exhibits 1 through 23.

Testimony: On behalf of Service Agency, Khanh Hoang, Ph.D., Staff Psychologist, and Monica Munguia, Educational Advocate and Fair Hearing Specialist; on behalf of Claimant, Mother and Sister.

FACTUAL FINDINGS

Background Information

1. Claimant is a 12-year-old girl with two adult siblings, a 14-year-old brother, and a fraternal twin sister. She lives in the family home with her parents and three of her siblings. One brother and her twin sister receive regional center services based upon a diagnosis of Autism Spectrum Disorder (ASD). Claimant experienced language delays when she was younger, has severe social anxiety, tends to isolate, is the victim of bullying at school, and has expressed suicidal thoughts. Mother seeks regional center services for Claimant, asserting that she suffers from ASD.

2. In order to be eligible for regional center services, an individual must have one of the following: intellectual disability, ASD; cerebral palsy; epilepsy; or another disabling condition found to be closely related to intellectual disability or to require treatment similar to that required for individuals with intellectual disability.

3. Once an individual is determined to have one of the five conditions listed above, he or she must establish that the condition is substantially disabling, meaning he or she has significant functional limitations in three or more of the following areas: self-care; receptive and expressive language; learning; mobility; self-direction; or capacity for independent living.

4. Claimant's elementary school cumulative records and progress reports from Kindergarten through fifth grade (Ex. 3) show that she attended general education classes, rather than special education classes, and did not receive speech or language services at school. Claimant's shyness was noted and documented by each of her teachers, but she performed school work at grade level. A transcript from the 2018/2019 school year shows that Claimant was in the Gifted and Talented Education Program (GATE) and was meeting grade-level requirements. (Ex. 5.)

5. On January 2, 2020, the Service Agency sent a letter to Mother, finding Claimant ineligible for regional center services. The Service Agency asserted Claimant did not present with a developmental disability, as defined by Welfare and Institutions Code section 4512, subdivision (a), and California Code of Regulations, title 17, section 54000, subdivisions (a) and (c). Specifically, the Service Agency concluded that the results of assessments performed on Claimant demonstrated Claimant did not have ASD, an Intellectual Disability, Epilepsy, or Cerebral Palsy, and did not have a condition which requires treatment similar to that required by individuals with Intellectual

Disability. Mother executed a timely Fair Hearing Request on Claimant's behalf to appeal the Service Agency's decision and this hearing ensued.

2011 Application

6. Mother originally sought regional center services for Claimant in 2011 when Claimant was approximately three-and-one-half years old. At that time, Claimant was referred to the Service Agency by her pediatrician at El Proyecto del Barrio (Proyecto) based upon Claimant's speech delays and tendency to isolate.

7. On August 20, 2011, a Social Assessment of Claimant was conducted by Lorena Segura, M.S., the Service Agency's Intake Service Coordinator. (Ex. 22.) Mother reported that Claimant is a loner and does not play with her siblings. She is aware of social cues, does not engage in repetitive behaviors, is not sensitive to sounds or crowds, and is affectionate with her family. Mother also reported that Claimant hides and separates when she is upset, but calms down shortly, does well with routines, does not engage in self-injurious behaviors, and reacts appropriately to pain. Claimant established good eye contact on the day Segura met with her. Segura recommended that the regional center secure medical and school records, schedule medical and psychological evaluations, and upon receipt of reports, determine Claimant's eligibility for regional center services.

8. A psychiatric evaluation was conducted by Larry E. Gaines, Ph.D., on November 15, 2011. (Ex. 23.) Dr. Gaines, a licensed clinical psychologist, conducted direct testing of Claimant. He noted language delays and some social hesitancy, but Claimant did not display any typical autistic behaviors. She did not have any unusual repetitive behaviors and she made eye contact. Claimant's IQ test score was 110, which

is high average. Dr. Gaines concluded that Claimant would benefit from enrollment in preschool and from speech and language therapy.

