

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

In the Matter of:

CLAIMANT,

vs.

Westside Regional Center,

Service Agency.

OAH No. 2020100397

DECISION

Marlo Nisperos, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on June 3, 2021. Candace Hein, Fair Hearing Specialist, represented Westside Regional Center (WRC or Service Agency). Claimant was represented by Parent.

Testimony and documents were received in evidence, and argument was heard. The record closed and the matter was submitted for decision on June 3, 2021.

ISSUE

Is Claimant eligible to receive services from WRC based on the qualifying condition of Autism Spectrum Disorder, Intellectual Disability or Fifth Category?

EVIDENCE

Documentary: Service Agency Exhibits 1 through 10; Claimant Exhibits A through L.

Testimonial: Kaley Shilakes, Psy.D, Intake Manager and Staff Psychologist; Candace Hein, Fair Hearings Specialist; Claimant's Parent.

FACTUAL FINDINGS

1. Claimant is an 18-year-old female former consumer of WRC who lives in the family home with her parents, and three siblings.

2. On August 18, 2020, WRC sent a Notice of Proposed Action (NOPA) and denial letter to Claimant informing her that WRC had determined she is not eligible for regional center services. Claimant requested a fair hearing.

3. This matter arose after Parent requested WRC to find Claimant again eligible for services. Claimant was exhibiting behaviors that Parent felt were similar to those displayed when Claimant received WRC services as a child. Parent wanted WRC to support Claimant as she becomes more independent and enters adulthood.

4. Claimant received WRC early intervention services in March 2005 when she was three years old. (Exhibit L.) Claimant was initially referred to WRC by her pediatrician due to concerns regarding her expressive communication skills. Parent was worried that Claimant mumbled her words and was difficult to understand. Parent also observed Claimant had sensory integration problems, displayed tantrums and was not social with new people; Claimant had to approach them on her own terms. (Exhibit L, p. 2.)

5A. WRC conducted a psychodiagnostic assessment on February 1, and February 17, 2005. (Exhibit K.) Claimant was an active and engaging toddler who attained her motor milestones early, but her development was delayed. Claimant's social and self-regulatory deficits interfered with her ability to participate in standardized assessments. As a result, the assessor was unable to obtain an accurate estimation of her cognitive development. Claimant's interactions with assessment materials suggested global delays, but her age appropriate self-care skills suggested intact overall abilities. The assessor observed Claimant's motor skills were age appropriate, but her language skills were severely delayed.

5B. The assessor opined that Claimant's behaviors were consistent with the characteristics of Pervasive Developmental Disorder. The opinion was based on Claimant showing 1) inconsistent and qualitatively questionable impairment in social interactions, 2) significantly delayed language development, and 3) some repetitive play. The assessor gave Claimant a provisional diagnosis of Pervasive Developmental Disorder – Not Otherwise Specified (PDD-NOS) and recommended a reevaluation to clarify this diagnosis. (Exhibit K, p. 7.) The PDD-NOS diagnosis was contained in the *Diagnosics and Statistical Manual of Mental Disorders, 4th edition (DSM-IV)*, the edition in use at the time of the assessment. A PDD-NOS diagnosis was given when an

individual displayed some characteristics of Autism Spectrum Disorder (ASD) but did not meet all criteria.

6. WRC and Parents developed Claimant's individualized family services plan based on the assessment. Claimant received the following services: speech therapy, occupational therapy and in-home behavior support. Claimant engaged in these services while attending private school. (Exhibit J, p. 1.)

7A. WRC conducted a psychological evaluation on June 6, 2005, when Claimant was age 2 years 10 months and 18 days, to evaluate her level of functioning for the purpose of clarifying diagnostic presentation and determining ongoing need for regional center eligibility. (Exhibit J.) Claimant displayed a broad scattering of non-verbal cognitive abilities, with the ceiling falling eight months below age level and low language scores negatively impacting her overall mental composite score. (Exhibit J, p. 7.) The assessor opined Claimant had the potential to obtain higher cognitive skills and required substantial support to develop attention skills and increase reciprocal language use.

