

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

In the Matter of:

CLAIMANT,

vs.

SOUTH CENTRAL LOS ANGELES REGIONAL CENTER,

Service Agency.

OAH No. 2020050727

DECISION

Nana Chin, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference and telephone on July 24, 2020.

Claimant ¹was represented at the hearing by her father (Father). Bernadette Buckley provided Spanish language interpretation for the proceedings. Karmell

¹ Claimant and her family members are identified by title to protect their privacy.

Walker, Fair Hearing Manager, represented the South Central Los Angeles Regional Center (SCLARC or Service Agency).

Oral and documentary evidence was received, and argument was heard. The record was closed and the matter submitted for decision on July 24, 2020.

ISSUE PRESENTED

Is Claimant eligible to receive regional center services within the meaning of the Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code section 4500 et seq. (Lanterman Act)?

EVIDENCE

Documentary: Exhibits 1-17.

Testimony: On behalf of the Service Agency, Laurie McKnight Brown, Ph.D.; on behalf of Claimant, Father.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant is a 6-year-old girl who was referred to the Service Agency by Father, who suspects Claimant has a developmental disability that qualifies her for regional center services. Psychological assessments conducted at the request of the Service Agency in 2016 and 2018 had previously found Claimant did not have a

developmental disability. In December 2019, Father again applied for regional services for Claimant.

2. On April 30, 2020, the Service Agency sent a letter, notifying Father of its determination that Claimant is not eligible for services because she does not meet the criteria set forth in Welfare and Institutions Code section 4512 and California Code of Regulations, title 17, sections 54000 and 54001, in that she is not substantially impacted by a developmental disability.

3. Father filed a fair hearing request dated May 18, 2020, to appeal the Service Agency's decision and this hearing ensued.

Background

4. Claimant was born on November 1, 2013. According to Father, Claimant had been exposed to drugs and alcohol by her biological mother during gestation, which resulted in Claimant being diagnosed with Fetal Alcohol Syndrome (FAS). Following her birth, Claimant remained in the hospital for five days due to respiratory difficulties.

5. Upon being released from the hospital, Claimant was placed with her current adoptive family as a foster child. Her adoptive grandparents served as Claimant's foster parents. When Claimant turned three years old, she was adopted by Father. Claimant lives in the family home with Father, her grandparents, and her 10-year old uncle.

6. Claimant has also been diagnosed with asthma and has been given a provisional diagnosis of attention-deficit/hyperactivity disorder (ADHD). Otherwise, Claimant is generally in good health and has never experienced a seizure.

7. Claimant is currently enrolled in kindergarten in a general education classroom, where she receives special education supports and services through the school district.

Prior Assessments by the Service Agency

2016 PSYCHOLOGICAL EVALUATION

8. Due to early developmental delays, Claimant received services from the Service Agency under the California Early Intervention Services Act (Early Start)² until she turned three years old.

9. Shortly before Early Start services were scheduled to end, the Service Agency referred Claimant to clinical psychologist Victor C. Sanchez, Ph.D., to perform a psychological evaluation to determine whether Claimant had a developmental disability related to Intellectual Disability (ID) or Autism Spectrum Disorder (ASD).

10. Dr. Sanchez conducted the evaluation on August 11, 2016, when Claimant was two years and nine months old, and prepared a report of his findings

² Early Start is an early intervention program for infants and toddlers from birth through two years of age. (Gov. Code § 95000 et seq.) To be eligible for the program, an infant or toddler must have significant developmental delay in one of the five following areas: cognitive development; physical and motor development, including vision and hearing communication development; social or emotional development; or adaptive development. Eligibility for services under Early Start ends when the consumer turns three years of age. (Gov. Code, § 95014.)

and conclusions (2016 Sanchez Evaluation). Dr. Sanchez interviewed Father, reviewed available records, made clinical observations of Claimant's behavior, and administered the Wechsler Preschool and Primary Scale of Intelligence, Fourth Edition (WPPSI-IV), the Peabody Picture Vocabulary Test (Peabody), the Developmental Profile III, the Beery Visual Motor Integration Test (Beery), the Childhood Autism Rating Scale, the Autism Diagnostic Interview-Revised, and Conner's Checklist.