9. A review was conducted in 2011 by the Service Agency's Interdisciplinary Team (Team). Claimant was deemed ineligible at that time because the records, and psychological testing conducted by Dr. Gaines, revealed that Claimant was not substantially impacted by an Intellectual Disability, ASD, Cerebral Palsy, Epilepsy, or a condition similar to Intellectual Disability.

2019 Mental Health Evaluation

10. When Claimant was a little over 10-and-one-half-years old, her pediatrician, Karmen Tatulian, M.D., referred her for a mental health evaluation. A Mental Health Intake Assessment, dated February 21, 2019, was conducted by the Los Angeles County Department of Mental Health, Child and Family Guidance Center. (Ex. 4.) It was noted that Claimant had suicidal thoughts, was the victim of bullying at school, and had issues as to socialization with peers. She had deficits in developing, monitoring, and understanding relationships and was rigid in her routines (for example, insisting on eating every three hours.) However, Claimant showed insight into her thoughts and feelings.

11. Claimant was diagnosed as having Major Depressive Disorder-Single Episode. ASD was ruled out. Despite demonstrating some inflexible adherence to routine and relationship deficits, Claimant did not have enough symptoms to meet the diagnostic criteria for ASD, nor were the symptoms she did have severe enough to qualify her as having ASD. It was recommended that mental health treatment should be undertaken with the goals of reducing the incidence of suicidal thoughts and

improving communication. ASD symptoms, such as social skills deficits and rigid adherence to routine, were not the focus of recommended treatment.

2019 Application for Regional Center Services Based on ASD

12. Mother continued to believe that Claimant has ASD. In August 2019, Mother again applied for regional center services for Claimant. In the Intake Application, Mother described symptoms suggestive of Autism. (Ex. 6.)

13. At Mother's request, Brenda Rodriguez, LCSW, at the Child and Family Guidance Center (CFGC), wrote a letter dated August 12, 2019, supporting Mother's request for evaluation by the Service Agency. (Ex. 7.) In her letter, Rodriguez notes that Claimant has received therapy at CFGC since March 2019. Claimant is bullied in school and struggles in socializing with peers, which leads her to isolate. Rodriguez states that Claimant's symptoms impair her ability to function in school and in social settings. Due to these symptoms, and Mother's reports that Claimant is rigid in adhering to routines and has difficulties in adjusting to routine changes, Rodriguez supports Mother's decision to have Claimant evaluated at NLACRC.

2019 Social Assessment

14. On September 20, 2019, a Social Assessment of Claimant was prepared by Roxana Cruz, LCSW, based upon a referral by the CFGC. (Ex. 8.) Cruz spoke to Mother by telephone. Mother reported concerns about Claimant's isolating behaviors, repetitive flapping, inappropriate dog and cat sounds, and sensory issues, including a sensitivity to textures of food and clothing. Mother reported that Claimant attends sixth grade general education classes, is bullied in school, and has been struggling socially ever since she was a little girl, and throughout her academic history. Mother stated that she initially thought Claimant was copying the behaviors of her twin sister

and teenage brother, both of whom have ASD. However, Mother grew more concerned when Claimant's behaviors increased over time. Mother reported that Claimant has had an extensive history of mental health services and expressed suicidal ideation. Cruz recommended that NLACRC secure Claimant's medical and school records, schedule medical and psychological evaluations of Claimant, and upon receipt of reports, determine Claimant's eligibility for regional center services.

2019 Medical Assessment

15. On October 2, 2019, Margaret Swaine, M.D., conducted a chart review of medical records. (Ex. 9.) Claimant was reported to have had mental health treatment, but actual diagnoses and evaluations were not available for review. Nothing in the medical records suggested Claimant has cerebral palsy or epilepsy.

2019 Psychological Assessment

16. On December 9, 2019, Renee Kim, Psy.D., a licensed Clinical Psychologist, conducted a psychological assessment of Claimant on behalf of the Service Agency. (Ex. 10.) The purpose of the assessment was to determine Claimant's current levels of cognitive, adaptive, and social functioning. It was specifically limited to an assessment of developmental disabilities, including intellectual disability and/or autism spectrum disorder, but was not intended to be a comprehensive psycho-diagnostic evaluation of mental or emotional disorders or conditions.