7B. The assessor opined that Claimant met the criteria for the diagnosis of PDD-NOS and Attention Deficit Hyperactivity Disorder (ADHD). Claimant's performance scores suggested functioning in the mildly developmentally delayed range at that time. (Exhibit J, p. 8.) The assessor recommended a reevaluation in two years to update her level of functioning.

7C. Claimant continued to receive regional center services through WRC after age three.

8. On August 31, 2009, WRC informed Parent that based on the most recent psychological evaluation on May 11, 2009, she was no longer eligible for WRC services.

(Exhibit 10.) Claimant showed improvement in her overall development demonstrated by her performance at or near age level in most areas. (Exhibit 9.) WRC recommended that, although Claimant's case would be closed, Claimant could benefit from social skills programs and community activities to increase her peer relations and self-regulation skills. (*Ibid.*)

9A. Claimant received educational support from the school district pursuant to an individualized education program (IEP) from 2005 through 2007, and from 2009 until she graduated from high school with a diploma in June 2020. Claimant's most recent IEP of May 7, 2019, when she was in the 11th grade, showed she was eligible for special education services under the primary category of specific learning disability (SLD) and secondary category of other health impairment (OHI). (Exhibit 5.)

9B. The 2019 IEP reported that Claimant continued to display similar difficulties that she displayed when receiving services from WRC in June 2005. (Exhibit 5, p. 1.) According to teacher reports, interviews and observations, Claimant displayed significant difficulties attending to classroom instruction for more than a few minutes at a time. Claimant demonstrated hyperactivity/impulsivity, difficulty being quiet, and learning problems were noted across raters and settings. (*Ibid.*)

10A. The most recent psychoeducational evaluation of April 18, 2018, showed that, in academic testing, Claimant presented with low to below average skills with significant weaknesses noted in her math and written expression abilities. (Exhibit A, p. 24.) Claimant's cognitive functioning was within the low average range when compared to same aged peers. (*Ibid.*) Claimant's cognitive performance was within the low average to average range with difficulties in visual processing and attention. Claimant's performance was consistent with her assessment results in November 2015 and November 2012. (Exhibit 5, p. 4.)

10B. At the May 7, 2019 IEP team meeting, Claimant's English teacher commented that Claimant is able to thoroughly fulfill curricular expectations when she applied herself. (Exhibit 5, p. 4.) As an example, the teacher shared that Claimant wrote much more than anticipated on a research paper.

11. The 2018 psychoeducational report summarized the results of each triennial reassessment conducted by the school for Claimant's eligibility for special education services. (Exhibit A, pp. 2 - 4.)

(A) The November 2015 psychoeducational evaluation, when Claimant was in the eighth grade, showed that her nonverbal cognitive abilities were within the average range. (Exhibit A, p. 4.) Claimant qualified for special education services under the primary category of SLD and secondary category OHI. The report reflected that she showed symptoms of inattention, hyperactivity, aggression, conduct problems, and attention/learning problems in the home and school settings.

(B) The November 2012 psychoeducational evaluation, when Claimant was in the fifth grade, noted that Claimant displayed significant difficulties with attention, specifically inattentive behaviors. (Exhibit A, p. 4.) Claimant qualified for special education services under the primary category of deaf and hard of hearing (DHH), consistent with her medical history of hearing difficulties, and secondary eligibility of OHI. (Exhibit A, p. 4.)

(C) The April 2010 psychoeducational evaluation, when Claimant was in the second grade, estimated her cognitive abilities fell in the low average range. Claimant performed in the below average range in the academic areas of written language, reading comprehension and decoding. (Exhibit A, p. 4.) Claimant met eligibility criteria for special education under the category DHH due to mild high frequency hearing loss.

Claimant also met eligibility criteria for OHI based upon her display of heightened alertness to environmental stimuli that resulted in limited alertness with respect to her educational environment.

(D) The February 2009 psychoeducational evaluation, when Claimant was in the first grade, established her eligibility for special education services under the category DHH. Claimant was also found eligible for services based on OHI because of a medical diagnosis of ADHD – combination type and as a student with speech and language impairment. (Exhibit A, p. 3.) Claimant also was eligible for special education services as an Autistic-like student due to a medical diagnosis of Autism/Aspergers.

