

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

In the Matter of:

CLAIMANT,

vs.

NORTH LOS ANGELES COUNTY REGIONAL CENTER,

Service Agency.

OAH No. 2020110319

DECISION

Carmen D. Snuggs, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on July 27 and August 4, 2021.

Claimant¹ was represented by his authorized representative, R.M. Anthony Cosio, Attorney at Law.

¹ Names are omitted to protect the privacy of the parties.

Stella Dorian, Fair Hearings Specialist, represented the North Los Angeles County Regional Center (NLACRC or Service Agency).

Spanish language interpreters appeared by teleconference and provided translation assistance to Claimant's mother (Mother) who was present throughout the hearing and provided testimony.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on August 4, 2021.

ISSUE

Is Claimant eligible to receive regional center services and supports under a diagnosis of autism?²

EVIDENCE RELIED ON

Documentary: Service Agency's exhibits 1-10, and 12.

² Claimant left the "Describe what is needed to resolve your complaint" section of the Fair Hearing Request form blank. However, the parties stipulated that the issue to be decided in this matter is Claimant's eligibility under a diagnosis of autism. The parties also stipulated that Claimant does not seek regional center services under a diagnosis of intellectual disability or a disabling condition that either is closely related to intellectual disability or requires treatment similar to that required for individuals with intellectual disability.

Testimonial: Khanh Hoang, Ph.D. and Mother.

FACTUAL FINDINGS

Background and Jurisdictional Matters

1. Claimant is a 34-year-old male who lives with his Mother. Mother has petitioned for a limited conservatorship of Claimant in the Superior Court of California, County of Los Angeles. Those proceedings are pending. Because the conservatorship sought by Mother is for individuals who suffer from a developmental disability, Claimant asserts that those proceedings are dependent upon the decision in this case.

2. On April 11, 2019, Mother completed NLACRC's intake application to request that Claimant be evaluated due to Mother's concern that Claimant suffered from autism and is therefore eligible for services under the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500 *et seq.* Mother indicated in the intake application that Claimant did not have friends or a social life. She further stated that Claimant went into the bathroom several times per day for no reason, would sometimes play with the water in the toilet, could not tolerate noise or light, did not like to be contradicted, had no "past times," and he spent the day sitting and looking at the wall. (Ex. 6, p. 4.) When Mother submitted the intake application, she did not have any of Claimant's school or medical records before he reached age 18. NLACRC informed Mother that Claimant's intake application would be placed on hold until the Service agency received those records.

3. On October 23, 2019, NLACRC issued a Notice of Proposed Action denying Claimant's application on the grounds that NLACRC's interdisciplinary eligibility committee determined, based upon available information, that Claimant did

not have a developmental disability as defined in the Lanterman Act. (Ex. 1, p. 42.)
Claimant appealed from that notice. All jurisdictional requirements have been met.

Claimant's History Before Age 18

4. Claimant attended Mullholland Middle School and Reseda High School within the Los Angeles Unified School District. In the sixth grade, Claimant received grades of "F," "C" and "D" in his courses in the Fall and Spring semesters.³ In the seventh, eighth, and ninth grades, Claimant received "Fs," "Ds" two "Cs" and two "As" over the course of those three years. He received the "As" in a course entitled "Service JH." (Ex. 3, p. 1.) Claimant attended summer school in the seventh grade and received a "B" in physical education and an "F" in health. Claimant received a "B" in English and a "D" in Reading Reinforcement during the summer session of 2001 when he was in the eighth grade. It appears that Claimant repeated the ninth grade at Reseda High School during the 2002-2003 school year. In the Fall semester he received five "Fs" and one "D," and in the Spring semester he received six "Fs." In the Summer of 2002, Claimant received a grade of "C" in English 9A and a grade of "D" in English 9B. During the 2003-2004 school year, Claimant attended Zane Grey High School and obtained a grade of "B" in English and Algebra. During the summer of 2004, Claimant attended Reseda High School and obtained a grade of "B" in English and a "C" in Health. During the 2004-2005 school year at Zane Grey High School, Grades of "B" in two General Work Experiences courses. According to Mother, Claimant dropped out of school after the 10th grade.