17. Dr. Kim reviewed the NLACRC client records, interviewed Mother, and observed Claimant's behavior. She administered the Wechsler Intelligence Scale for Children, 5th Edition (WISC-V); Vineland Adaptive Behavior Scales, 3rd Edition (VABS-III); Autism Spectrum Rating Scales, Ages 6-18 Parent Ratings (ASRS); and Autism Diagnostic Observation Schedules, 2nd Edition Module 3 (ADOS-II).

18. Dr. Kim noted that Claimant had been referred for evaluation due to concerns regarding her social and behavior functioning. Claimant was reported to have a history of difficulty making friends and was reported to display anxiety symptoms, including frequent worrying, fear of germs, and fearfulness of crowds.

19. Claimant had two emergency room visits due to anxiety symptoms. She also has a long history of receiving mental health services related to anxiety. She does not have any other known diagnoses. Mother reported that Claimant washes her hands repeatedly, is fearful of crowds and loud noises, and prefers small gatherings rather than being in large groups of people. Claimant was reported to become noticeably anxious when there is a sudden change in her normal routine and a regular routine is reported to lessen her anxiety level.

20. Mother reported to Dr. Kim that Claimant was very quiet during early childhood, resulting in overall decreased use of spontaneous speech. Claimant also was reported to shake her hands when anxious. She was not reported to display other distinct restrictive or repetitive behaviors during early childhood.

21. Mother reported that Claimant makes dog and cat sounds when responding to others. For example, Claimant will growl when she is upset and will make hissing sounds when Mother asks her to do her homework. She also is reported to hear voices at times, which tell her to "say rude things" to people. Claimant receives mental health services.

22. Dr. Kim was told that Claimant attends general education classes and does not have an Individualized Education Program (IEP). Claimant was reported to be reading and writing below grade level, but her math skills were at grade level. No concerns regarding Claimant's academic functioning were expressed by the school.

23. Dr. Kim observed Claimant in a session. Claimant presented as a socially aware but cautious child. She was able to regard the assessor, respond to her greeting in the waiting area, and transition to the testing room without difficulty. When Claimant walked into the room, she sat quietly while allowing Mother to speak to the assessor. Claimant was soft-spoken, but displayed appropriate tone in her speech. She did not consistently elaborate on her experiences, but did answer questions appropriately. With prompting, Claimant was able to elaborate accordingly. She was not observed to display distinct restrictive or repetitive behaviors. Claimant's use of eye gaze was appropriate, and she coordinated her gestures with vocalizations and eye gaze. The assessor did not observe Claimant hearing voices or responding to internal stimuli during the session. Claimant was able to talk about her feelings.

24. Dr. Kim measured Claimant's cognitive functioning utilizing the Wechsler Intelligence Scale for Children, 5th Edition (WISC-V). Claimant obtained a full scale IQ of 83, which fell in the low average range. She also scored in the low average range on verbal comprehension, fluid reasoning, and similarities. Claimant scored in the low end of average range on vocabulary, block design, figure weights, coding, and digit span. Claimant scored in the average range on matrix reasoning.

25. Dr. Kim administered the Vineland Adaptive Behavior Scales, 3rd Edition Comprehensive Interview Form (VABS-III) in order to measure Claimant's adaptive functioning. The VABS-III is a standardized measure of adaptive behavior, focusing on the things that Claimant actually does in daily life. The examinee's adaptive functioning is compared to that of others her age. The VABS-III measures 11 skill areas that are used to yield an Adaptive Behavior Composite Score and four domain-skill area classification scores for Claimant's age group: Communication (Receptive, Expressive, and Written); Daily Living Skills (Personal, Domestic, and Community); Socialization

(Interpersonal Relationships, Play and Leisure Time, and Coping Skills); and Motor Skills (Gross Motor and Fine Motor).