(E) The November 2007 psychoeducational evaluation, conducted when Claimant was five years old, demonstrated that Claimant had average visual perceptual skills and visual motor integration skills, and she had average to low average auditory memory skills. (Exhibit A, p. 3.) Claimant's low average phonological skills were attributed to difficulties with discrimination and hearing problems as a result of her medical history that reflected mild hearing loss. The IEP team believed that Claimant's performance may have been impacted by a possible hearing loss. In 2007, the IEP team did not recommend special education services for Claimant after assessments were conducted. (*Ibid.*)

12. Parent testified that Claimant exhibits behavior patterns that are consistent with the behaviors she displayed when receiving services from WRC. Parent described the following examples of Claimant's recent behaviors:

(A) When Parent asks Claimant to help clean the house, Claimant will have angry outbursts and will refuse Parent's request. Claimant will insist that she will clean her own room, rather than help with housework. While in her room, Claimant will get

distracted and will not clean her room. Claimant will also make a mess for the purpose of immediately organizing it. Parent believes this is similar to behavior problems observed during childhood when Claimant displayed distractibility, impulsivity, and unpredictable behavior.

(B) Claimant gets upset because Parent is unavailable to provide transportation for her on short notice. Parent complained that Claimant's behavior is reminiscent of the tantrums exhibited when she was a child.

(C) Parent went on a trip out of town and asked Claimant to retrieve mail for her. Claimant claimed to have looked for Parent's mail and said she could not locate it. But upon further questioning, Parent learned Claimant had not looked for the mail. Parent asked Claimant to send her a package in the mail, and Claimant was unable to follow Parent's multistep instructions to mail the package. Parent noted that as a child, Claimant experienced difficulties listening to instructions, and this is similar to Claimant's current behavior.

(D) If Parent drives a different route to a familiar destination, Claimant will react negatively. Also, when Parent changes plans to Claimant's schedule unexpectedly, Claimant will throw a tantrum and shut down. Parent believes this is a similar problem with transitions that Claimant displayed as a child by exhibiting oppositional behavior and being slow to adjust to people and new environments. Claimant still displays discomfort with talking to people she doesn't know and is selective with who she will talk to until she is comfortable.

(E) Claimant experienced a problem with the employment development department during COVID-19 related to unemployment funds. Claimant became overwhelmed with the situation and began crying. It took Claimant an extended period

of time to recover and get her emotions back under control. Claimant had difficulty self-regulating as a child and continues to exhibit problems with this behavior.

(F) Parent believes Claimant has sensory issues based on Claimant only eating certain foods, not liking the textures of certain food and not allowing food to touch on her plate.

(G) Parent contended that Claimant has a hard time expressing herself, and stated Claimant "does not have a filter" because she says inappropriate things and uses inappropriate language and tone. Parent has reminded Claimant that she is not on a reality show because she will sometimes imitate what she sees on television. Claimant does not engage in in-depth conversations, she only gossips or talks about what she has seen on television. Parent believes this is similar to the expressive and receptive language struggles Claimant displayed in the fifth grade.

13A. Parent earned a master's degree in special education and has a mild - moderate credential and teaching credential. Parent was previously employed as a special education teacher. Based on Claimant's needs and Parent's ability to provide additional instruction and support, Parent is currently working as a one-to-one aide at Claimant's school so she can be on the same campus as Claimant to provide additional support. Parent has worked with autistic children in her professional career and sees Claimant display similar behavior.

13B. Parent has provided support and instruction to Claimant at home and credit's the cooking skills Claimant has developed because of the extra support Parent provides. Claimant is able to cook because Parent has taught her how to cook by modeling the behavior. Claimant is capable of cooking recipes on her own by

following along with instructional videos available on YouTube; she does not read recipes.

13C. Parent spends extra time modeling behavior so Claimant can do things independently in the community. For example, Claimant can return items at a store and purchase groceries on her own. Parent feels that Claimant's behaviors are not improving and her abilities are not progressing because of the dynamic between Claimant and Parent. Accordingly, Parent wants to remove herself from being Claimant's primary support and teacher and allow WRC service providers to continue developing the life skills Claimant needs to be successful and independent.

