

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

CLAIMANT,

vs.

**SOUTH CENTRAL LOS ANGELES REGIONAL CENTER,

SERVICE AGENCY.**

OAH No. 2020080342

DECISION

Eileen Cohn, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on November 5, 2020 by videoconference.

Michael Salmaggi, Deputy Public Defender, represented Claimant, who was incarcerated at the time of the hearing, and was not made available to appear, despite his request. Mr. Salmaggi was accompanied by claimant's mother (Mother) and sister (Sister).¹ Judith Enright, Attorney at Law, represented the South-Central Los Angeles Regional Center (Service Agency). She was accompanied by Shantal Garcia, Fair Hearing Coordinator.

¹ Claimant and the names of his family have not been included to protect their privacy.

Oral and documentary evidence was received. At the conclusion of the hearing, the record was kept open until September 9, 2020, for receipt of claimant's supplemental exhibit, which was timely submitted and marked and admitted as Exhibit A. The record was closed, and the matter was submitted for decision on September 9, 2020.

ISSUE²

Is Claimant eligible for services as an individual substantially disabled by Autism pursuant to the Lanterman Developmental Disabilities Service Act (Lanterman Act)?³

EVIDENCE

The following oral and documentary evidence was presented during the hearing. Oral evidence was presented by Armand de Armas, Ph.D. (de Armas), California-licensed psychologist, and Claimant's sister on behalf of the claimant. Laurie McKnight-Brown (Brown), Psy.D.,⁴ California-licensed psychologist and member of claimant's Interdisciplinary Team (IT), and Rocio Duran (Duran), Intake Service Coordinator, testified on behalf of the Service Agency. The Service Agency submitted Exhibits 1-19 and respondent submitted Exhibit A. Service Agency's Exhibits 1-16 and

² Claimant withdrew his request for consideration of other areas of eligibility at the end of the hearing and the parties stipulated to this issue.

³ Welf. & Inst. Code, §§ 4700-4716.

⁴ Brown was not designated as an expert witness and her status as either a Psy.D. or Ph.D. was not established.

claimant's Exhibit A were marked and admitted. Service Agency's Exhibits 17-19 were marked, and official notice was taken of those exhibits.

Jurisdictional Matters and Background

1. Claimant was born in April 1997, is 23 years of age, and has never been made eligible for services under the Lanterman Act. Claimant is one of 10 children and was raised by Mother from an early age after his father abandoned the family and his parents divorced. Claimant had previously been designated by his school district as eligible for special education services and was provided with an Individualized Education Program (IEP) based upon his designation as a pupil with a specific learning disability (SLD) (receptive language processing disorder).

2. Claimant was arrested and incarcerated for the criminal offense of stalking on February 3, 2020. (Exh. RC-5.) By order of the court dated April 21, 2020, claimant was committed to the Department of Mental Health for placement at the Department of State Hospitals in a treatment program until such time as claimant was restored to competency. At that time respondent had been in custody for 79 days. (Exh. RC-4.) The Honorable Laura Steimer, Commissioner of the Los Angeles Superior Court, Mental Health Division, issued orders dated February 19, 2020, March 24, 2020 and April 21, 2020 for the Service Agency to assess and evaluate claimant, and to prepare a report prior to July 21, 2020 regarding regional center eligibility. Claimant supplied records through his attorney for Service Agency review on March 27, 2020. (Exh. RC-2.) At the time of the fair hearing claimant remained in custody at the Los Angeles County Jail, Twin Towers (Twin Towers), mental health unit, was deemed competent to stand trial, and was awaiting trial for his criminal offense.

3. The Service Agency's IT convened and reviewed the psychosocial assessment conducted on April 24, 2020 by Bobby Vargas, Service Coordinator and Law Enforcement Liaison. The IT also reviewed the following records submitted by claimant through his counsel. The IT reviewed De Armas' psychological assessment dated March 23, 2020. The IT reviewed a variety of school documents including: an IEP dated February 23, 2011; a triennial psychoeducational assessment of January 2011; Mother's letter disenrolling claimant from special education dated October 26, 2012 and related letters from the school psychologist and the school confirming Mother's request; and assorted student grade and test reports. (Exh. RC-1.)

4. By letter dated July 8, 2020, the Service Agency notified the court and claimant of the IT's determination that he is ineligible for regional center services under the Lanterman Act. (Exhs. RC-1 and 2.)