11. During his interaction with Claimant, Dr. Sanchez made the following observations:

[Claimant] was extremely friendly and cooperative-allowing rapport to be established and maintained without difficulty. She seemed interested in the assessment materials and appeared to be giving a good effort. . . . [Claimant] played very appropriately with available toys-exhibiting no clearly unusual behaviors of any kind. As such, she was not seen to exhibit any form of self-stimulatory, ritualistic, or perseverative interests.

(Ex. 9, p. 3.)

12. During the evaluation, Father reported Claimant presented no significant behavioral problems, she complied at a reasonably good rate, and she exhibited no self-stimulatory, ritualistic or perseverative interests. Father also reported that Claimant did not exhibit any self-injurious behaviors and was not generally over-active.

13A. To assess Claimant's cognitive abilities, Dr. Sanchez administered the WPPSI-IV. Claimant's overall performance on the WPPSI-IV yielded a full-scale IQ

(FSIQ) score of 108. Dr. Sanchez concluded that “review of the data generated by the assessment battery suggests Claimant’s overall cognitive skills fall in at least the Upper End of the Average Range.” (Exhibit 9, p. 3.)

B. Claimant’s receptive language skills, as measured by the Peabody, were found to be age appropriate, while her visual motor integration skills, as measured by the Beery, appeared to be “well-developed as [Claimant’s] performance approximated that of the average two year ten month old.” (Exhibit 9, p. 3.)

C. Claimant’s adaptive skills were assessed using the Developmental Profile-III. Claimant performed in the average range across all domains “save for a relative weakness in the area of communication skills.” (Exhibit 9, p. 3.)

D. To assess Claimant for ASD, Dr. Sanchez administered the Child Autism Rating Scale and the Autism Diagnostic Interview-Revised. Her scores on both protocols fell well below the cutoffs for an ASD diagnosis.

14. Using the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), Dr. Sanchez diagnosed Claimant with Language Disorder.

15. Following Dr. Sanchez’s evaluation, the Service Agency found Claimant to be ineligible for regional center services under the Lanterman Act.

2017 PSYCHO-SOCIAL ASSESSMENT

16. Shortly after Claimant’s fourth birthday, Father contacted the Service Agency and requested an assessment to determine whether Claimant had a developmental disability that would make her eligible for Lanterman Act services.

17. On December 16, 2017, Jacqueline Aranda, a service coordinator (SC) in SCLARC's intake unit, met with Claimant and Father to obtain her medical, family, educational, and social history, and to assess her current level of functioning. In her report of the meeting, SC Aranda noted that Claimant had trouble participating with "back and forth verbal exchange[s] answering basic question[s] pertaining to age, gender, family, school, and interests." (Exhibit 6, p. 1.) She also noted that Claimant "was constantly seeking attention from her father," "appeared very hyperactive," "demonstrated difficulty staying on task," and her "[l]anguage was difficult to understand," with Claimant "not forming sentences" and, instead, pointing or speaking single words to communicate. (*Ibid.*)

18. Father reported concerns regarding Claimant's interactions with other children, stating that she displayed "awkward like conversation," was not willing to play cooperatively, required constant redirection and guidance and was not aware of boundaries. (Exhibit 6, p. 3.) Father also reported Claimant communicated using only single words and gestures, and had delayed responses to questions and difficulty following instructions. SC Aranda noted that Claimant's social, communication and cognitive delays, as reported by Father, were also reflected in Claimant's Individualized Education Plan (IEP).

19. SC Aranda recommended: (1) a psychological evaluation; (2) speech and language services; (3) an occupational therapy (OT) evaluation; and (4) continued special education services.

2018 PSYCHOLOGICAL EVALUATION

20. The Service Agency referred Claimant for a psychological evaluation to assess whether Claimant had ASD. Yoselin Munoz, Psy.D., psychological assistant with

Consulting Collective, conducted the evaluation on June 4 and 11, 2018, and prepared a report of his findings and conclusions (2018 Munoz Evaluation).