26. On the VABS-III, Claimant obtained an overall Adaptive Behavior Composite in the Moderately Low range. Claimant's Communication Skills and Daily Living Skills fell in the Moderately Low range, while her Socialization Skills fell in the Low range.

27. In the area of Communication, Claimant is able to follow instructions with reactions and pay attention to a show for at least 60 minutes and understand what is happening. Claimant does not consistently follow through with instructions heard one hour before. She is able to give simple directions involving one to two steps and state her own birthday when asked. When Claimant says something which is not fully understood, she does not consistently clarify by restating the comment using different words. Claimant is able to read and understand material of at least the fourth-grade level. She is able to use the Internet or a library to find information when writing a paper or completing an assignment.

28. With regard to her Daily Living Skills, Claimant is able to complete self-care tasks independently, but she requires prompting to initiate them. She is able to prepare a simple snack or meal. Claimant can complete at least two simple household chores. She knows the phone number to call in an emergency. Claimant is able to identify a specific date on the calendar and she can identify different currency. She can use a clock and keep track of time.

29. Socially, Claimant is able to maintain an acceptable distance between herself and others. She can try to do things to please others. Claimant can sometimes talk with others about shared interests. She is able to play with others a simple card or

board games. Claimant is able to apologize with sincerity after hurting another's feelings. She does not consistently control her anger or hurt feelings when she is giving constructive criticism.

30. Dr. Kim assessed Claimant's Socio-Emotional Functioning. She administered the Autism Spectrum Rating Scales (ages 6-18) Parent Rating Form (ASRS) and Autism Diagnostic Observation Schedule Module 3 (ADOS-II) to assist in determining whether Claimant may have autism or ASD. The results of the ASRS indicated overall results within the elevated range, though results of the ADOS-II fell below the autism cut-off range.

31. The ASRS is designed to measure behaviors associated with ASD of children and youth aged two to 18 by parents and/or teachers. The ADOS-II is a standardized assessment of a child's communication, reciprocal social interaction, and imagination and creativity that consists of socially referenced activities that allow the assessor to observe behaviors that have been identified as important to the diagnosis of autism spectrum disorders.

32. On the ADOS-II, Dr. Kim noted that Claimant's use of eye gaze appeared to be well-regulated and meshed with other communication. She also directed facial expressions towards others. Claimant displayed some shared enjoyment when interacting with others. She effectively used verbal and nonverbal means to make clear social overtures and displayed responsiveness to most social contexts. Claimant engaged in reciprocal social communication and, in general, she comfortably interacted with others during the session.

33. Claimant gave Dr. Kim a reasonable account of a routine event that did not appear to be part of a preoccupation or intense interest and seemed likely to be

real. She also gave an account without specific probes on some occasions, but required some prompting to answer questions directed to her. Claimant displayed spontaneous speech to elaborate on her own responses in order to clarify information about herself and spontaneously used descriptive gestures to communicate with others. She discussed friends and friendship.

34. Dr. Kim did not observe Claimant using idiosyncratic or stereotyped words or phrases during the session, nor did Claimant express any unusual sensory interests. Claimant did not display any complex motor mannerisms or show excessive interest in unusual or highly specific topics.

35. Dr. Kim's diagnostic impressions were as follows: Claimant's overall cognitive functioning falls within the low average range. She displays low average verbal comprehension skills and low average fluid reasoning skills as demonstrated by her performance on the current assessment. Her adaptive skills fall within the moderately low to the low range. The results of the current assessment also indicate that Claimant does not meet diagnostic criteria for ASD.

36. Dr. Kim noted the following: Claimant was not believed to have an early history of speech and language delays. She has been described as quiet in nature, but is not believed to have a history of stereotyped language during early childhood. Claimant currently does make frequent dog and cat sounds when responding to others, such as growling and hissing to answer questions that are directed towards her. However, Claimant displayed appropriate social communication skills during session. She was able to communicate verbally and nonverbally, coordinating gestures with vocalizations and eye gaze. Claimant also was observed to engage in back and forth conversations, talking about her experiences without difficulty during session.