5. Claimant timely appealed the Service Agency's decision. All jurisdictional requirements for this matter to proceed to hearing have been satisfied. (Exh. RC-3.)

Eligibility

RC'S IT DETERMINATION OF INELIGIBILITY

6. Service Agency did not conduct an independent evaluation as ordered by the court due to complications with securing vendors during the pandemic. Claimant did secure an assessment from de Armas.

7. The IT team was comprised of three psychologists, a medical doctor, and an education specialist. The IT Team received input from the service coordinator and as well as the program manager. Brown testified at the hearing as a member of the IT, but not as an expert. Each member of the IT reviewed all the available records and

assessments and discussed them. She confirmed that the IT disagreed with de Armas's evaluation based primarily on its review of claimant's school records which provided information about claimant during the developmental period, including his designation as a student with a SLD and his positive behaviors, the Service Agency's in-person psycho-social assessment, and claimant's more recent mental health diagnoses and history, including a more recent diagnosis of major depressive disorder, anxiety and schizophrenia, and related hospitalization.

8. The IT reviewed the IEPs provided. The triennial assessment report of February 2, 2011, when respondent was 13 and in eighth grade, provides a snapshot of his functioning prior to the age of 18 from the results of a variety of standardized assessments, observations, a review of teacher reports and school records and an interview with claimant. (Exh. RC-6.) In this triennial assessment report the psychologist also summarized claimant's early school history. Claimant initially qualified for special education as a pupil with a SLD in January 2008, when he was about 10. At the time of the triennial assessment, his teachers reported low reading comprehension. He had received passing grades in his classes, but performed below basic in both math and English-language Arts on the California Standards Test. On standardized assessments claimant performed in the below average range on visual motor integration (Developmental Test of Visual Motor Integration, 5th Edition (VMI)); borderline to below average on measures of processing auditory information (Test of Auditory Processing Skills – Third Edition (TAPS-3)), an overall borderline score on measures of visual perception (Visual-Perceptual Skills, 3rd Edition (TVPS-3)), low on measures of academic performance (Woodcock-Johnson III Normative Update Tests of Achievement (WJ-III ACH)), and below average on measures of cognitive functioning (Test of Nonverbal Intelligence (TONI-3)). (Exh. RC-6.)

9. The triennial assessment did not address Autism, but it contained information regarding claimant's social and emotional behavior which are pertinent to a diagnosis of Autism. The psychologist interviewed claimant. Claimant reported he enjoyed baseball, his favorite and least favorite classes and his interest in pursuing a career as an electrician. The psychologist observed him and reported observations from his school records. "Per observation, [claimant] maintains a positive relationship with the peers and adults at school. ...[¶] In relating to adults he expresses himself easily. In responding to rules and adult direction he is capable of conforming. Records and observation indicate that he is capable of expressing his needs and wants. He is able to care for his personal needs such as bathing, clothing himself and toileting needs." (Exh. RC-6) The psychologist observed him "as a calm and friendly young man." (*Ibid.*)

It is easy to build and maintain rapport with [claimant]. He showed a positive attitude, worked at a good pace, and remained pleasant throughout the testing process. [Claimant] is able to grasp directions and instructions with ease. He appeared interested in testing and took short breaks as recommended by the examiner. He demonstrated good perseverance and was able to stay on task throughout the assessment process. Although he was not overly preoccupied with success or failure, [claimant] demonstrated a desire to do well on test items, as evidenced by sitting upright, maintaining good eye contact, taking time to consider his responses, and making self-corrections to his responses as needed.

(Exh. RC-6.)

10. Based on the triennial assessment, the school district developed an IEP dated February 23, 2011. Mother, claimant, the school psychologist, two teachers, and a counseling intern participated in the IEP team meeting. Mother was provided an interpreter. Claimant was designated as a pupil with a SLD. As part of his profile, the IEP team reported claimant's communication development as age-appropriate, e.g. he was able to participate in conversation "very well," and able to articulate. The IEP team reported that claimant "gets along well with his peers and his teachers. He appears to be respected by the students. There are no concerns in this area at this time." In the meeting notes attached to the IEP his teachers commended his work ethic, focus and positive behavior. His adaptive/daily living skills included doing chores at home including sweeping the kitchen and living room, raking the leaves, taking out the trash, and washing the dishes. Claimant's goals and objectives focused on his academics. Claimant was placed in the resource specialist program which consisted of support services and provided with detailed goals and objectives. Mother signed the IEP.