21. The assessment included: (1) a clinical interview of Father; (2) review of a Psycho-Educational Assessment report prepared by Los Angeles Unified School District (LAUSD) dated April 21, 2018, and the 2016 Sanchez Evaluation; (3) clinical observations of Claimant's behavior on June 4 and 11, 2018; and (4) administration of the Leiter International Performance Scale, Third Edition (Leiter-3); Adaptive Behavior Assessment System, Third Edition (ABAS-3); Autism Diagnostic Observation Schedule-2 (ADOS-2); and Social Responsiveness Scale, Second Edition (SRS).

22. During the clinical observations, Dr. Munoz noted that, upon initial interaction, Claimant engaged in good eye contact and reciprocated a social smile. Thereafter, Claimant's eye contact was inconsistent. Dr. Munoz also noted Claimant transitioned easily into different activities and did not exhibit any stereotyped or repetitive behaviors. Regarding other behaviors, Claimant "presented with high energy and often required redirection to complete tasks." (Exhibit 8, p. 4.)

23A. In order to assess Claimant's cognitive functioning, Dr. Munoz administered the Leiter-3, a test designed to assess cognitive function in individuals age 3 to 75+ years old. Dr. Munoz recorded Claimant's performance on the Leiter-3 to be average in all but the Sequential Order (SO) subtests. According to Dr. Munoz, Claimant's below average performance on the SO subtest suggested Claimant had difficulty in problem-solving and attention/concentration.

B. Claimant's adaptive functioning skills were measured through Father's report utilizing the ABAS-3. Claimant's scores in the conceptual and practical domains were in the low range, with her score in the social domain being extremely low. The

scores yielded a General Adaptive Composite (GAC) score of 67, which is in the extremely low range.

C. In order to assess Claimant for ASD, Dr. Munoz administered the ADOS-2. The ADOS-2 is a semi-structured instrument that presents a series of tasks that involve social interaction for the examiner to observe and categorize. The observations are subsequently combined to produce quantitative scores for analysis, which are then used to diagnose individuals with ASD. During the assessment, Dr. Munoz noted Claimant did not present any behaviors that would support an ASD diagnosis.

D. On the Social Responsiveness Scale, which was completed by Father, Claimant was rated in five subscale areas: social awareness, social cognition, social communication, social motivation and autistic mannerisms. Claimant scored in the severe range with a Total Score (T-score) of 85.

24. Dr. Munoz opined that the results from the standardized measures, his observations, and review of records did not support an ASD diagnosis. Dr. Munoz further opined that Claimant's communication and social-emotional deficits and behavioral concerns may be associated with FAS and ADHD.

Claimant's School Records

CLAIMANT'S SPECIAL EDUCATION HISTORY

25. Claimant initially qualified for special education services at her school district under the criteria of Developmental Delay and was enrolled in the special education preschool program on November 2, 2016.

2018 SCHOOL DISTRICT PSYCHO-EDUCATIONAL ASSESSMENT

26. On April 21, 2018, school psychologist Ivonne Valdovinos, Ed.S., P.P.S., conducted a psycho-educational assessment to determine whether Claimant remained eligible for special education services as she transitioned into kindergarten (2018 Psycho-Educational Assessment).

27. Ms. Valdovinos reviewed Claimant's records, conducted behavioral observations of Claimant, interviewed both Father and Claimant's teacher (Teacher), and administered various tests.

28. During the assessment, Ms. Valdovinos noted that after Claimant overcame her initial reserve, she became interactive, smiled and attempted to engage in reciprocal conversation. Claimant, however, had difficulties finishing tasks, becoming distracted or uninterested and would have to be redirected. Ms. Valdovinos observed Claimant exhibiting similar distracted behaviors in the classroom. Though Claimant participated in class activities and was attentive during preferred classroom activities, she had difficulty complying with directives and staying on task. During the unstructured observations, Claimant was playing with toys appropriately and with her peers.

29. Teacher reported that Claimant was most successful in the area of cognitive development. Claimant, however, exhibited significant need in the area of oral language and impulsive behavior.