37. Claimant displayed social and communicative intent. However, due to her history of anxiety symptoms, she does have difficulty interacting with groups of children her age. Claimant also reported that she was previously hurt by a friend in elementary school, which has impacted her ability to establish trust in her current peer relationships.

38. Dr. Kim noted that Claimant has a long history of anxiety symptoms which has negatively impacted her functioning. She does display a number of behaviors as a result of her history of anxiety which include fearful of germs, frequent handwashing, and difficulty adapting to changes in her routine. Claimant relies on predictable routines to contain her anxiety symptoms. Dr. Kim recommended that Claimant continue to participate in mental health services to address her anxiety.

39. Mother reported to Dr. Kim that Claimant hears voices, some of which tell her to "say something rude" to others. Dr. Kim recommended that Mother bring these concerns to the attention of Claimant's current mental health provider for treatment and monitoring. Dr. Kim diagnosed Claimant as having Unspecified Anxiety Disorder and recommended that she continue to participate in mental health services to address any behavior/safety concerns and to clarify current diagnoses. Dr. Kim also recommended that Mother follow-up with the school district to obtain supports and services for Claimant.

Claimant's Evidence

TESTIMONY OF MOTHER AND SISTER

40. Mother and Claimant's adult sister (Sister) testified at the hearing. Mother stated that she is seeking regional center eligibility because she is "looking for resources to help [Claimant.]" Claimant's twin sister and teenage brother, who have

ASD and are regional center consumers, engage in hand-flapping, make animal sounds, and receive Applied Behavioral Analysis services (ABA), as does Claimant.

41. Mother and Sister noted that Claimant's "behaviors" have increased. Mother and Sister state that Claimant does not make eye contact and does not shower, brush her teeth, or dress without assistance.

42. Claimant had been in the GATE program. Mother and Sister state that Claimant complains of boredom, struggles in school, and has been assisted by tutors since first grade. Recently, Claimant was receiving grades of C and D in her classes, but with the help of a tutor, she is now getting grades of A and B. Claimant does not complete class work and needs an extra day or two to complete her assignments. The school is currently developing an IEP for Claimant, but the process has been delayed due to the Covid-19 pandemic.

EVALUATION BY PETER ADZHAN, PSY.D.

43. LA Care Health Plan referred Mother to Peter Adzhan, Psy.D., to conduct an evaluation. Dr. Adzhan is licensed by the California Board of Behavioral Sciences as a Licensed Educational Psychologist (LEP). He is not licensed as a Clinical Psychologist by the California Board of Psychology.

44. Mother reported to Dr. Adzhan that Claimant shows difficulties with communication and social interactions and has rigid behavior. Dr. Adzhan assessed whether Claimant meets the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5)² diagnostic criteria for ASD. He assessed Claimant's adaptive

² The DSM-5 is the 2013 update to the diagnostic tool published by the American Psychiatric Association.

skills to identify areas of strengths and needs regarding communication, self-care, and relating to others. Dr. Adzhyan also recommended evidence-based interventions to address any identified needs.

45. Dr. Adzhyan reviewed medical and school records provided to him by Mother. On March 7, 2020, he observed Claimant in her home and interviewed Mother. On March 15, 2020, Dr. Adzhyan prepared a Comprehensive Diagnostic Evaluation Report. (Ex. 14.) He noted that compared to her gross motor skills, Claimant's language skills were significantly delayed, she was attending general education classes, and was not receiving any interventions.

46. Dr. Adzhyan administered the following in assessing Claimant: the Kaufman Brief Intelligence Test 2nd Edition (KBIT-2), a brief, individually-administered measure of verbal and nonverbal cognitive ability; the Woodcock-Johnson IV Tests of Oral Language (WJ-IV-OL), which provide a broad sampling of language proficiency in the areas of Listening, Speaking, Oral Language and Comprehension; the Test of Pragmatic Language-2 (TOPL-2), which provides comprehensive analysis of social communication in context and pragmatic language skills; Autism Spectrum Rating Scale (ASRS), a rating scale completed by the parent that helps identify symptoms, behaviors, and features of ASD in children and adolescents; Autism Diagnostic Interview, Revised (ADI-R), is a structured interview with parent that addresses communication, social interactions and repetitive behaviors and interests, which is used as part of a diagnostic assessment to distinguish between ASD and other developmental disorders; the Autism Diagnostic Observation Schedule-2 is a semi-structured, standardized assessment of communication, social interaction, and play or imaginative use of materials. It is an assessment tool designed to assess behaviors related to Autism; and the Vineland-3 Comprehensive Parent/Caregiver Form, a

structured interview with caregiver that targets communication, daily living, and social skills.

