BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

v.

GOLDEN GATE REGIONAL CENTER, Service Agency.

OAH No. 2020090381

DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on January 25 through 27, 2021, by videoconference.

Attorney Jeffrey A. Gottlieb represented claimant, who was not present for the hearing.

Attorney Erin Donovan represented service agency Golden Gate Regional Center (GGRC).

The record was held open for submission of written argument. Claimant and GGRC timely submitted written closing argument. The matter was submitted for decision on March 8, 2021.

ISSUE

Is claimant eligible for services under the Lanterman Developmental Disabilities Services Act (the Lanterman Act, Welf. & Inst. Code, § 4500 et seq.)?

FACTUAL FINDINGS

1. Claimant was born in 1993. She applied first for Lanterman Act services in September 2019, when she was 26 years old. After evaluating claimant, GGRC denied her application. She appealed.

2. Claimant alleges that she qualifies under the Lanterman Act for services from GGRC because she has autism spectrum disorder, and because this disorder constitutes a substantial disability for her. Claimant does not allege that she qualifies for any other reason, and presented no evidence at the hearing regarding other possibly qualifying conditions.

3. Both claimant and GGRC presented voluminous evidence in this matter. The findings below summarize only the most relevant and probative evidence.

Diagnostic Criteria for Autism

4. The American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), describes the modern criteria for diagnosis of autism spectrum disorder. According to the DSM-5, a person meeting these criteria has autism spectrum disorder.

A. Persistent deficits in social communication and social interaction across multiple contexts, as manifested by the following, currently or by history . . . :

1. Deficits in social-emotional reciprocity, ranging, for example, from abnormal social approach and failure of normal back-and-forth conversation; to reduced sharing of interests, emotions, or affect; to failure to initiate or respond to social interactions.

2. Deficits in nonverbal communicative behaviors used for social interaction, ranging, for example, from poorly integrated verbal and nonverbal communication; to abnormalities in eye contact and body language or deficits in understanding and use of gestures; to a total lack of facial expressions and nonverbal communication.

3. Deficits in developing, maintaining, and understanding relationships, ranging, for example, from difficulties adjusting behavior to suit various social contexts; to difficulties in sharing imaginative play or in making friends; to absence of interest in peers.

[¶]. . . [¶]

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

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

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

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

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

[¶]. . . [¶]

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

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

E. These disturbances are not better explained by intellectual disability (intellectual developmental disorder) or global developmental delay.

5. Autism spectrum disorder is a developmental disorder. A person's expression of this disorder may vary depending on the person's age, and on the behavioral strategies a person may have learned from experience. Nevertheless, and as diagnostic criterion C reflects, a factor that distinguishes autism spectrum disorder from some other disorders that may produce similar adult behavior is that the diagnostic features of autism spectrum disorder are present from early childhood.

6. Autism spectrum disorder is not a degenerative disorder: Its significant symptoms do not worsen over time. In addition, and as diagnostic criterion A reflects, its significant symptoms are apparent and persistent in multiple contexts. They do not appear and disappear depending on environment or companions, although variations in environment or companions may affect the degree of impairment that symptoms cause.

7. Autism spectrum disorder is not a psychiatric disorder. It does not reflect mood dysregulation, hallucination, or delusion. It often is comorbid with psychiatric disorders, however. The DSM-5 notes that "[a]dolescents and adults with autism spectrum disorder are prone to anxiety and depression," and that as many as 70 percent of people with autism spectrum disorder also have at least one other psychological disorder.

8. The DSM-5 states that clinicians should not diagnose autism spectrum disorder in a person who "shows impairment in social communication and social interactions but does not show restricted and repetitive behavior or interests." It recommends consideration of a "social (pragmatic) communication disorder, instead of autism spectrum disorder," for such a person.