30A. To assess Claimant's cognitive functioning, Ms. Valdovinos administered the Mullen Scales of Early Learning AGS Edition and the Braken Basic Concept Scale Third Edition Receptive (BBC-3:R). Based on the results of these assessment tools, as

well as interviews and questionnaires, observations, and review of records, Ms. Valdovinos opined that Claimant's overall cognitive functioning was within the average range. Claimant's strengths were in the areas of visual processing, sensory-motor processing, and pre-academic skills. Claimant, however, demonstrated delays in auditory processing, association, conceptualization, expression processing, and language.

B. Ms. Valdovinos also administered the Behavior Assessment System for Children, Third Edition (BASC-3) and the Autism Spectrum Rating Scales (ASRS). Both Father and Teacher served as informants. Father's results in the BASC-3 indicated the existence of clinically significant concerns in the area of hyperactivity, aggression, atypicality and communication. Teacher's results, however, did not demonstrate similar at risk or clinically significant behavior concerns. On the ASRS, Teacher indicated all composites were within the average range, in contrast to Father who reported Claimant's behavior to be in the very elevated range. Ms. Valdovinos opined the behaviors Claimant reported by Father may be associated with Claimant's FAS diagnosis.

C. Ms. Valdovino determined that Claimant did not qualify for special education services under the category of autism because: (1) Claimant's verbal and nonverbal communication and social interactions were not significantly affected; (2) Claimant did not present resistance to environmental change or change in daily routines; (3) Claimant did not engage in repetitive activities and stereotyped movements; and (4) Claimant did not exhibit unusual responses to sensory experiences. Ms. Valdovino did note that Father's rating scales showed concerns on all these areas.

31. However, Ms. Valdovino concluded that Claimant met the eligibility criteria for special education services as a student with a Specific Learning Disability based on her below average performance in the area of auditory processing and association, conventionalization and expression.

2019 IEP

32. Claimant's annual IEP meeting was conducted on April 11, 2019.³ The IEP Team consisted of Claimant's grandmother; Socorro Del Real, administrator; Marisol Medrano, Special Education Teacher; Deana Bonilla, General Education Teacher; and Shabnam Amiri, Speech and Language Pathologist. The IEP team agreed to keep Claimant's placement in the general education classroom. To address the impact Claimant's specific learning disability was having on her articulation, the school district agreed to provide Claimant with 240 minutes per month of language and speech services ; to address Claimant's reading and math deficits, the school district agreed to provide 90 minutes per week of resource specialist program (RSP) services .

Current Assessment

2019 PSYCHO-SOCIAL ASSESSMENT

33. Shortly after Claimant turned six years old, Father requested Claimant be re-evaluated for regional center services.

³ The next scheduled review was scheduled for April 11, 2020. It was unclear from the record if the 2020 IEP Meeting took place.

34. On December 19, 2019, Maritza Cortes, a SC in SCLARC's intake unit, conducted an initial intake meeting with Claimant and Father to obtain Claimant's medical, family, educational, and social history, and to assess her current functioning (2019 Psycho-Social Assessment). SC Cortes noted that Claimant established appropriate eye contact but hid behind her father when greeted. Once in the office, Claimant sat down and played with the available toys. When asked, Claimant was able to say her name, age and grade level with reasonable clarity using simple sentences.

35. Father reported concerns regarding Claimant's self-care abilities, in that she places too much food in her mouth when eating, is not fully toilet trained and uses a diaper at night, and lacks safety awareness. Father reported that Claimant still has difficulty socializing with same age peers and is often too rough and will hit others. Claimant also exhibits repetitive body movements such as spinning and biting her nails, watches the same movies repeatedly, puts objects inside her mouth often, and does not provide eye contact consistently during social interactions.

36. Based on the intake interview, SC Cortes recommended: (1) a psychological evaluation; (2) speech and language services; (3) an OT evaluation; and (4) continued special education services.

2020 PSYCHOLOGICAL EVALUATION

37. The Service Agency referred Claimant to Thomas L. Carrillo, Ph.D., for a psychological evaluation to assess whether Claimant had a developmental disability due to suspected Intellectual Disability, Autism, and/or Specific Learning Disability.