47. Dr. Adzhyan noted that Claimant was cooperative during the entire assessment process. Her eye contact was adequate. She only initiated interaction with the assessor when he initiated the interaction. Claimant's attention span was typical for her age and no impulsivity was observed. During administration of the ADOS-2, Claimant's eye contact was very poor and there was no reciprocal back and forth conversation. She answered the questions without expanding on the topic.

48. Claimant's overall cognitive ability on the KBIT-2 was within the low average range. She showed average ability to solve novel tasks, comprehend complex relationships, draw conclusions from presented information, and deductively reason with concepts that do not require use of language.

49. Dr. Adzhyan reached the following conclusions:

A. Claimant meets the DSM-5 criteria for Autism. This was based on his observation that Claimant shows persistent deficits in social communication and social interaction across multiple contexts, in that she demonstrated abnormal social approach; limited reciprocal back-and-forth conversation; reduced sharing of interests, emotions or affect. He also observed deficits in nonverbal communicative behaviors used for social interaction in that Claimant showed poorly integrated verbal and nonverbal communication; abnormalities in eye contact and body language; and deficits in understanding and use of gestures; lack of facial expressions and nonverbal communication; difficulties adjusting behavior to suit various social contexts; difficulties in making friends; and absence of interest in others. Dr. Adzhyan observed deficits in developing, maintaining, and understanding relationships in that Claimant

had difficulties adjusting behavior to suit various social contexts; difficulties in making friends; and absence of interest in others.

B. Additionally, Dr. Adzhyan based the ASD diagnosis on Claimant showing restricted, repetitive patterns of behavior, interests, or activities in that Claimant engages in excessive hand washing and was observed to engage in repetitive hands movements when she got excited; she does not tolerate change of routine and gets upset when plans and routines change; she prefers to wear the same clothes and socks for a week; when there is change in route from home to school or school to home she gets upset and insists that her parent return to the regular route; and shows hypersensitivity to noises, specific fabrics and specific food textures (is a picky eater). However, Dr. Adzhyan noted that Claimant does not show any highly restricted, fixated interests that are abnormal in intensity or focus.

50. Dr. Adzhyan noted that these behaviors were first observed at age two and the reported symptoms significantly impair Claimant's social interactions with parents, siblings, and peers; her ability to build and maintain friendships; and Claimant's school performance. He also concluded that these disturbances are not better explained by intellectual disability or global developmental delay.

51. Dr. Adzhyan recommended focused in-home and community-based services, using ABA to address Claimant's communication and social deficits. He opined that at school, Claimant could benefit from individual and group speech and language services to address pragmatic language deficits, as well as training in social skills, self-management, interpreting non-verbal communication, and adapting to changes in routine.

Testimony of Khanh Ngan Hoang, Ph.D.

52. Khanh Ngan Hoang, Ph.D., a licensed clinical psychologist, testified at the hearing. Dr. Hoang is employed at the Service Agency as a staff psychologist. She is a member of the Service Agency's Team that evaluated Claimant's eligibility for services. Dr. Hoang explained that Autism impacts social interaction and communication. An individual with ASD typically displays restrictive, repetitive behaviors and shows pervasive deficits across multiple settings (at home, in school, and at work.) There is a lack of back and forth interaction with others, an inability to pick up on conversations or read cues, and a child with ASD often will not play with toys. The autistic individual has non-functional, fixated interests, or unusual responses to sensory stimuli and is not aware of, or able to, describe thoughts and feelings.