9. Between 2000 and 2013, a prior edition of the Diagnostic and Statistical Manual of Mental Disorders gave diagnostic criteria for several similar disorders grouped generally as "pervasive developmental disorders." In general, the essential features of "autistic disorder" were "markedly abnormal or impaired development in social interaction and communication and a markedly restricted repertoire of activity and interests." "Asperger's disorder" also involved "severe and sustained impairment in social interaction" and "restricted, repetitive patterns of behavior, interest, and activities," but without "clinically significant delays or deviance in language acquisition." In both "autistic disorder" and "Asperger's disorder," "the impairment in reciprocal social interaction is gross and sustained."

10. The DSM-5 collapses the distinction between these disorders, noting that "many individuals previously diagnosed with Asperger's disorder would now receive a diagnosis of autism spectrum disorder without language or intellectual impairment."

Claimant's Characteristics in Childhood and Adulthood

11. Claimant was born about seven weeks prematurely. She spent about one week in newborn intensive care at Lucile Salter Packard Children's Hospital before being discharged to a different hospital nursery, where she stayed for almost two more months.

12. Claimant received follow-up care in early childhood through an infant developmental clinic associated with Lucile Salter Packard Children's Hospital. When she was 20 months old, she was an "active and alert toddler" who could "name and list four body parts and two animals," but who usually communicated "by pointing." When claimant was 26 months old, she was an "active, pleasant and alert toddler" who was "able to perform all of the tasks expected for a 2-year-old." She could "name a few friends," and her "vocabulary was easily understood and she combined words well." Examining pediatricians described claimant as "progressing very normally" in development.

13. Claimant's mother testified, and reported on claimant's application to GGRC, that claimant "stopped talking" when she was about five years old (late 1998). According to claimant's mother's testimony, claimant spoke only rarely, and softly, for several years, and when she did speak she muttered or used an odd voice. Claimant's mother also testified that claimant interacted poorly with her classmates during these years, in part because of her speech problems.

14. The testimony described in Finding 13 was inconsistent with contemporaneous school records. The school records describe claimant between 1999 and 2001 as using a soft or "silly" voice under stress, such as when a teacher asked her to speak to the whole class. They also describe difficulty articulating certain

consonants. At the same time, these records describe claimant as able to "express her ideas well when she makes the effort to speak clearly," and as using "conversation . . . to negotiate meaning and generate responses." Her kindergarten teacher described claimant as "happy to play with her friends each day," and as "polite and helpful in the classroom and on the playground." In light of these school records, claimant's mother's exaggerated description of claimant's early childhood communication problems was not credible.

15. Between 1999 and 2004, claimant received special education services to address the pronunciation problem described in Finding 14. The evidence did not establish that claimant received any other special education services or academic accommodations for disability before college. Her individualized education plan from February 2004 notes that claimant continued then to "lisp," but that her "Proacademic/academic/functional skills" were "good," and that her "Social/Emotional development" was "normal."

16. Little information was in evidence about claimant's behavior or development during her middle school years. Her mother testified that during this period claimant developed a strong interest in Komodo dragons, and attempted often to engage others in conversation about them. Claimant's mother's testimony was credible, but did not establish that claimant's interest in Komodo dragons during this period was perseverative, exceeding the degree to which many children in early adolescence develop strong interests that their parents do not share.

17. Claimant's mother and father lived together with claimant when claimant was young, but separated in late 2009. Claimant chose to live with her father, and had little contact with her mother between 2009 and 2013. In spring 2010 (at age 16), with her father's encouragement, claimant took and passed the California High School

Proficiency Examination.[1] She received a high school Certificate of Proficiency in June 2010, and stopped attending high school after receiving it.

18. Claimant resumed living with her mother in 2013, when claimant was about 20 years old. Claimant received a diploma from Sequoia District Adult School in 2015, and an Associate of Arts degree from Cañada College in December 2018. While she was a student at Cañada College, claimant received additional examination time in a "distraction reduced setting" as a disability accommodation. The evidence did not establish that claimant received any other special education services or academic accommodations for disability during college.