³ Claimant's school records containing a warning that the record of courses completed had not been verified. (Ex. 10, p. 4.)

5. Teacher observations from Claimant's elementary school teachers note the following: in the first grade, Claimant was "progressing very well in all academic areas," often had difficulty focusing on completing tasks, and was working on establishing more social relationships in the first grade; in the second grade, Claimant "made good progress in all academic areas" and was reported to be a good student who got along well with others; in third grade, Claimant's teacher noted that Claimant maintained good academic progress but needed to be more responsible about completing his work at times; in the fourth grade, Claimant was similarly reported to have made good academic progress in the fourth grade, had good work habits, and had good relationships with his peers; in the fifth grade, Claimant's teacher reported that Claimant seldom completed his assignments and needed to be improve his written language and math skills. (Ex. 10, p. 9.)

6. In the section of Claimant's academic records entitled "Record of Special Services," the words "special Education Services See Special Education Folder" is indicated, but there is no other information included in that section. (Ex. 10, p. 9.) Nor is there a reference to any special education classes in Claimant's transcripts. However, there are handwritten notes indicating that Claimant was enrolled in English as a Second Language (ESL) courses for second and social snice themes class, level two in 1994, and a Bridge to Communication ESL course at an unspecified time.

Claimant's History After Age 18

OLIVE VIEW MEDICAL CENTER

7. On December 7, 2013, when Claimant was 26 years-old, he was taken involuntarily by law enforcement to Olive View Medical Center (Olive View) for a psychiatric evaluation. According to the emergency room visit summary, Claimant

dragged Mother outside while she was sleeping. When Mother told Claimant that she was going to call the police, he took her phone and locked her outside. Mother used a neighbor's phone to call the police. Police officers reported that Claimant stated he thought of suicide on a daily basis and considered "suicide by cop." (Ex. 4, p. 3.) When interviewed by Olive View personnel, Claimant responded with "I don't know" to every question and denied being suicidal. Mother, with the assistance of an interpreter, reported to Olive View staff that Claimant appeared to be depressed because he watched television all day and occasionally became angry and upset. Mother reported that this incident was the first time Claimant was violent with her.

8. Claimant's speech was "very quiet and [mumbled] with curt answers." (Ex. 6, p. 4.) Staff was unable to appropriately assess Claimant's thought processes or content on that date because he refused to engage in discussion. However, staff concluded that Claimant demonstrated poor insight in that he could not explain why he was in the hospital. Claimant was admitted to Olive View after staff determined that he was a danger to himself.

9. Mother and Claimant's brother (Brother) visited Claimant at Olive View the day after Claimant was admitted. Mother reported to a physician at Olive View that Claimant "had [a] behavior change for about a year, and he is isolative, always by himself, getting angry easily, [and] does not communicate what is bothering him." (Ex. 4, p. 7.) Mother denied that Claimant had an intellectual disability. Brother reported to the physician that there were days that Claimant did not want to talk to anyone but on other days he wanted to participate in activities. Mother expressed that she hoped hospital staff would find out what was wrong with Claimant and determine why he acts the way he does.

10. During his admission at Olive View, Claimant stated that he regularly thought of suicide and was unable to describe a reason for his behavior towards Mother. The interviewer documented that “[o]f note, throughout the interview the patient did not spontaneously speak of anything, his voice was extremely low in volume and his eye contact was very poor.” (Ex. 4, p. 9.)

11. Craig Harris, M.D., diagnosed Claimant with depressive disorder, not otherwise specified, and schizoid personality disorder (SPD). Dr. Harris wrote:

[Claimant remains highly guarded, poorly related, showing poor eye contact, lack of social interaction, lack of relationships, flat affect, poverty of speech content, and low volume suggestive of Schizoid Personality Disorder. The mother’s report that [Claimant] did well in school until 10th grade, suggests that any cognitive deficits are not likely. [Claimant] would likely not benefit from medication acutely, but would benefit from following up with outpatient psychiatry at the Olive View Mental Health Urgent Care. . . .