53. Claimant did not demonstrate these traits, based on the testing and evaluations conducted by Drs. Gaines and Kim, both of whom are clinical psychologists. The minimal score for an autism diagnosis on the ADOS III is nine. Claimant scored well below that; her ADOS III score was three, indicating minimal to no evidence of autism.

54. As for IQ, the test administered by Dr. Gaines, Claimant scored in the high average range. On the tests administered by Drs. Kim and Adzhyan, Claimant scored in the low average range. Accordingly, neither Claimant's IQ scores, nor her school performance in general education classes, establishes that she is intellectually disabled or requires treatment similar to that required for individuals with intellectual disability.

55. Dr. Hoang suggested that Claimant may benefit from ABA services and adaptive skills training. She opined that any failure to meet developmental

expectations may be due to depression, anxiety, obsessive compulsive disorder, or another mental health disorder, rather than a developmental disability. Dr. Hoang posited that providing Claimant with an incorrect ASD diagnosis could actually prove detrimental to her.

56. Dr. Hoang was critical of Dr. Adzhyan's conclusions. First, she notes that Dr. Adzhyan is an LEP, not a clinical psychologist. Clinical Psychologists are highly experienced and specially trained in administering testing instruments used in making an ASD diagnosis. They arrive at a diagnosis based upon their extensive clinical experience. In contrast, an LEP does not go through the same clinical training and performs a narrower professional function, pertaining specifically to academic learning processes or the education system. (Ex. 16; Bus. & Prof. Code § 4989.14.) An LEP focuses on academic interventions and IEP's. Determining eligibility for educational interventions on the basis of special needs is not the same as determining eligibility for regional center services under the Lanterman Act.

57. Dr. Hoang notes that Dr. Adzhyan evaluated Claimant's symptoms very narrowly and reached a diagnosis of ASD which was inconsistent with others who observed Claimant in different settings. She further opined that Claimant may have presented differently with Dr. Adzhyan based on issues of shyness or the assessor's gender. Dr. Hoang was also critical of the fact that Dr. Adzhyan reached his conclusions without reviewing the Psychological Assessment conducted by Dr. Kim, and did not consider that none of Claimant's teachers mention any odd behaviors in the school setting.³

³ Dr. Hoang testified that, optimally, observation of Claimant in the school setting would have been conducted by NLACRC in making its eligibility determination.

58. In light of the foregoing, Dr. Kim's assessment is credited over that of Dr. Adzhyan, and her opinions are afforded great weight. Mother and Sister were credible witnesses who testified in a clear, concise, and straightforward manner regarding their observations of Claimant's behaviors, and as valuable historians of Claimant's development. However, Mother's and Sister's accounts were sometimes inconsistent with the behaviors described in Dr. Gaines and Dr. Kim's psychological reports and in Claimant's school records. As such, Mother's and Sister's testimony is afforded limited weight.

59. Dr. Hoang met with the Team, which consisted of three clinical psychologists and two medical doctors, to consider all of the evidence. They reviewed Claimant's records and considered all of the evaluations, including Dr. Adzhyan's assessment. Based upon their review, the Team concluded that Claimant does not have ASD or any other qualifying developmental disability.

60. Dr. Hoang stated at the hearing that the Team did not "interpret the child in a vacuum." Dr. Hoang opined that Claimant may be showing symptoms of Severe Social Anxiety or Obsessive Compulsive Disorder, may benefit from medication, and should be seen for a psychiatric consultation and mental health treatment.

However, this could not be carried out prior to the hearing because of school closures as a result of the Covid-19 pandemic.

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 requested a hearing to contest Service Agency's denial of Claimant's eligibility for services under the Lanterman Act and therefore jurisdiction for this appeal was established. (Factual Findings 1-5.)