19. Claimant's mother believes that claimant experienced significant trauma between 2009 and 2013. She holds this belief in part because in mid-2013, claimant briefly was the subject of an investigation by a county adult protective services agency. No witness identified the exact nature of the trauma(s) claimant experienced during this period, however. In addition, claimant and her mother declined to make records from this period available to GGRC from any social service agency, court, or medical provider.

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[1] Claimant's mother testified that claimant had chosen to test out of high school because the busy, noisy environment was unpleasant for her. She also testified, however, that she had no contact with claimant for several months after December 2009, until she obtained a court order directing claimant's father to disclose claimant's whereabouts to her. The evidence did not establish that claimant's mother knew or knows why claimant chose to leave high school after two years.

20. On claimant's application for Lanterman Act services, claimant's mother reported that claimant had been diagnosed with autism spectrum disorder, attention deficit hyperactivity disorder, and "major depressive disorder with psychotic features."[2] She reported as well that claimant began taking escitalopram (an antidepressant medication) and benztropine (a medication to address potential motor side effects from antipsychotic medications) in 2013, and Geodon (an antipsychotic medication) in 2014, and confirmed in testimony that claimant still takes these medications. Claimant and her mother declined to make any psychiatric treatment records available to GGRC, however. For this reason, the evidence did not establish what behavior or experiences caused claimant to receive mental health treatment, what other medications claimant may have taken, or what non-medication mental health care claimant may have received or may continue to receive.

21. Since she resumed living with her mother, claimant has worked in a few different cafés or delicatessens, serving and selling food and drinks. She also has worked in the floral department at a supermarket. The evidence did not establish that any of claimant's employers ever fired her because she was unable to satisfy their expectations, although claimant's mother testified to various challenges she believes claimant to have experienced in employment.

22. Claimant's mother operates a small group home for older developmentally disabled women. Claimant works for her mother, and both of them live at the facility. Claimant prepares meals for residents; helps them bathe and dress; leads them in art projects; and helps them use electronic devices for entertainment.

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[2] Claimant's mother did not state who had diagnosed attention deficit hyperactivity disorder or major depressive disorder in claimant, or when.

Claimant's mother testified that claimant performs all these tasks only under direct supervision, and that she never leaves claimant alone at home because she does not believe that claimant would be able to respond properly to any kind of emergency.

23. Claimant cooks. She prefers to use an electric induction hot plate instead of an open burner on a gas stove, because the open flame makes her anxious. She also uses an oven. In interviews with GGRC representatives, claimant did not describe any unusual dietary preferences. Her mother described claimant as a very picky eater, however, and stated that claimant usually eats from a mug rather than from a plate.

24. Claimant's mother testified that claimant receives about $2,400 per month in wages. Claimant manages her own money, although her mother says she does so poorly. Claimant spends money on transportation (as stated in Finding 25), and enjoys buying and using makeup. The evidence did not establish claimant's other major expenses.

25. Claimant has never learned to drive, and stated in interviews that she fears that she could cause a traffic accident. Nevertheless, she is able to navigate independently in the community, primarily by walking and using ride-sharing services. Claimant stopped taking the bus a few years ago after a frightening incident in which she believed another passenger had followed her off the bus intending to harm her.

26. In December 2019, claimant traveled by herself to Australia to visit extended family members. The evidence did not establish how long she stayed, or what she did during her trip. The evidence also did not establish whether claimant ever had travelled internationally, either alone or with companions, before this trip.

Eligibility Evaluations

27. A three-member team from GGRC evaluated claimant. The evaluation team comprised social worker Mariana Cardenas, pediatrician John Michael, M.D., and clinical psychologist Elsie Mak, Ph.D. Cardenas and Mak met claimant, and all three team members reviewed medical and educational records she and her mother had made available to GGRC. For reasons stated more fully in Findings 37 and 38, the GGRC team determined that claimant is not eligible for Lanterman Act services.