(Exh. RC-7.)

11. The IT also considered the psycho-social assessment of Bobby Vargas (Vargas) Service Agency's Intake Coordinator, and Law Enforcement Liaison, which in their view confirmed claimant did not qualify as an individual with a developmental or substantial disability. On June 10, 2020, Vargas conducted an in-person psycho-social assessment with claimant at the Twin Towers. As part of his assessment he also interviewed Mother, with whom claimant had lived prior to his arrest. Mother reported to Vargas that claimant's developmental milestones were normal. Vargas did not testify but the foundation for the report was not disputed, although the conclusions were. Duran, the Intake Service Coordinator, was knowledgeable of the purpose of the

psycho-social assessment and provided foundation for Vargas's interview. Vargas did a follow-up call with Mother where she confirmed she was not aware claimant had Autism during his developmental years but became aware of the diagnosis through de Armas.

12. At the time of Vargas's psycho-social assessment claimant had requested eligibility based upon all available eligibility categories. As such, Vargas's report included claimant's current and motor functioning, fine and gross motor skills, and cognitive abilities, which Vargas reported as within ranges which were not consistent with eligibility for intellectual disability, epilepsy, or cerebral palsy.

13. Based on his interview with claimant, Vargas also reported claimant's adequate functioning in the areas of self-care social/behavioral/emotional and communication.

14. In the area of self-care claimant reported he was able to: dress himself, care for his personal hygiene, perform simple household chores, make simple purchases, count money, prepare meals. Claimant also possesses a driver's license and does not rely on public transportation.

15. In the area of social/behavioral/emotional, claimant reported he does not have many friends but is "very social," however, he noted that from custody staff reports he seems to easily agitate others. He confirmed he had been hospitalized once in a psychiatric hospital and diagnosed with schizophrenia.

16. In the area of communication, Vargas observed that claimant "did not appear to have any significant limitations in this area. He was able to express himself in a coherent manner, he answered questions in a direct and to the point manner and was polite." (Exh. RC-5.)

17. Claimant reported his participation in special education for one year in middle school and then in high school where he was part of the Resource Specialist Program, which was a resource for students with learning disabilities. Claimant's self-report is further explained by his school records below. Claimant graduated from high school in 2015 and attended El Camino College for two years but did not obtain an associate degree.

18. Claimant was also employed by the company Subway for three years where he obtained the position of shift manager. He reported to Vargas he was fired for missing work, but in another report to de Armas, claimant stated he quit after he became distraught over the death of his favorite uncle, and when he asked for his job back, Subway refused to rehire him.

19. Claimant exited special education at the end of October 2012, when he was 15, and in high school. Mother withdrew him from special education against the advice of the school district because she believed he no longer needed the services to be successful in the general education program. At the time of Mother's request claimant was on track to meet his course requirements to graduate. (Exhs. RC-8, 11 and 13.) Claimant in his later interview with de Armas reported that he did not want to continue in special education because of the stigma.

20. In claimant's exit IEP meeting of October 26, 2012, there was no changes in the IEP teams report of claimant's positive behavior, communication and adaptive living skills from the previous IEP.

21. Claimant graduated high school with a standard high school diploma on June 5, 2015.

22. The IT concluded that claimant did not have the characteristics associated with Autism and was not substantially disabled during the developmental period. From the school records it was clear to the IT that claimant had a severe auditory processing disorder which could account for any difficulty in socializing or delay in back and forth communication; however, the school records did not reflect any ongoing difficulty with communication or peer relationships. The IT considered the diagnosis of SLD accurate based on claimant's grades and learning challenges. His test scores placed him in the low-average range of cognitive ability which was consistent with his designation as SLD. Even assuming social demands increase with age such that the claimant's deficits would be more manifest as claimant aged, the school records when he was 15, the later part of the developmental period, did not reveal any such deficits that could qualify claimant as an individual with Autism or substantially disabled as a result of Autism.