14. Claimant can put on makeup by following instructions from a YouTube video. Parent believes Claimant's behavior of putting on makeup is similar to the fixation on her image observed during childhood. Parent believes that putting on makeup is similar to repetitive play that Claimant performed during childhood.

15. Claimant washes her hair and can perform activities of daily living. Claimant requires prompting to brush her teeth and sometimes will not brush them. For example, Claimant chose to wear a mask to the in-person assessment with WRC rather than brush her teeth. Claimant told Parent that no one would notice because she was wearing a mask.

16. Claimant works as a carnival game attendant. Parent believes that without her encouragement, Claimant would not have sought employment. Parent noted that Claimant is able to perform her job because the cash register has pictures on it. Claimant only needs to press the button with the corresponding picture to do her job. Claimant does not pay for any living expenses and does not budget her

income from work. Parent is working with Claimant on managing her money but believes WRC can provide assistance to help Claimant become financially independent.

17. Claimant does not establish long term friendships. Claimant is friends with people she sees at school or in the workplace. Parent is aware of a former friend who lived in close proximity to their home, but Claimant did not make an effort to see the friend once the friend attended a different school. Parent believes WRC can help Claimant develop social skills and communication skills to have deeper friendships.

18. Claimant can maneuver in her community within a small proximity. She can get to school and work and back home because they are within blocks of each other. Claimant can take public transportation but is only familiar with and confident to take a certain bus line. She can utilize the services of Uber rideshare. However, Parent would like Claimant to be able to function in the larger world.

19. Parent believes that the psychoeducational assessments show Claimant has borderline intellectual functioning and that, combined with some autistic-like behaviors, creates a great impact on Claimant. Based on these behaviors, Parent believes Claimant should be eligible for services and support from WRC.

20. On August 18, 2020, WRC sent a NOPA to Claimant stating that she was found ineligible for services because she did not meet the criteria set forth in the Lanterman Act. (Exhibit 2, p. 10.) WRC's decision was based on the information gathered during the evaluation process and reviewed by a multidisciplinary team. The team determined that Claimant is not substantially handicapped by intellectual disability, cerebral palsy, epilepsy, ASD or other conditions similar to intellectual disability as referenced in California Welfare and Institutions Code section 4512, and California Code of Regulations, title 17, section 54000 (fifth category). (Exhibit 2, p. 11.)

21A. Kaley Shilakes, Psy.D., WRC intake manager and staff psychologist, was a member of the eligibility team that determined Claimant did not meet eligibility requirements. The eligibility team considered Claimant's school and other outside records, information provided by parents, the intake report, and psychological evaluations by Beth Levy, Ph.D., and Karen E. Hasting, Psy.D., in making their determination regarding eligibility.

21B. The intake report consisted of a psychosocial assessment that contained information gathered from Claimant and Parent regarding why WRC services were being sought. (Exhibit 8.) Parent expressed concerns with Claimant's capacity for independent living and self-sufficiency. Parent reported that Claimant is able to perform most daily living activities but requires reminders to brush her teeth and take care of personal hygiene. (Exhibit 8, p. 79.) Claimant shares a good relationship with family members, is able to communicate with adults better than same aged peers, and is nurturing towards young children. Claimant displays inappropriate behavior and has trouble managing her emotions at home and in the school setting. Parents have observed Claimant exhibit repetitive behaviors, is sensitive to certain loud sounds, and is very rigid and has a hard time with transitions or changing her routine. Parent reported Claimant has a hard time with expressive language and has difficulty modulating her tone of voice. Parent reported Claimant has a hard time with comprehending and retaining information; but Claimant was able to provide her personal information including date of birth, address, and education history. Parents suspect Claimant has ASD and may have a cognitive deficit.