38. On March 13, 2020, Dr. Carrillo interviewed Father and Claimant; conducted a behavioral/clinical observation of Claimant; and administered the WPPSI-

IV, Wide Range Achievement Test –Fourth Edition (WRAT 4); Vineland Adaptive Behavior Scales – Third Edition (Vineland-3), and the Autism Diagnostic Observation Schedule (ADOS-2) Module 2.

39. Dr. Carrillo also reviewed the 2018 Munoz Evaluation, the 2018 Psycho-Educational Assessment, 2019 IEP, and the 2020 Psycho-Social Assessment.

40A. To obtain information on Claimant’s cognitive/intellectual functioning, Dr. Carrillo administered the WPPSI-IV. The results showed Claimant displayed a scattering of abilities, ranging from the normal to the superior range of intellect. Claimant’s overall results yielded a Full-Scale IQ Score of 115, suggesting Claimant’s cognitive abilities were within “the bright-normal range.” (Exhibit 7, p. 4.) To further assess Claimant’s cognitive ability based on academic achievement, Dr. Carrillo administered the WRAT 4. At the time of testing, Claimant was in kindergarten, however, Claimant demonstrated academic skills at a first-grade level.

B. Based on father’s interview, Claimant began to talk at one year of age and, at the time of testing, demonstrated delays in both expressive and receptive language. Dr. Carrillo noted that Claimant’s conversational content was impoverished and was representative of a child much younger than her chronological age of six years and four months. In order to obtain a standardized assessment of Claimant’s communication abilities, Dr. Carrillo administered and assessed the results of the Communication portion of the Vineland-3. On that assessment, Claimant received a Standard Score of 73, which is within the borderline range of delay. Claimant received a Receptive Language Age Equivalent score of 1 year, 11 months, an Expressive language Age Equivalent of three years, one month, and a Written Language Age Equivalent of 5 years, 5 months. Dr. Carrillo noted that though the findings appeared

to qualify Claimant for a diagnosis of Language Disorder, Claimant "did not display any unusual communication patterns seen in Autism." (Exhibit 7, p. 4.)

C. To obtain information regarding Claimant's adaptive and social skills, Dr. Carrillo administered and assessed the results from the Daily Living Skills and Socialization portions of the Vineland-3. In the area of Daily Living Skills, Claimant received a Standard Score of 87, which is within the normal range. In the area of Socialization, Claimant received a Standard Score of 72, which Dr. Carrillo described as within the borderline range of delay. In comparing three areas of adaptive functioning, including Communication, Daily Living Skills, and Socialization Skills, Claimant was seen as having overall adaptive abilities within the borderline range of delay, with an Adaptive Behavior Composite Score of 79.

D. In the Social Emotional and Behavioral area, Dr. Carrillo observed that Claimant presented as a playful and engaging child. He did, however, note Claimant had some problematic behaviors, including spinning, having difficulty with transitions and having repetitive interests which involve stacking or lining up toys. All behaviors which are sometimes seen in children who are diagnosed with autism.

E. Due to the above-mentioned behaviors, Claimant was screened for ASD utilizing the ADOS-2, Module 2. In the area of Social Affect, Claimant received a score of 0; in the area of Restricted and Repetitive Behavior, Claimant received a score of 2. Claimant's total score of 2 was well below the cut-off score for a diagnosis of ASD.

Multidisciplinary Evaluation

41. On April 21, 2020, the Service Agency's interdisciplinary team reviewed the 2020 Carrillo Evaluation and the 2020 Psycho-Social Assessment, and determined

that Claimant was not eligible for regional center services because she did not have a substantially disabling developmental disability.

42. Laurie McKnight Brown, Ph.D., testified at hearing regarding the interdisciplinary team's conclusion that Claimant was ineligible for regional center services. Dr. McKnight Brown is the lead psychologist consultant on the eligibility team at SCLARC. Dr. McKnight Brown explained that in order to be eligible for services under the Lanterman Act, an individual must have a qualifying developmental disability that is substantially disabling in at least three or more areas of major life activity. Claimant had not been diagnosed with any developmental disability which would qualify her for services. Dr. McKnight Brown acknowledged Claimant has been diagnosed with FAS and ADHD; however, she explained that these diagnoses were not qualifying diagnoses for eligibility under the Lanterman Act.