23. In determining whether claimant has a substantial disability, the IT was informed by the Association of Regional Center Clinical Recommendations for defining "Substantial Disability" (Guidelines). (Exh. RC-18.) ⁵The Guidelines are consistent with

⁵ "'However ... "[w]here the language of a statute fails to provide an objective standard by which conduct can be judged, the required specificity may nonetheless be provided by the common knowledge and understanding of members of the particular vocation or profession to which the statute applies."... [T]he Lanterman Act and implementing regulations clearly defer to the expertise of the DDS and [regional center] professionals and their determination as to whether an individual is developmentally disabled. General, as well as specific guidelines are provided in the Lanterman Act and regulations to assist such [regional center] professionals in making

Welfare and Institutions Code section 4512 and California Code of Regulations, title 17, sections 54000 and 54001 and clarify what each of the seven areas of adaptive functioning mean. Notably, the “impairments” must relate to the eligible condition.

24. In the area of self-care, personal hygiene, grooming and feeding are considered. In the area of receptive and expressive language the individual must have “significant limitations in both the comprehension and expression of verbal and/or nonverbal communication resulting in functional limitations.” Receptive language impairments may include significant difficulty understanding a simple conversation, needing information to be rephrased, significant difficulty following directions, and significant difficulty understanding and interpreting nonverbal communication. with consideration given to standardized measures. Expressive communication includes significant difficulty in the area of communicating information, participating in basic conversations, and atypical speech patterns. Learning as an area of substantial disability includes general intellectual ability, academic achievement, retention – short and long-term memory, and reasoning, applying information and skills from one situation to another. Self-direction includes significant impairments in the ability to make and apply personal and social judgments and decisions and may include difficulty establishing and maintaining personal relations, daily schedules, and/or severe maladaptive behaviors. Significant impairment in the capacity for independent living includes the inability to perform age-appropriate and independent living skills without assistance, including household tasks, money management health care, and domestic activities. Substantial disability in the area of economic self-sufficiency

this difficult, complex determination....’ [Citation.]” (*Ronald F. v. State Department of Developmental Services* (2017) 8 Cal.App.5th 84, 95 and fn. 3.)

includes the inability to participate in vocational training or obtain and maintain employment without significant support.

25. The IT concluded that claimant did not have a substantial disability in three of the seven areas as a result of an eligible condition such as Autism. During the hearing, Brown reviewed the criteria for substantial disability against claimant's records and the Service Agency's psycho-social assessment and confirmed that the IT did not find evidence of a substantial disability during the developmental period. More specifically, she stated claimant may have had a receptive language deficit related to his auditory processing disorder, but did not evidence an expressive language deficit; there were no deficits in self-care or mobility; he evidenced self-direction by completing his homework, staying on task; and through the age of 18 and possibly afterward did not evidence any problems with economic self-sufficiency because he secured a job, had a license and could navigate the community. Claimant's deficits in learning were not attributed to autism, but to his SLD and severe auditory processing disorder.

26. The IT found no other areas of adaptive functioning that revealed a substantial disability related to a qualifying eligibility. Instead, the IT concluded that any current deficits could be accounted for by claimant's more recent substance abuse and other mental health issues, including his diagnoses of depression, anxiety and schizophrenia. The IT attributed any changes in claimant's functioning to his substance abuse and psychiatric diagnoses. Brown noted that claimant received a high school diploma, after he was disenrolled from special education, had a driver's license, held a job and went to community college. Brown noted that de Armas's adaptive behavioral assessment, the Vineland Adaptive Behavior Scales, Third Edition (Vineland-3),

generally confirmed that respondent's adaptive functioning was primarily deficient in the area of socialization.

27. Brown provided honest and straightforward testimony. Nevertheless, the weight of Brown's testimony was limited to providing the foundation for the IT's decision that claimant was not eligible. No weight was given to any opinions Brown offered independent of the IT's determination because she was not designated as an expert and did not personally examine claimant.