(Ex. 4, p. 10.)

Kristen Ochoa, M.D. of Olive View examined Claimant and agreed with the plan of care outlined by Dr. Harris. Dr. Ochoa also agreed that Claimant’s presentation and history as presented by Claimant’s family was consistent with SPD. (Ex. 4, p. 10.)

LOS ANGELES COUNTY DEPARTMENT OF MENTAL HEALTH RECORDS (WEST VALLEY MENTAL HEALTH)

12. On October 5, 2017, when Claimant was 29-years old, he was assessed by Elizabeth Gil, Ph.D., Licensed Psychologist.⁴ Mother was also interviewed in Spanish. At that time, Claimant was living with Mother and dependent upon her for assistance with all activities of daily living. Mother was concerned that Claimant's symptoms were getting worse, and she was not able to care for him alone. Mother reported that Claimant was functioning normally until he was 20-years old, when he became less sociable. Claimant had no friends and stayed at home all day while Mother was at work. Specifically, Claimant stayed in a tent in the yard from 7:00 a.m. to 3:00 p.m. three to four days per week. Mother reported seeing Claimant laughing to himself at inappropriate times albeit in response to something on the television or his cell phone. Claimant slept eight to nine hours per day, gave short response to questions, demonstrated a lack of insight, a depressed mood, and irritability, and was described to be incapable of managing his money or being able to shower.

13. Mother and Claimant denied previous hospitalizations, diagnoses, or medication trials despite Claimant's treatment, diagnosis and psychiatric hold at Olive View. Claimant was quiet, minimally responsive and displayed stilted speech. Claimant was referred for a medication evaluation on November 14, 2017.

14. Progress notes for November 14, 2017, indicate that Claimant was seen by Andrew Do, M.D., Attending Psychiatrist at West Valley Mental Health. Dr. Do noted

⁴ Review of the report of the assessment revealed that it is incomplete as the odd numbered pages of the report were omitted.

that Claimant spoke quietly during the appointment, was often unintelligible and muttered under his breath. Mother provided most of Claimant's history with the assistance of Spanish language translation services. Mother reported that Claimant was a quiet child but became significantly more quiet in his early 20s, he did not have any friends at the time of the appointment and he required several prompts to care for himself. She also reported that Claimant would be internally occupied and then laugh at himself. Dr. Do was unclear if Claimant's symptoms and presentation represented a primary psychotic disorder with primarily negative features, or a long-standing developmental disorder such as autism spectrum disorder (ASD). (Ex. 4, p. 86.) Dr. Do ruled out unspecified schizophrenia spectrum and other psychotic disorder, schizophrenia, ASD and learning disability. He prescribed Latuda for Claimant to target social isolation, apathy, and poor self-care.

15. According to progress notes from December 14, 2017, Claimant had difficulty making eye contact, responded in single words, and appeared to be socially uncomfortable with everyone except for Mother. The provider was still unclear whether Claimant suffered from psychosis with negative features or a developmental disorder. Claimant was prescribed medication for insomnia.

16. The date of the next progress note is unclear from the record as it is illegible, however, no behavior issues were noted and Mother remained concerned about Claimant's "limited functionality." (Ex. 4, p. 68.) The provider indicated that "diagnostically, presentation appears more in line with autism spectrum disorder as opposed to a true psychotic disorder (though still remains inconclusive at this time)." (*Ibid.*) The provider also changed the dosage of Claimant's medication for the treatment of insomnia and irritability.