Father's Testimony

43. Father conceded that Claimant had not been formally diagnosed by a medical professional with intellectual disability, cerebral palsy, epilepsy or autism. Father, however, believes Claimant has autism as she exhibits many behaviors characteristic of those with autism, and he described many of her atypical behaviors.

44. According to Father, Claimant has deficits in social interaction and communication. She isolates herself from other children her age, preferring to interact with imaginary friends, and has limited speech, instead using a lot of facial expressions and hand gestures to convey her thoughts. Claimant does not either pay attention or understand when spoken to.

45. Claimant exhibits restricted and repetitive patterns of behaviors, often becoming fixated on small items, or she insists on lining up her food. Father also expressed concerns that Claimant appears to be insensitive to pain, which has caused her to injure herself when tantruming but, at the same time, is extremely sensitive to smells and noises.

46. Father expressed concern regarding Claimant's hyperactivity and lack of safety awareness, which has caused her to run out into the street without looking when she has heard an ice cream truck, undo her safety belt when riding in a car, and turn on all the burners of the gas stove. Though he has spoken to Claimant about these behaviors, Claimant does not appear to understand his concerns.

47. Father reported Claimant's disability has caused her to have significant functional limitations in the following areas: (1) in the area of receptive and expressive language, Claimant is unable to verbally express herself and often does not seem to understand others who are speaking to her, (2) in the area of self-care, Claimant still needs assistance toileting, and if left unsupervised, will smear feces on the walls; and (3) in the area of self-direction, Claimant will become easily distracted and will not complete tasks.

LEGAL CONCLUSIONS

Jurisdiction

1. The Lanterman Act governs this case. (Welf. & Inst., § 4500 et seq.) A state level fair hearing to determine the rights and obligations of the parties, if any, is referred to as an appeal of Service Agency's decision. Claimant properly and timely

requested a fair hearing and therefore jurisdiction for this case was established.
(Factual Findings 1-3.)

Burden and Standard of Proof

2. When an individual seeks to establish eligibility for government benefits or services, the burden of proof is on the individual. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) As no other statute or law specifically applies to the Lanterman Act, the standard of proof in this case is preponderance of the evidence. (Evid. Code, §§ 115, 500.) Therefore, the burden is on Claimant to prove by a preponderance of the evidence that she meets the eligibility criteria for regional center services. Claimant did not meet her burden.

Applicable Statutes and Regulations

3. In order to establish eligibility 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. Whereas the first four categories of eligibility are very specific, the disabling conditions under the residual fifth category are intentionally broad to

encompass unspecified conditions and disorders. However, this broad language is not intended to be a catch-all, requiring unlimited access for all persons with some form of learning or behavioral disability. There are many persons with sub-average functioning and impaired adaptive behavior; under the Lanterman Act, a regional center does not have a duty to serve all of them.

5. The Lanterman Act requires that the qualifying condition be “closely related” (Welf. & Inst. Code, § 4512) to intellectual disability or to “require treatment similar to that required for individuals with an intellectual disability.” (Welf. & Inst. Code, § 4512.) The definitive characteristics of intellectual disability include a significant degree of cognitive and adaptive deficits. Thus, to be “closely related” or “similar” to intellectual disability, there must be a manifestation of cognitive and/or adaptive deficits which render that individual’s disability like that of a person with intellectual disability.

6. In addition to showing a claimant’s disability fits into one of the five categories of eligibility set forth in Welfare and Institutions Code section 4512, the claimant must show that the disability constitutes a “substantial disability.”

7. Pursuant to Welfare and Institutions Code Section 4512, subdivision (1), a “substantial disability” is one which constitutes “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.

8. California Code of Regulations, title 17, section 54001, subdivision (a), also defines "substantial disability" as:

(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.

9. The Lanterman Act and its implementing regulations contain no definition of the qualifying developmental disability of intellectual disability. Consequently, when determining eligibility for services and supports on the basis of intellectual disability, that qualifying disability has previously been defined as congruent to the diagnostic definition set forth in the DSM-5.