2. Generally, when an applicant seeks to establish eligibility for government benefits or services, the burden of proof is on her to prove by a preponderance of the evidence that she meets the criteria for eligibility. (*Lindsay v. San Diego County 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, Claimant must show that she 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," Claimant must show that her 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 "[d]isabling 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. The evidence did not establish that Claimant has a "substantial disability" (as defined in the Lanterman Act and Title 17 of the regulations) resulting from one of the five qualifying conditions specified in Welfare and Institutions Code section 4512, specifically, Autism, Intellectual Disability, Cerebral Palsy, Epilepsy, or a condition closely related to Intellectual Disability or requiring treatment similar to that required for individuals with Intellectual Disability. The evidence presented established, through the testimony of Dr. Hoang and Dr. Kim's psychological evaluation report, that Claimant does not have ASD, and the evidence did not demonstrate that Claimant suffers from an Intellectual Disability, Cerebral Palsy or Epilepsy. Nor did the evidence establish that Claimant has significant functional limitations in at least three areas of major life activity.

9. Claimant failed to present sufficient evidence to establish that Claimant has ASD, although both Mother and Sister proffered testimony setting forth their belief that Claimant suffers from ASD. Dr. Hoang persuasively discredited Dr. Adzhyan's report. The Service Agency, on the other hand, proffered evidence from multiple professionals, including licensed psychologists, demonstrating that Claimant did not meet the criteria for ASD, based upon school records, observations of

Claimant, and the results of Claimant's performance on tests administered during psychological assessments. (Factual Findings 6 through 60.)

10. Claimant proffered no evidence, nor did she assert, that she suffers from Cerebral Palsy, Epilepsy, or an Intellectual Disability. The assessment of whether Claimant suffers from a fifth category condition requires consideration of both prongs of potential fifth category eligibility, i.e., whether Claimant suffers from a disabling condition found to be closely related to Intellectual Disability or whether Claimant requires treatment similar to that required for individuals with Intellectual Disability. (Welf. & Inst. Code § 4512, subd. (a).)

11. In *Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, the appellate court held that "the fifth category condition must be very similar to [Intellectual Disability], with many of the same, or close to the same, factors required in classifying a person as [intellectually disabled]. Furthermore, the various additional factors required in designating an individual developmentally disabled and substantially handicapped must apply as well." (*Id.*, at p. 1129.) It is therefore important to track factors required for a diagnosis of Intellectual Disability when considering fifth category eligibility.

12. The presence of adaptive deficits alone is not sufficient to establish Intellectual Disability or fifth category eligibility. (*Samantha C. v. State Dept. of Developmental Services* (2010) 185 Cal.App.4th 1462, 1486 [Intellectual Disability "includes both a cognitive element and an adaptive functioning element" and to "interpret fifth category eligibility as including only an adaptive functioning element" misconstrues section 4512, subdivision (a)].) Claimant has not established that she suffers from the kind of general intellectual impairment found in persons with

Intellectual Disabilities, nor is there sufficient evidence to establish that Claimant's adaptive deficits stem from cognitive deficits.

13. Determining whether a Claimant's condition "requires treatment similar to that required" for persons with Intellectual Disability is not a simple exercise of enumerating the services provided and finding that a claimant would benefit from them. Many people, including those who do not suffer from Intellectual Disability, or any developmental disability, could benefit from the types of services offered by regional centers (e.g., counseling, vocational training, living skills training, or supervision). The criterion therefore is not whether someone would benefit from the provision of services, but whether that person's condition requires treatment similar to that required for persons with Intellectual Disability, which has a narrower meaning under the Lanterman Act than services. (*Ronald F. v. State Dept. of Developmental Services* (2017) 8 Cal.App.5th 84, 98.)

14. Claimant presented no evidence establishing she meets the second prong of the fifth category.

15. Based on the foregoing, Claimant failed to establish by a preponderance of the evidence that she is eligible for regional center services under the Lanterman Act under the qualifying category of ASD, or under any other qualifying category. As such, Claimant's appeal shall be denied. (Factual Findings 6 through 60; Legal Conclusions 1 through 14.)

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ORDER

Claimant's appeal is denied. Service Agency's determination that Claimant is not eligible for services under the Lanterman Act is upheld.

DATE:

LAURIE R. PEARLMAN

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.