28. Claimant relies on an evaluation by Kylie Billingsley, Ph.D. Dr. Billingsley also met claimant, and reviewed records about her including records that were not available to GGRC. Dr. Billingsley diagnosed claimant with autism spectrum disorder, and identified several ways in which she believes this disorder constitutes a substantial disability for claimant.

GGRC EVALUATION

29. Social worker Cardenas met claimant and claimant's mother at their home. She spoke with both of them, together. Cardenas observed that claimant participated in their conversation, but behaved in a "reserved" manner, avoiding eye contact and seeming reluctant at times to answer questions.

30. Claimant deferred to her mother during much of their conversation with Cardenas, but disagreed with her occasionally. For example, claimant's mother told Cardenas that claimant "dragged her feet" sometimes when walking. Claimant said that she had no problems walking (including walking the family dog), running, or using stairs, and that she recently had engaged a personal trainer to help her work out more effectively at her gym.

31. Psychologist Mak met claimant at GGRC. She spoke briefly with claimant and claimant's mother in the reception area. Claimant then accompanied Dr. Mak to Dr. Mak's office for diagnostic testing and interviewing.

32. When Dr. Mak first met claimant and her mother in the reception area, claimant avoided eye contact with Dr. Mak, and deferred to her mother. When they left for Dr. Mak's office, however, claimant's "demeanor changed significantly," becoming "socially engaged and talkative" as soon as they entered the elevator. In fact, claimant was so talkative during her first session with Dr. Mak that they ran out of time to complete the diagnostic assessments Dr. Mak had planned and needed to schedule a second appointment.

33. With Dr. Mak, claimant discussed her own experiences and emotions. She also discussed the care home residents empathetically, and she used cues from items in Dr. Mak's office and from their conversation to ask Dr. Mak appropriate, non-intrusive personal questions. Claimant used "emphatic and descriptive gestures" and facial expression, and generally engaged effectively in polite, reciprocal conversation.

34. Dr. Mak administered standardized cognitive testing and concluded that claimant has "strong intellectual abilities."

35. Dr. Mak also administered the Autism Diagnostic Observation Schedule (ADOS), a standardized assessment tool for autism spectrum disorder. Dr. Mak used Module 4, for adolescents and adults who speak fluently. During the ADOS, Dr. Mak observed essentially no traits or behaviors that Dr. Mak considered consistent with autism spectrum disorder. To the contrary, claimant continued reciprocal conversation with gestures and eye contact; showed "insight into several typical social

relationships"; and displayed no "unusual sensory interest," no "compulsion or rituals," and no "obvious anxiety."

36. Dr. Mak also asked claimant and her mother to have one of claimant's teachers complete a questionnaire (the Adaptive Behavior Assessment System, Third Edition, or ABAS-3) describing claimant's ability to perform various activities of daily living. Dr. Mak asked for an ABAS-3 from a teacher, and not from one of claimant's family members, because she knew that Dr. Billingsley had received, and relied upon, similar information from claimant's mother and half-sister (as described below in Findings 41 and 42). Dr. Mak hoped to supplement claimant's mother's reports with information from someone outside claimant's household, describing claimant's adaptive function in a community setting rather than at home.

37. Dr. Mak asked for the ABAS-3 in November 2019, but did not receive a completed ABAS-3 until July 2020. The person who completed the ABAS-3 identified herself in an accompanying letter as Carol Johnson, an "art teacher" and "licensed MFT" (marriage and family therapist) who had been working with claimant only for about five months.[3] Johnson explained that she knew little about claimant's daily activities or abilities, and "had to ask [claimant's] mother for much of the reported information." Although the answers claimant's mother and Johnson gave Dr. Mak about claimant on the ABAS-3 suggested that her adaptive function in many contexts was "below average," they did not demonstrate to Dr. Mak that claimant experiences substantial disability in major life activities.

[3] Johnson and claimant had interacted mostly by videoconference because of the COVID-19 pandemic.