17. On a date in 2018 not made clear by the record, when Claimant was 31-years old, the progress notes indicate that Claimant was compliant with his medication and did not suffer from any acute issues. Mother reported that Claimant had not experienced any incidents of anger or violence. She had not seen Claimant talking to any unseen individuals or seeing voices. In his free time, Claimant colored with crayons and only took Seroquel when he had trouble sleeping or was irritable. Claimant told Dr. Do that he had no complaints or concerns, and that he would like to get a job and live in an apartment in the future. Dr. Do indicated in the progress note that Claimant did not endorse any "positive symptoms of psychosis," which was substantiated by Mother. Claimant minimally communicated with Dr. Do, and spoke in one-to-two sentence phrases "with a childlike demeanor." (Ex. 4, p. 70.)

18. The next several progress notes indicate that Claimant had not engaged in violence or aggression but remained at his baseline levels for completing activities of daily living. Mother reported that Claimant appeared to be more relaxed when he took his medication. Mother received assistance with completing application forms for In-Home Supportive Services (IHSS) and was provided information for the board and care registry.

19. On a date not made clear by the record because the service date listed in the progress notes is illegible, Claimant was administered psychological testing for purposes of substantiating findings to complete a request for a conservatorship. Specifically, he was administered the Bender Gestalt test and the Wechsler Adult Intelligence Scale (WAIS) non-verbal tests. It was noted that Claimant worked without distractions, appropriately followed instructions and gave one-word responses. The test administrator noted that Claimant demonstrated a "noticeable delay in working speed." (Ex. 4, p. 76.) Mother reported to the clinician that in Claimant's earlier life he

liked to watch cartoons and drew for hours. Mother also reported that Claimant was able to express himself when he was younger. Mother reported that in more recent times, Claimant laughed inappropriately.

20. On November 29, 2018, Claimant underwent further psychological testing consisting of the WAIS-Fourth Edition subtests of Matrix Reasoning, Symbol Search, and Coding. Although the progress notes indicate that Claimant was able to participate in the testing, the test results were not included.

21. A progress note for a service date of January 17, 2019 indicates that Claimant was last seen by Dr. Do on October 15, 2018. The notes indicate the following:

[Claimant] stays mostly at home. Minimal interactions with other[s]. Mostly nonverbal. Reported diagnosis of Autism by PMD as an adult; note from PMD says "diagnosed years ago." No reported history of special education; went to school LA per psychologist. History of suspected TBI, became less social after released from jail in early adulthood. Denied services by Regional Center. Mother and caregiver plan to work with case manager for day program referral. Also requests from complete for application of temporary conservatorship over medical decision making. Per mother and caregiver, [Claimant] was seen for an MRI evaluation recently (unclear indication) and [Claimant] uncooperative with study, refused to do it. Today, [Claimant] unable to minimally explain MRI procedure, indication, risks or benefits. [Claimant] mostly nonverbal

during interview. Answers simple questions with repeated prompting. Can perform simple addition, follow simple 3-step command, oriented to self, inattentive to time and place. Participated in psychological testing but did not complete; did fine with nonverbal tasks, although required more time per psychologist who reviewed results with winter during session.

(Ex. 4, p. 77.)

22. The provider concluded the following on January 17, 2019: "unclear diagnosis, reported [ASD] vs Unspecified Schizophrenia Spectrum Disorder, although not exclusive of each other. [Claimant] reports adequate response from current medication regiment Instructed mother and caregiver to work with case manager to look for adult day programs that would be appropriate for [Claimant]." (Ex. 4, p. 77.)

23. Mother accompanied Claimant to another appointment on a date not made clear by the record. The progress notes indicate that both Mother and Claimant were "poor" historians." Claimant hardly spoke at all, and Mother was unable to provide any specific information regarding Claimant's schooling. It was noted that Claimant sat "indifferently," was withdrawn, and had a flat affect. (Ex. 4, p. 79.) Claimant was reported to have been unable to take care of himself, needed to be supervised, slept and ate "a lot," and was indifferent a majority of the time. (*Ibid.*) Claimant was also reported to become angry when confronted and to exhibit maladaptive behavior. It was further noted that the medical provider had signed papers in support of a

conservatorship application and “strongly recommended regional center services.” (Ex. 4, p. 78.)⁵