21C. WRC conducted an initial evaluation on July 27 and July 28, 2020, to determine Claimant's current level of functioning and to assess developmental disabilities, specifically intellectual disability and/or ASD. (Exhibit 4, p. 48.) The

evaluation was conducted remotely using telehealth methods based on the COVID-19 pandemic restrictions that prevented in-person clinical visits. Parent shared that Claimant struggles with planning and organizing and gave the example that it took her a while to use the bank ATM. Parent expressed her desire to get support as Claimant enters adulthood as it takes her about eight months to incorporate a new behavior/task into her life, like using an ATM. The assessor determined that Claimant did not meet the diagnostic criteria for ASD. (Exhibit 4, 63.) The assessor stated that current research shows it is difficult to diagnose ASD at a young age and the symptom constellation becomes clearer and often reveals other neurological and developmental disorders at a later age, as in this case. (Exhibit 4, p. 67.) Based on the evaluation, Claimant meets criteria for Borderline Intellectual Functioning which negatively impacts her ability to learn, and which is consistent with her adaptive functioning. The examiner noted that the last two psychoeducational assessments support her conclusion as they identified Claimant as qualifying for special education services as a student with SLD and secondarily OHI due to difficulties with attention. (*Ibid.*)

21D. WRC conducted a psychological evaluation on January 28, 2021 to determine eligibility for WRC services and assist with appropriate program planning. Dr. Shilakes testified that the date written on the psychological evaluation, January 28, 2020, was incorrect as the evaluation occurred in 2021. The assessor observed that Claimant presented as an immature teenager and communicated her thoughts and ideas that were typically immature for her age. Claimant had a short attention span and focus, challenges with abstract reasoning tasks and academic concepts, was socially related and engaged and did not display stereotypical or repetitive behaviors. Claimant's general cognitive ability was estimated to be in the borderline range. Assessments measuring Claimant's reading, writing and math abilities all fall between borderline and mildly intellectually deficient level. (Exhibit 3, p. 40.) Based on autism

testing, Claimant did not present as an adult with significant deficits in social communication, socialization and repetitive or restrictive behaviors. Claimant's social and communication style is consistent with her borderline intellectual functioning and are immature for her age. Claimant presents with significant adaptive functioning challenges with regard to language, self-care, learning, self-direction and socialization, which are impacting her ability to function independently. (*Ibid.*) The assessor determined that Claimant did not meet any diagnostic criteria for ASD.

22A. Dr. Shilakes testified that the eligibility team determined Claimant is not eligible under the fifth category. Dr. Shilakes described the fifth category as when an individual is not diagnosed with an articulated disability but may have a diagnosis that is very closely related to intellectual disability (ID) and would receive similar treatment to someone with an intellectual disability due to cognitive deficits. The IQ score indicative of an intellectual disability is 70 or below for cognitive and adaptive functioning.

22B. Claimant did not score in the 70 or below range and therefore she does not meet criteria for ID. The eligibility team opined that Claimant did not meet eligibility criteria for the fifth category because Claimant's profile is more consistent with someone with SLD and ADHD. Some skills Claimant has demonstrated are not similar to a person with ID; for example, getting a job at 15 years old and getting ready for college. The eligibility team reviewed the services, goals, and accommodations from Claimant's IEPs, and there were none that were commonly found with an individual with ID. Additionally, the goals and accommodations in the most recent IEP are consistent with Claimant's challenges pertaining to her learning disabilities and attention issues.

23. The eligibility team did not see that Claimant was substantially disabled in three or more of the following major life areas: language, receptive and expressive, self-care, learning, self-direction, capacity for independent living, economic self-sufficiency, or mobility.

LEGAL CONCLUSIONS

1. Claimant did not establish that she suffers from a developmental disability, and therefore she is not entitled to regional center services under the Lanterman Developmental Disability Services Act (Lanterman Act). Additionally, Claimant did not prove she has a substantial disability that creates functional limitations in three or more areas of major life activity. (Factual Findings 1-23, Legal Conclusions 2-13.)