38. Dr. Mak concluded that claimant meets none of the diagnostic criteria for autism spectrum disorder summarized in Findings 4 through 8. She does not have deficits in communication or social interaction that are severe or persistent in multiple contexts, and she does not have unusually restricted or repetitive behaviors or interests. Based on claimant's life history and self-description, Dr. Mak concluded that depression, anxiety, or both likely affect claimant's ability to make decisions and to direct her own adult life; but she concluded as well that with effective treatment, claimant likely would be able to hold a job and live independently. These opinions are persuasive.

BILLINGSLEY EVALUATION

39. Dr. Billingsley is a psychologist in private practice. Before moving into her own private practice, Dr. Billingsley spent about eight years as a staff psychologist at Kaiser Permanente in Redwood City.

40. In approximately 2015, claimant's treating psychiatrist at Kaiser Permanente referred claimant to Dr. Billingsley for assessment. Dr. Billingsley testified that she reviewed claimant's mental health treatment records at that time, but that she kept no notes and does not recall whether the records gave her any important information. Although Dr. Billingsley acknowledged in her written report that claimant's psychiatric diagnoses involve psychosis, her report expresses doubt that claimant ever has experienced true psychosis. Neither Dr. Billingsley's report nor her testimony provided any support for this speculative statement.

41. Dr. Billingsley also interviewed claimant's mother about claimant in 2015, and received an ABAS-3 from claimant's half-sister.[4] Dr. Billingsley did not complete a diagnostic evaluation of claimant in 2015.

42. In 2019, claimant returned to Dr. Billingsley for evaluation. Like the GGRC evaluation team, Dr. Billingsley reviewed educational and medical records from claimant's childhood. She also relied heavily on claimant's mother's descriptions of claimant, both as a small child and as a young adult. Dr. Billingsley also administered several standardized assessments to claimant. Finally, Dr. Billingsley sought information about claimant's then-current adaptive functioning by having claimant's mother and half-sister jointly complete a Vineland Adaptive Behavior Scales (VABS) rating form.

43. Dr. Billingsley misconstrued some records regarding claimant's early childhood development and education. For example, she stated in her report, and testified, that claimant did not yet speak two-word phrases when claimant was 2.9 years old; in fact, as stated above in Finding 12, claimant did not use multi-word phrases when she was 20 months old but had progressed to fluent conversation by the time she was 26 months old. Dr. Billingsley also testified that claimant's school records reflect that claimant needed significant one-on-one support to maintain focus. The only corroboration for this assertion came from claimant's mother's testimony, however, not from any documents in evidence. Dr. Billingsley testified that educators and physicians who evaluated claimant when claimant was young likely failed to notice (or misunderstood) subtle differences between claimant and other children that

[4] According to claimant's mother, claimant's half-sister is about 15 years older than claimant. They have never lived together.

resulted from claimant's autism spectrum disorder, but especially in light of the matters stated in Finding 9 this speculation was neither credible nor persuasive.

44. Like Dr. Mak, Dr. Billingsley administered standardized cognitive testing and concluded that claimant has average to high average intelligence.

45. Dr. Billingsley also administered the ADOS, Module 4, to claimant. Her report does not state claimant's scores, but states that claimant "meets criteria for an autism spectrum disorder." Dr. Billingsley's qualitative descriptions of claimant during the ADOS state that claimant "offered new information about her thoughts, feelings and experiences on several occasions," but "struggled with appropriately responding to the examiner's comments about her thoughts, feelings, or experiences." Claimant "demonstrated a strength in using extensive verbal and nonverbal behavior for social interchange." Dr. Billingsley noted that claimant "displayed slight occasional sensory behavior," but did not explain this observation.