24. On April 18, 2018, Dr. Do, wrote the following in a letter pursuant to Claimant and Mother’s request for submission to the Service Agency:

[Claimant] has been a patient of mine since he came to our clinic in November of 2017. His mother brought him in as she was concerned with his behavior. She notes that [Claimant] has “always been a quiet kid” both at home and school; however, this appears to have worsened through his 20s. She notes that he is progressively less engaging and social with her, though will have days where he is more communicative. She denies ever observing him talking to himself, talking to unseen individuals or hearing voices. She does not have a concern that he is a constant danger to himself or others. On evaluation, he often presents with a child-like, simplistic manner and communicates with me in simple words and phrases. Presently, I have low suspicion for a primary psychotic disorder such as schizophrenia given this lack of symptoms. I have reasonable suspicion for a developmental disorder given his presentation. I believe he would strongly benefit from receiving services such as that provided by Regional Center to help with

⁵ The first page of the progress report for this date was date-stamped page 79 while the second page of the progress report was date-stamped page 78.

communication skills, socialization, and development of vocational skills.

(Ex. 5.)

NLACRC Psychological Summary and Testimony of Khanh Hoang, Ph.D.

25. Khanh Hoang, Ph.D., NLACRC Staff Psychologist, is a licensed clinical psychologist and has been a staff psychologist at NLACRC for approximately five years. Her duties include conducting psychological evaluations for applicants for services and participating in determining eligibility as part of a multi-disciplinary team. She explained that in order to receive regional center services, an applicant must have a developmental disability as defined by the Lanterman Act that originates prior to the age of 18, continues or is expected to continue indefinitely, and the developmental disability creates a substantial disability in three of seven areas of adaptive functioning. Those whose handicapping conditions are caused by a condition that is solely physical or psychiatric in nature, and those who suffer from a learning disorder, are not eligible for regional center services.

26. In determining whether an adult suffers from a developmental disability that originated prior to the age of 18, the regional center relies on multiple sources including caregiver reports, records from the applicant's developmental years, and observations.

27. The Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM 5) sets forth the criteria for identifying an individual with ASD. Specifically, a person suffering from ASD typically demonstrates deficits in social communication and interaction across multiple settings. In addition, the individual will engage in restricted

or repetitive patterns of behavior or interest. Examples of this behavior are lining up toys, repeating words, inflexibility with respect to changes in routine, odd interests, spending an inordinate amount of time focusing on interests, and displaying odd sensory interests such as flipping a light switch on and off for hours, or sensitivity to loud noises.

28. Dr. Hoang conducted an eligibility assessment of Claimant in connection with his application for services. As part of the assessment, Dr. Hoang reviewed Claimant's records from Olive View, the report of Dr. Do's Initial Medication Evaluation on November 14, 2017, the report of the assessment performed by Dr. Gil, the medication service progress notes described in Factual Findings 12 through 23, and Claimant's cumulative junior and senior high school records.

29. Dr. Hoang performed a clinical interview and observation of Claimant on January 15, 2020. Dr. Hoang also interviewed Mother with the assistance of Khalila Mitchell, a bilingual Administrative Assistant employed by NLACRC, as well as I.P., Mother's close friend and landlord.

30. Dr. Hoang prepared a written Psychological Summary (Ex. 8.), and her testimony was consistent with her report. During her interview of Claimant, Claimant did not sustain eye contact with Dr. Hoang. Instead, when Claimant entered the testing room with Mother and I.P., he looked down and appeared to be anxious. Claimant did not want to participate in the interview and gave Mother permission to share information with Dr. Hoang. Claimant told Dr. Hoang that he preferred to wait in the lobby and proceeded to do so.

31. Dr. Hoang administered the Autism Diagnostic Interview-Revised (ADI-R) to Mother. The ADI-R is a "parent interview designed to obtain detailed diagnostic

information” the areas of language and communication development, and reciprocal social interactions, restricted, repetitive and stereotyped patterns of behavior and interests, all of which are associated with ASD.