CLAIMANT'S ASSESSMENT BY DR. ARMANDO DE ARMAS AND SISTER'S TESTIMONY

28. De Armas was retained by claimant to conduct a neuropsychological assessment in 2020. De Armas is an experienced psychologist and clinician with a 20-year history of performing assessments as a vendor for the Harbor Regional Center. De Armas specializes in clinical and forensic neuropsychology, is a Diplomate, Prescribing Psychologists' Register, and a Board-Certified Diplomate-Fellow in Forensic Sciences. He is a Member of the Los Angeles County Psychiatric and Psychological Experts Panel. De Armas has conducted 2000 assessments for Autism. De Armas personally interviewed claimant at Twin Towers on two occasions, interviewed Mother twice, and administered assessments designed to assess Autism as well as claimant's behaviors. As part of his second interview with Mother, he administered a recognized standardized interview questionnaire to identify claimant's behaviors during the early developmental stage. De Armas provided a credible reason for Mother's more precise ability to articulate claimant's deficits in the second interview because it required her to think more particularly about claimant's behaviors. As a parent of 10 children, Mother did not recall precisely claimant's behaviors when asked more general questions. De Armas provided thoughtful expert testimony and was candid when

challenged. De Armas was firm in his opinion that claimant met the diagnostic criteria for Autism, severity level 1, despite the absence of supporting data from claimant's school records. His reports and testimony were given great weight especially since the Service Agency did not perform its own assessment with a qualified psychologist or provide expert testimony.

29. De Armas prepared two letter reports, dated March 23, 2020, (Exh. 15), and August 16, 2020 (Exh. 16.). For both reports he interviewed claimant personally, face-to-face in a private room at the Twin Towers. In his initial meeting, he also performed a battery of standardized assessments but did not have claimant's school records. In both the earlier and later reports, de Armas concluded that claimant met the diagnostic criteria of Autism, severity level 1. De Armas administered the Wechsler Adult Intelligence Scale-IV, standardized assessment in the area of cognitive ability, which confirmed claimant's general challenges with verbal comprehension and perceptual reasoning, reflected in the school district's earlier assessments, which included more definitive assessments of his auditory processing disorder.

30. De Armas conducted assessments that were not administered previously by the school district to assess Autism. De Armas administered the Autism Diagnostic Observation Schedule, Second Edition) (ADOS-2) which consisted of his interview with claimant. The assessment includes a series of interview questions and provides an opportunity to observe eye contact, facial expression, insight and reciprocal communication. During his interview, claimant disclosed social difficulties throughout his school, college and job interviews, where he was not called back after his initial interviews. De Armas observed that claimant had difficulty engaging in reciprocal communication, made limited use of gestures, but had appropriate eye contact. Claimant could not comment on others' emotions and had difficulty with empathy.

Claimant did not engage in stereotyped or idiosyncratic use of phrases. Based on claimant's overall scores on the ADOS-2, de Armas concluded he qualified as an individual with Autism.

31. De Armas administered the Vineland-3, which measures claimant's adaptive functioning in several areas including communication, daily living and socialization, which includes interpersonal relations, play and leisure. De Armas found that his communication and daily living skills were a relative strength and socialization was a relative weakness. (Exhs. RC-15 and 6.)

32. De Armas administered the Personality Assessment Screener (PAS), which measures socialization, but which is used in health care and mental health settings to screen for clinically significant emotional and behavioral problems requiring follow-up. In that assessment, De Armas identified the likelihood that follow-up assessments are "very likely to identify significant problems with depression, anxiety, tension, worry and feeling demoralized." (Exhs. RC-15 and 16.)

33. De Armas interviewed Mother twice. In his first interview in March, Mother did not have a good recall of claimant's early developmental milestones and admitted she could not remember when he spoke his first words because she had ten children. She did recall claimant was isolated from his peers and did not have friends from school. She did not know claimant's current psychiatric issues but stated he did take street drugs and became aggressive when he used drugs and when he did not use psychotropic medications. (Exh. RC-15.) De Armas administered the Gilliam Autism Rating Scale, Third Edition (GARS-3), which elicited specific information from Mother alone, although the assessment is also given to others, including teachers. Mother reported highest elevations in the area of social interaction and maladaptive speech, providing a basis for De Armas's diagnosis of Autism, at a severity level of 1.

34. During his second interview with Mother, De Armas administered the Autism Spectrum Disorder DSM-5 Parent Interview, a structured interview designed to assess childhood symptoms and criteria for Autism. In this interview, Mother recalled claimant's deficits which were signs of Autism during the developmental period, including his odd use of his hands to grasp objects, rare use of simple gestures like pointing, waving bye or shaking his head to indicate "no," and his inability to imitate faces, start a conversation. Mother reported deficits in developing and maintaining relationships, rare demonstrations of interest in other children, making friends or engaging in pretend play, and his lack of understanding of being teased or bullied. Other unusual behaviors were noted: highly restricted fixed interests in one specific toys, fear of loud sounds and sensitivity to touch, e.g., brushing his teeth.