10. The DSM-5 describes intellectual disability as follows:

Intellectual disability . . . is a disorder with onset during the developmental period that includes both intellectual and adaptive functioning deficits in conceptual, social and practical domains. The following three criteria must be met:

A. Deficits in intellectual functions, such as reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience, confirmed by both clinical assessment and individualized, standardized intelligence testing.

B. Deficits in adaptive functioning that result in failure to meet developmental and socio-cultural standards for personal independence and social responsibility. Without ongoing support, the adaptive deficits limit functioning in one or more activities of daily life, such as communication,

social participation, and independent living, across multiple environments, such as home, school, work, and community.

C. Onset of intellectual and adaptive deficits during the developmental period.

(Exhibit 17, p. 1.)

11. The DSM-5 notes that the "essential features of intellectual disability . . . are deficits in general mental abilities . . . and impairment in everyday adaptive functioning in comparison to an individual's age-, gender-, and socioculturally matched peers. . . . Onset is during the developmental period. . . . The diagnosis of intellectual disability is based on both clinical assessment and standardized testing of intellectual and adaptive functions. . ." (Exhibit 17, p.4.)

12. The DSM-5 further explains that "Intellectual functioning is typically measured with individually administered and psychometrically valid, comprehensive, culturally appropriate, psychometrically sound tests of intelligence. Individuals with intellectual disability have scores of approximately two standard deviations or more below the population mean, including a margin for measurement error (generally +5 points). On tests with a standard deviation of 15 and a mean of 100, this involves a score of 65-75 (70 ± 5)." (Exhibit 17, p. 4.)

13. Claimant did not present any evidence that she had ever received testing which would indicate that her cognitive functioning was below average. Instead, in each assessment of Claimant's cognitive abilities, Claimant received scores in the average to high average range.

14. Additionally, it was not established that Claimant demonstrates deficits in cognitive and adaptive functioning such that she presents as a person suffering from a condition similar to intellectual disability. Claimant's testing scores demonstrate average IQ to high average IQ with a deficit in the area of expressive and receptive language. Moreover, the evidence did not establish that Claimant requires treatment similar to that required for individuals with intellectual disability. Based on the foregoing, Claimant does not fall under the fifth category of eligibility.

15. As with intellectual disability, the Lanterman Act and its implementing regulations contain no definition of the qualifying developmental disability of "autism." Consequently, when determining eligibility for services and supports on the basis of autism, that qualifying disability has been defined as congruent to the DSM-5 definition of "Autism Spectrum Disorder."

16. The DSM-5, at section 299.00, sets forth the diagnostic criteria that must be met to provide a specific diagnosis of Autism Spectrum Disorder, as follows:

A. 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.

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 (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).

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 interests in sensory aspects of the environment (e.g., apparent indifference to pain/temperature, adverse response to specific sounds or textures, excessive smelling or touching 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 developmental 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.

(Exhibit 16, p. 1-2.)

17. Claimant did not present any evidence that she had ever received a clinical diagnosis of autism or ASD (under the DSM-5) from any medical or psychological professional. Though the evidence did suggest Claimant had deficits in the area of communication, those deficits alone do not establish eligibility for services under the Lanterman Act.

18. The evidence did not establish that Claimant suffers from cerebral palsy or epilepsy. Therefore, Claimant is not eligible for regional center services based on those conditions pursuant to Welfare and Institutions Code section 4512, subdivision (a).

19. As set forth in Legal Conclusion 2, Claimant bears the burden to present evidence proving her eligibility for services. In order to meet this burden, Claimant is required to present evidence that: (1) she had been diagnosed with a developmental disability; and (2) her condition constitutes a substantial disability, in that it has resulted in significant functional limitations in three areas of major life activity as set forth in Welfare and Institutions Code section 4512, subdivision (A). In this case, though there is some evidence that Claimant may have some functional limitations in at least one major life activity, there is no medical evidence indicating that her limitations are due to any one of the five categories of eligibility set forth in Welfare and Institutions Code section 4512.

20. Based on the forgoing, the preponderance of the evidence did not establish that Claimant is eligible to receive regional center services.

ORDER

Claimant's appeal is denied. The Service Agency's determination that Claimant is not eligible for regional center services is upheld.

DATE:

NANA CHIN

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.