46. Dr. Billingsley summarized the information she received about claimant from the VABS as showing "deficits in her adaptive behavior across all domains, with significant weaknesses in the domain of Socialization." Her report also offered a chart, stating that claimant's age-equivalent ability to do various activities, as reported by her mother and half-sister on the VABS, ranged from a high of 19 years for "domestic" tasks such as cooking to a low of less than 2 years for "interpersonal relationships." Dr. Billingsley characterized the VABS responses about claimant as likening claimant to a preschool-age child in her ability to "demonstrate[] responsibility & sensitivity to others," to entertain herself, and to understand what others say to her. In her testimony, Dr. Billingsley made little effort to reconcile claimant's mother's and half-sister's reports (characterizing claimant as childlike and incompetent in almost

every adult activity including basic conversation) with either her own direct observations of claimant or with Dr. Mak's observations.

47. Dr. Billingsley testified that she did not analyze how "trauma," anxiety, or possible post-traumatic stress disorder from claimant's experiences between 2009 and 2013 might affect claimant's current daily life, because she viewed these issues as being "outside the scope" of her assessment.

ANALYSIS

48. The medical and educational records summarized in Findings 12 through 17 characterize claimant as a child who progressed more or less normally, without suggestion from any teacher or health care provider that she had a developmental disability, until she left her mother's home and tested out of high school at age 16. During the next four years, as summarized in Findings 17 through 20, claimant experienced unspecified trauma and began receiving psychiatric treatment. Despite these challenges, and as summarized in Finding 17, claimant has completed a college degree.

49. Dr. Billingsley diagnosed claimant with autism spectrum disorder. Her diagnosis relies on an understanding of claimant's early childhood development that is uncorroborated at best and inaccurate at worst (as summarized in Finding 43). It also overemphasizes claimant's mother's description of claimant's childhood struggles in communication and social relationships, while minimizing Dr. Billingsley's own personal observations of claimant's conversational ability and sensitivity to her own and others' emotional experiences. Finally, and as summarized in Findings 40 and 47, Dr. Billingsley's diagnosis treats claimant's trauma and mental illness as inconsequential to her current adaptive function, rather than as formative experiences.

Measured against the DSM-5 criteria summarized in Findings 4 through 8, Dr. Billingsley's diagnosis is not persuasive.

50. Dr. Billingsley also concluded that claimant's autism spectrum disorder is substantially disabling, because it makes claimant unable to maintain adult relationships, to plan and carry out adult life choices, and to hold employment outside her home. In light of all the matters stated in Findings 21 through 26, 32, and 33, this conclusion also is not persuasive.

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4500 et seq.) Lanterman Act services are provided through a statewide network of private, nonprofit regional centers, including GGRC. (*Id.*, § 4620.)

2. A "developmental disability" qualifying a person for services under the Lanterman Act is "intellectual disability, cerebral palsy, epilepsy, [or] autism," or any other condition "closely related to intellectual disability or [requiring] treatment similar to that required for individuals with an intellectual disability." (Welf. & Inst. Code, § 4512, subd. (a); see Cal. Code Regs., tit. 17, § 54000, subd. (a).)

3. As set forth in Finding 2, claimant did not contend that she is eligible for Lanterman Act services because of intellectual disability, cerebral palsy, epilepsy, or a condition similar to intellectual disability. As set forth in Findings 38 and 49, the evidence did not demonstrate that claimant has autism spectrum disorder.

4. A qualifying disability must be "substantial," meaning that it causes "significant functional limitations in three or more of the following areas of major life activity . . . : (A) Self care. (B) Receptive and expressive language. (C) Learning. (D) Mobility. (E) Self direction. (F) Capacity for independent living. (G) Economic self sufficiency." (Welf. & Inst. Code, § 4512, subds. (a), (l)(1); Cal. Code Regs., tit. 17, § 54001, subd. (a)(2).)

5. The evidence, as summarized in Findings 38 and 50, did not establish that claimant has such "substantial" disability from any cause.

ORDER

Claimant's appeal from GGRC's determination that claimant is ineligible for services under the Lanterman Act is denied.

DATE:

JULIET E. COX
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.