35. During the hearing, Sister testified and supported Mother's report of claimant's social deficits. Sister had a specific recall of claimant having significant social issues when he was young which included his extreme aversion to going to large family gatherings. His aversion was so severe Mother often had to stay behind with him. Sister recalled he was a "different kid" not like his siblings or many cousins. He did not have friends and he generally played alone. Sister had some familiarity with Autism because one other family member, a cousin's daughter has Autism. Claimant's sister was aware of his use of illegal substances which she speculated began at or around the age of 20, but this did not affect the credibility of her testimony about claimant's early childhood.

36. De Armas used the criteria set forth in the DSM-5 to evaluate whether claimant met the criteria for a diagnosis of Autism Spectrum Disorder (299.0). (Exh. RC.-19.) De Armas's conclusions are in bold. The DSM-5 criteria are 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.

Met (on ADOS-2 and GARS-3)

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 (on ADOS-2, GARS-3, and ASD DSM-5 Parent Interview)

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 (on ASD DSM-5 Parent Interview)

Specify current severity:

**Severity is based on social communication impairments
and restricted repetitive patterns of behavior**

[Italics and bolding in original.]

**De Armas identified claimant as Level 1 in behaviors
and social communication – with accompanying
intellectual impairment (but not intellectual disability)
and without accompanying language impairment**

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 stereotypies, lining up toys or flipping objects, echolalia, idiosyncratic phrases).
2. Insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior (e.g., extreme distress at small changes, difficulties with transitions, rigid thinking patterns, greeting rituals, need to take same route or eat 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 interest).

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 of objects, visual fascination with lights or
movement).

Met (on ASD DSM-5 Parent Interview)

Specify current severity:

**Severity is based on social communication impairments
and restricted, repetitive patterns of behavior**

[Italics and bolding in original.]

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).

Met (on ASD DSM-5 Parent Interview)

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

De Armas found significant social impairment

E. These disturbances are not better explained by intellectual disability (intellectual developmental 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.

De Armas considered his adaptive ratings much higher than that of an individual with intellectual disability and generally in the average range with the exception of socialization. He did not think the other higher scores supported a diagnosis of intellectual disability. Also, claimant's retention of a job at Subway for two to three years and his position as a shift leader, and his ability to maintain competitive employment did not support a diagnosis of intellectual disability.

(DSM-5, pp. 50-51.)

37. De Armas disagreed with claimant's diagnosis of schizophrenia and discounted claimant's mental health issues. De Armas acknowledged that claimant was placed on a psychiatric hold during 2019 and diagnosed with schizophrenia, depression and anxiety. He acknowledged claimant abused methamphetamines and that claimant's report of using it once a week was probably an underestimate because generally substance abusers underreport their usage. De Armas disputed the diagnosis

of schizophrenia because claimant did not have the persistent hallmarks of schizophrenia including ongoing auditory hallucinations.

38. De Armas discounted student's school records. He never mentioned them in his report and during cross-examination said he looked at the triennial evaluation but did not see any reference to Autism. When asked during cross-examination about the positive reports from the school, including his friendly and calm demeanor and easy rapport, or positive attitude and grasp of instructions De Armas stated that was not the "bland" person he saw during the interview. He stated that the school records were not consistent with Mother's observations at home and that Mother did not fully appreciate at the time claimant's deficits. De Armas admitted claimant was able to maintain eye contact, which he said was consistent with his diagnosis of Autism with a severity level of 1. He also admitted that claimant's auditory processing disorder could impact his ability to socialize with other children.

39. De Armas's assessment addressed claimant's developmental period primarily through Mother's recollection. Mother may have not been fully appreciative of the full nature of claimant's deficits during his developmental period. While claimant's diagnosis of a SLD due to a severe auditory processing disorder was accurate, De Armas raised a credible diagnosis of Autism based upon his interviews and observations. While there were weaknesses in his assessment, brought out on cross-examination, including the impact of claimant's substance abuse and depression on his affect, the limitations of interviewing and observing claimant in the Twin Towers, the over-reliance on Mother's recollection, the Service Agency failed to administer its own assessment which would have been able to confirm or dispute De Armas's expert report and testimony. As such, claimant met his burden of proof that he is an individual with Autism with a severity level of 1.