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. A claimant seeking to establish eligibility for government benefits or services has the burden of proving by a preponderance of the evidence that he has met the criteria for eligibility. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits]; *Greator v. Board of Admin.* (1979) 91 Cal.App.3d 54, 57 [retirement benefits]; Evid. Code, § 500.) Where a claimant seeks to establish eligibility for regional center services, the burden is on the appealing claimant to demonstrate by a preponderance of evidence that the Service Agency's decision is incorrect and that the appealing claimant meets the eligibility criteria. Claimant has not met her burden of proof in this case.

3. In order to be eligible for regional center services, a claimant must have a qualifying developmental disability. As applicable to this case, 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.

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

"Substantial disability" means the existence of significant functional limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person:

(A) Self-care.

(B) Receptive and expressive language.

- (C) Learning.
- (D) Mobility.
- (E) Self-direction.
- (F) Capacity for independent living.
- (G) Economic self-sufficiency.

4B. Additionally, California Code of Regulations, title 17, section 54001 states, in pertinent part:

(a) "Substantial disability" means:

(1) A condition which results in major impairment of cognitive and/or social functioning, representing sufficient impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential; and

(2) The existence of significant functional limitations, as determined by the regional center, in three or more of the following areas of major life activity, as appropriate to the person's age:

- (A) Receptive and expressive language;
- (B) Learning;
- (C) Self-care;

- (D) Mobility;
- (E) Self-direction;
- (F) Capacity for independent living;
- (G) Economic self-sufficiency.

5A. In addition to proving a "substantial disability," a claimant must show that her disability fits into one of the five categories of eligibility set forth in Welfare and Institutions Code section 4512. The first four categories are specified as: intellectual disability, cerebral palsy, epilepsy, and autism. The fifth and last category of eligibility is listed as "disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with intellectual disability." (Welf. & Inst. Code, § 4512.)

5B. Whereas the first four categories of eligibility are very specific, the disabling conditions under this residual fifth category are intentionally broad to encompass unspecified conditions and disorders. However, this broad language is not intended to be a catchall, 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, the Service Agency does not have a duty to serve all of them.

5C. The Legislature requires that the fifth category qualifying condition be "closely related" to intellectual disability or "require treatment similar to that required" for individuals with 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" 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. However, this does not require strict replication of all of the cognitive and adaptive criteria typically utilized when establishing eligibility due to intellectual disability. If this were so, the fifth category would be redundant. Eligibility under this category requires an analysis of the quality of a claimant's cognitive and adaptive functioning and a determination of whether the effect on her performance renders her like a person with intellectual disability. Furthermore, determining whether a claimant's condition "requires treatment similar to that required" for persons with intellectual disability is not a simple exercise of enumerating the services provided and finding that a claimant would benefit from them. Many people could benefit from the types of services offered by regional centers (e.g., counseling, vocational training, living skills training, speech therapy, or occupational therapy). The criterion is not whether someone would benefit. Rather, it is whether someone's condition requires such services.

6. Furthermore, 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, a person with a "dual diagnosis," that is, a developmental disability coupled either with a psychiatric disorder, a physical disorder, or a learning disability could still be eligible for services. However, someone whose conditions originate only from the excluded categories (psychiatric disorder, physical disorder, or learning disability, alone or in some combination) and who does not have a developmental disability would not be eligible.

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

8. The DSM-5, section 299.00 discusses the diagnostic criteria which must be met to provide a specific diagnosis of ASD, 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 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 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.

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

9. It was not established that Claimant meets the criteria under the DSM-5 for a diagnosis of ASD.

10. The evidence did not establish that Claimant meets the criteria for intellectual disability.

11. There is insufficient evidence to prove Claimant's eligibility for Lanterman Act services under the fifth Category as defined under Welfare and Institutions Code section 4512.

12. The preponderance of the evidence did not establish that Claimant has significant functional limitations for a person her age in at least three of the seven areas of major life activity as defined by Welfare and Institutions Code section 4512, subdivision (1)(1), and California Code of Regulations, title 17, section 54001.

13. Claimant is not eligible to receive regional center services and supports under the category of autism, intellectual disability, or fifth Category under the Lanterman Act.

ORDER

Claimant's appeal is denied. The Service Agency's determination that Claimant is ineligible for regional center services is upheld.

DATE:

MARLO NISPEROS

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.