32. Dr. Hoang noted that Mother was not able to provide details about Claimant’s early development and was hesitant and unsure of her recollections. Mother stated that she did not have much knowledge about Claimant’s early development because she worked a lot and Claimant was cared for by his maternal grandmother. Mother did, however, describe Claimant as quiet as compared with his older and younger brothers and she stated that Claimant had friends throughout his childhood. Mother denied that Claimant had a learning disability and noted he was in general education classes. Mother also noted that Claimant was arrested and spent two years in jail for possession of a weapon. She reported that Claimant became more isolated and quieter upon his release from jail.

33. With respect to Claimant’s functioning at the time of the psychological assessment, Mother deferred to I.P. to provide information to Dr. Hoang. I.P. was concerned about Claimant’s mental health and ability to take care of himself. I.P. reported that Claimant’s typical day began with Claimant eating food prepared for him by Mother and afterward, he would sit on his bed for hours. I.P. reported that Claimant twirled his hair, rubbed his face, and felt the side of his pants. Claimant emerged from his room when Mother returned from work. According to I.P., Claimant is motivated by food and does not converse with I.P. when she tries to speak with him. I.P. described Claimant’s moods as “up and down.” (Ex. 8, p. 2.) I.P. also told Dr. Hoang that Claimant would lock himself in the bathroom for hours when he was in a bad mood, Claimant stopped participating in therapy in early 2019, and while Claimant saw the psychiatrist

every three months for a medication evaluation, he did not take his psychiatric medication as prescribed.

34. When Dr. Hoang conducted her one-one-one observation with Claimant, he appeared anxious and guarded and would only briefly make eye contact with Dr. Hoang before averting his eyes. Dr. Hoang noted that Claimant rubbed his lips frequently and gave one-word responses when Dr. Hoang was able to get Claimant to engage in conversation. Claimant reported that he sat around all day in response to a request to describe his day and responded that he did not know what his future plans were and needed to figure it out. Dr. Hoang reported that at one point, Claimant stopped responding and simply answered "no" to all her questions. At the end of the observation, Claimant complied with Dr. Hoang's request to put his chair away, made direct eye contact with her, and appeared eager to go home.

35. Dr. Hoang concluded that it was difficult to determine whether Claimant suffered from ASD due to the limited information about Claimant's developmental years and Mother's poor recollection. Dr. Hoang further concluded that based upon her brief interaction with Claimant and her observation of him, Claimant "appeared to present with mental health issues rather than ASD." Dr. Hoang recommended that Mother obtain Claimant's records prior to age 18 and submit them to NLACRC so that the interdisciplinary team could make an eligibility re-determination. She further recommended that Claimant continue mental health treatment, but that the treatment be increased such that Claimant received intensive mental health services. Dr. Hoang believed Claimant may be a candidate for a day program to increase his activity and social opportunities during the day. Finally, Dr. Hoang recommended that Claimant follow-up with his psychiatrist to explore ways to ensure Claimant's compliance with taking his prescribed medication.

36. At the hearing, Dr. Hoang provided additional information regarding her psychological assessment. Dr. Hoang noted that Claimant's school records were the only records of Claimant's developmental years submitted to the regional center. Those records reflected that Claimant was in general education courses. As there was no indication Claimant had been placed in special education courses, Dr. Hoang concluded that there was no information relevant to ASD contained in the documents.

37. In reviewing Claimant's mental health records, Dr. Hoang found Claimant's diagnosis of SPD, Mother's report that Claimant functioned normally until the age of 20, and his lack of motivation, inability to make eye contact, and poor social communication skills to be suggestive of a mental health disorder. Dr. Hoang noted that Dr. Do ruled out ASD, SPD, and other mental health issues, and explained that to "rule out" means that there are not enough symptoms to make a full diagnosis.