40. Claimant however failed to meet his burden of proof that he has a substantial disability which could be attributed to an eligibility of Autism. Aside from his social deficits, claimant failed to provide sufficient evidence that claimant suffered from substantial deficiencies in three of the seven areas specified under the Lanterman Act. Claimant's history during his developmental period and after, as well as his behavior with Vargas, during his psycho-social assessment, establish that he was not substantially disabled by his diagnosis of Autism, severity level 1.

LEGAL CONCLUSIONS

1. An administrative hearing to determine the rights and obligations of the parties, if any, and to appeal a contrary service agency decision is available under the Lanterman Act. (Welf. & Inst. Code, §§ 4700-4716.) Claimant requested a hearing to contest Service Agency's denial of eligibility for services under the Lanterman Act and therefore jurisdiction for this appeal was established. (Factual Findings 1-5.)

2. Throughout the applicable statutes and regulations (Welf. & Inst. Code, §§4700-4716, and Cal. Code Regs., tit. 17, §§ 50900-50964), the state level fair hearing is referred to as an appeal of the Service Agency's decision. Where a claimant seeks to establish his eligibility for government benefits or services, the burden is on the appealing claimant to demonstrate that the Service Agency's decision is incorrect. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, claimant bears the burden of proving, by a preponderance of the evidence, that he is eligible for government benefits or services. (See Evid. Code, § 115.) Claimant has not met his burden of proof in this case.

3. 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 age 18 years, 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.

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

'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:

- (1) Self-care.
- (2) Receptive and expressive language.
- (3) Learning.
- (4) Mobility.
- (5) Self-direction.
- (6) Capacity for independent living.

(7) Economic self-sufficiency

5. In order to establish eligibility, a claimant's substantial disability must not be solely caused by an excluded condition. The statutory and regulatory definitions of "developmental disability" (Welf. & Inst. Code, § 4512 and Cal. Code. Regs., tit. 17, § 54000) exclude conditions that are solely physical in nature. California Code of Regulations, title 17, section 54000, also excludes conditions that are solely psychiatric disorders or solely learning disabilities. Therefore, impaired intellectual or social functioning which originated as a result of a psychiatric disorder, if it was the individual's sole disorder, would not be considered a developmental disability.

6. The Lanterman Act has not been revised since the publication of the DSM-5 to reflect the current terminology of Autism Spectrum Disorder. Nevertheless, eligibility determinations using the DSM-5 should treat Autism as synonymous with Autism Spectrum Disorder and will be treated as such in this matter.

Disposition

7. Claimant met his burden of proof that he is an individual with Autism, severity level one, primarily due to his social deficits, and based primarily on assessment measures which relied upon more in-depth questioning of Mother, and De Armas's interview of claimant where he elicited from claimant his consistent history of social isolation. De Armas's assessment was not without flaws because his interviews and observations of claimant were in an unnatural environment, the Twin Towers, and relied mostly on Mother's recollection, which was admittedly imperfect. However, given De Armas's qualifications, long-standing experience, and the absence of a contrary expert report from the Service Agency, De Armas's diagnosis was supported by sufficient foundation.

8. Claimant failed to meet his burden of proof that he suffers from a substantial disability arising from a diagnosis of Autism entitling him to Service Agency's services. Claimant failed to sufficiently counter the more persuasive evidence from claimant's school records and Vargas's psycho-social assessment that he was generally capable of functioning in five or six of the seven areas identified in Legal Conclusion 4. Claimant's learning deficits were not the result of Autism, but even assuming they were, he does not meet the criteria of substantial disability. Based upon his diagnosis of Autism, claimant may have not suffered solely from an excluded psychiatric condition or learning disorder, disqualifying him from services, according to Legal Conclusion 5, but prior to the time his substance abuse and psychiatric disorders became manifest, he was generally capable of performing the skills of daily living, including working, attending school, driving a car, and doing chores, and did not demonstrate that he was not capable of living independently.

ORDER

Claimant's appeal is denied. Claimant is not eligible for services as an individual substantially disabled by Autism pursuant to the Lanterman 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.