38. With respect to Dr. Do's reasonable suspicion that Claimant suffered from a developmental disability, Dr. Hoang offered the opinion that Dr. Do did not substantiate his opinion for his suspicion. She explained that Dr. Do's concerns about Claimant speaking in a child-like manner or simplistic way and his lack of social communication can be caused by significant mental health issues, and that those symptoms in and of themselves do not implicate ASD. Dr. Hoang further testified that being quiet could be caused by anxiety or other conditions.

39. Dr. Hoang explained that she conducted the January 15, 2020, clinical interview with Claimant, Mother and I.P. to seek clarity about Claimant's functioning and to differentiate between his documented mental health issues and ASD. She observed Claimant in the waiting room, spoke with Claimant, Mother, and I.P. for approximately 10 minutes, and then spoke with Claimant along with Mother and I.P. for 15 to 20 minutes at the end of the assessment. Dr. Hoang asserted that she

administered the ADI-R because it is the “gold standard” (her words) in diagnosing individuals over the age of 18 with ASD and is designed to elicit information to illustrate the behavior of the subject of the ADI-R. The ADI-R consists of 86 questions, but Mother was not able to answer many of them. Because I.P. did not know Claimant during his developmental years, Dr. Hoang was unable to obtain any information from I.P. that would assist Dr. Hoang in determining whether Claimant suffered from ASD prior to age 18. Dr. Hoang estimated that he spent one hour to one and one-half hours interviewing Mother and I.P. with the assistance of Khalila Mitchell of NLARC. Because of the lack of information from Mother, Dr. Hoang was unable to score the ADI-R.

40. Mother could not give examples of Claimant’s functioning during his developmental years or describe Claimant’s behavior during that time period that would meet the criteria for ASD. Dr. Hoang acknowledged that she did not discuss with Mother the behaviors Mother listed the intake application.

41. Dr. Hoang’s acknowledged that Claimant’s presentation (lack of eye contact and frequent touching of his lips) could be indicative of ASD. However, Claimant did not demonstrate repetitive or odd use of language associated with ASD. Dr. Hoang’s opinion that Claimant’s maladaptive behavior was consistent with a mental health condition was unchanged. On March 9, 2020, NLACRC’s interdisciplinary team conducted a re-determination review of Claimant’s eligibility for regional center services, consisting of a medical, psychological and social review. They determined that Claimant’s records and the information gathered through Dr. Hoang’s psychological assessment did not support a finding of the presence of a developmental disability. NLACRC recommended that Claimant follow-up with mental health treatment.

Mother's Testimony

42. Mother, who does not read English, did not attend school and is employed as a housekeeper. She was never able to obtain health insurance for Claimant and did not recall ever taking him to a doctor apart from taking him for vaccination visits because of the lack of insurance.

43. No doctor ever told Mother that Claimant had problems with cognition or with social skills. Mother does not recall Claimant being enrolled in special education classes.

44. Brother is five years younger than Claimant. Mother noticed that Claimant would not share his toys with Brother and would get upset if someone took his toys away. As a result, Claimant and Brother did not play together often.

45. Mother recalled that Claimant had trouble concentrating in elementary school. He would draw but would not do his homework. According to Mother, Claimant would draw the same things repetitively. Claimant did not have any friends during his developmental years, nor did Mother recall anyone friend coming over to play with Claimant. Mother asserted that she was unaware of Claimant's progress in school because she worked a lot. She also asserted that no one from the school ever told her Claimant had any "problems" when he was in elementary school, nor did she ever meet with anyone from Claimant's school. Mother contends that she does not know the difference between a "A" grade and an "F," and she was unaware that Claimant was failing.

46. Mother testified that Claimant did not repeat things over and over when he was in junior high school, nor did he need help dressing himself or toileting while he was elementary school. However, Claimant currently needs help showering. Mother

explained that Claimant gets wet in the same spot on his body and plays with the shower head. Mother must tell him to lift his head and not to use too much water.

47. Mother asserted that Claimant lacks social skills, he plays with his fingers and looks at his fingernails. When asked whether she thinks Claimant should see a doctor about his habits, Mother answered in the negative.

48. Mother first learned about NLACRC from I.P. when Claimant was approximately 28 years old. According to Mother, Dr. Hoang spent three minutes with Claimant, 10 minutes with Mother, and 10 minutes with I.P. Mother did not recall how many questions Dr. Hoang asked her or how many questions were asked of I.P. Mother is unaware of the services NLACRC provides, nor was she informed that Claimant is entitled to services if he is determined to be eligible under the Lanterman Act.

49. Mother responded "so-so" when asked if she knows what ASD is. She is aware that individuals who suffer from ASD engage in repetitive action and are bothered by noise.

LEGAL CONCLUSIONS

1. 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 she has met the criteria for eligibility. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161[disability benefits]; *Greatorex 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 his burden of proof in this case.

2. In order to be eligible for regional center services, a claimant must have a qualifying developmental disability.

3. 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 qualifying developmental disability within the meaning of Welfare and Institutions Code section 4512, a Claimant must show that he has a "substantial disability."

4b. Pursuant to Welfare and Institutions Code section 4512, subdivision (1)(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.

4c. 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.

5. In addition to proving that he suffers from a "substantial disability," a claimant must show that his disability fits into one of the five categories of eligibility set forth in Welfare and Institutions Code section 4512. The first four categories are specified as: intellectual disability, epilepsy, autism, and cerebral palsy. The fifth and last category of eligibility is listed as "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.)

6. 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; 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 qualifying 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 and supports 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 Autism Spectrum Disorder, as follows:

A. Persistent deficits in social communication and social interaction across multiple contexts, as manifested by the following, currently or by history (examples are illustrative, not exhaustive; see text):

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

2. Deficits in nonverbal communicative behaviors used for social interaction, ranging, for example, from poorly integrated verbal and nonverbal communication; to

abnormalities in eye contact and body language or deficits in understanding and use of gestures; to a total lack of facial expressions and nonverbal communication.

3. Deficits in developing, maintaining, and understanding relationships, ranging, for example from difficulties adjusting behavior to suit various social contexts; to difficulties in sharing imaginative play or in making friends; to absence of interest in peers. [11] . . . [11]

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.

(Ex. 12, pp. 1-5.)

Discussion

8. It is undisputed that Claimant suffers from deficits in his adaptive functioning. However, Claimant has the burden to prove that these deficits originate from ASD and not from an excluded category such as a psychiatric disorder, and that his condition originated before he reached age 18. Claimant has not met that burden. While Dr. Do indicated that he has a reasonable suspicion that Claimant suffers from a developmental disorder, that suspicion is not enough to satisfy eligibility requirements under the Lanterman Act. The evidence in this case preponderates in favor of a conclusion that Claimant's deficits are caused by a mental health disorder, thereby excluding him from eligibility for regional center services. Mother related to mental health providers that Claimant was functioning normally until he was 20 years old. In addition, Claimant's elementary school records make no mention of a ASD diagnosis, nor are there any school records indicating that Claimant qualified for special education services under an ASD diagnosis. Moreover, Mother could not and did not provide information to Claimant's mental health care providers or Dr. Hoang, although she was assisted by Spanish Language interpreters, that would indicate that Claimant suffers from ASD. Although Mother is unsure of what autism is, Dr. Hoang's testimony established that the ADI-R and Mother's relation of Claimant's history during his developmental years, would have been sufficient to establish the presence of ASD.

9. Based upon the foregoing, Claimant has not established that he is eligible for regional center services under an ASD diagnosis.

10. Although the result may seem harsh, the legislature did not grant regional centers the authority to provide services to individuals whose disabilities fall outside the five specified categories. Because Claimant did not show that he suffers from ASD, he did not establish that he is eligible for services under the Lanterman Act

at this time. Claimant and Mother are encouraged to seek referral assistance from NLACRC as well as information regarding other agencies that provide services that may be beneficial to Claimant.

ORDER

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

DATE:

CARMEN D. SNUGGS

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.