

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

**In the Matter of:**

**CLAIMANT,**

**vs.**

**WESTSIDE REGIONAL CENTER,**

**Service Agency.**

**OAH No. 2020120095**

**DECISION**

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter remotely by video and teleconference on January 25, 2021.

Candace Hein, Fair Hearing Specialist, represented Westside Regional Center (WRC or Service Agency). Melissa Lander and Marlene Lueck, Stand Out Advocates,

LLC, claimant's authorized representatives, represented claimant, who was not present. Claimant's mother appeared and testified.<sup>1</sup>

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on January 25, 2021.

## **ISSUE**

Is claimant eligible to receive services and supports from the Service Agency under the Lanterman Developmental Disabilities Services Act (Lanterman Act)?

## **EVIDENCE RELIED UPON**

Documents: Service Agency's exhibits 1 through 11, claimant's exhibits A through C.

Testimony: Kaely Shilakes, Psy.D.; Max Blum, M.S.; Susan Schmidt-Lackner, M.D.; claimant's mother.

## **FACTUAL FINDINGS**

### **Parties and Jurisdiction**

1. Claimant is 17 years old and lives at home with his parents and older sister. In the summer of 2020, claimant's mother asked the Service Agency to

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<sup>1</sup> Family and party titles are used to protect claimant's privacy.

determine claimant's eligibility for services and supports due to her concerns that claimant may have Autism Spectrum Disorder (ASD). Claimant was referred to WRC by claimant's psychiatrist, Susan Schmidt-Lackner, M.D.

2. By a Notice of Proposed Action (NOPA) and letter dated October 26, 2020, WRC notified claimant's mother that claimant is not eligible for regional center services under the Lanterman Act because he "[d]oes not meet criteria set forth in the Lanterman Act" and "is not substantially handicapped by intellectual disability, cerebral palsy, epilepsy, autism spectrum disorder or other conditions similar to intellectual disability . . . .", citing Welfare and Institutions Code section 4512 and California Code of Regulations, title 17, section 54000.

3. On November 10, 2020, claimant's mother filed a fair hearing request to appeal the Service Agency's eligibility determination. This hearing ensued.

## **Evaluations of Claimant**

### **DR. MALOFF'S MARCH 2018 PSYCHOLOGICAL ASSESSMENT**

4. On March 24, 2018, Jared Maloff, Psy.D., performed a psychological assessment of claimant at the request of claimant's attorney. Claimant was nearly 15 years old. Dr. Maloff wrote that his evaluation would identify claimant's "current level of functioning, his appropriate diagnostic profile, and . . . create a proper educational and behavioral plan . . . ." (Ex. A, p. 1.) Though the assessment appears to have been conducted for purposes connected with claimant's education, Dr. Maloff's results are relevant to claimant's eligibility for regional center services. because they are based on a methodology ordinarily used to determine a Lanterman Act eligible diagnosis. Dr. Maloff performed a records review; conducted a clinical interview; observed claimant in the community; and applied the following testing instruments, among others:

Childhood Autism Rating Scale, Second Edition (CARS2-ST), Behavior Assessment System for Children – 2nd Edition (BASC-2), Wechsler Intelligence Scale for Children– 4th Edition (WISC-IV), and the Woodcock-Johnson III Tests of Achievement (WJ-III). Dr. Maloff diagnosed claimant using the Diagnostics and Statistics Manual (DSM).

5. Dr. Maloff diagnosed claimant both with ASD and with Major Depressive Disorder, Recurrent, Severe Without Psychotic Symptoms.

6. Dr. Maloff found that:

[claimant's] depression is compounding the severe difficulties caused by his Autism Spectrum Disorder. His developmental disability causes him to have difficulty regulating himself emotionally and behaviorally. The addition of significant depression, however, leads him to be far more irritable as well as have thoughts of engaging in self-harm. [Claimant] struggles to mediate his impulsive tendencies. Given his Autism Spectrum Disorder, he is nearly entirely focused upon meeting his own specific needs without considering the opinions, desires, or needs of others. This inability to properly engage in perspective taking is a hallmark symptom of Autism Spectrum Disorder. Many times, [claimant] will engage in an impulsive action in order to meet a specific need that he has (for attention, amusement, interaction). Throughout his life, [claimant] has consistently had difficulty because he has been prone to engaging in impulsive behavior that may meet one of these

specific needs that he has but which infringes upon the needs, desires, and rights of others.

(Ex. A.)

7. Dr. Maloff noted that claimant has been expelled from schools for his behaviors but has performed better academically with one-on-one attention and was able to access the curriculum at his current school. Nevertheless, at home, claimant continues to “engage in inappropriate behavior that is provocative and has at times been violent towards his parents and sister.” (Ex. A.)

8. Dr. Maloff recommended, among other things, “very significant” Applied Behavior Analysis (ABA) services five days per week, and “individual therapy sessions with a treatment provider specializing in working with teens on the autism spectrum.” (Ex. A.)

## **WRC’S 2018 DENIAL OF ELIGIBILITY**

9. Very shortly after Dr. Maloff’s assessment, claimant’s mother first requested that WRC provide services and supports for claimant in 2018. John Amador, MSW, an intake counselor at WRC, conducted a psychosocial assessment of claimant on June 14, 2018. Mr. Amador recommended obtaining claimant’s medical and school records and conducting a psychological assessment to rule out ASD. Mr. Amador referred the psychological assessment to Jeffrey Nishii, Psy.D.

## **Dr. Nishii’s Summer 2018 Psychological Evaluation**

10. Dr. Nishii conducted a psychological evaluation of claimant on July 12, August 14, and August 30, 2018, when claimant was 15 years old. In his evaluation report, Dr. Nishii wrote that WRC referred claimant for an assessment “to rule out or

substantiate a diagnosis of autism spectrum disorder and clarify current level of functioning.” (Ex. 4, p. 16.)

11. Dr. Nishii performed a records review, conducted a clinical interview, observed claimant in the community, and applied the following testing instruments: the Wechsler Intelligence Scale for Children – 5th Edition (WISC-V), the Wide Range Achievement Test – 4th Edition (WRAT-4), the Vineland Adaptive Behavior Scales – 3rd Edition (VABS-III), and the Autism Diagnostic Observation Schedule, Second Edition (ADOS-2).

12. Dr. Nishii noted that claimant’s Individualized Education Plan qualified him for special education support under the category of autism, which was “observed to impact his ability to edit completed work assignments, adapt to schedule and environment changes, sustain interpersonal relationships, read social cues, exhibit polite behavior, and engage in socially appropriate and respectful manner.” (Ex. 11, p. 57.) Claimant was verbally and physically aggressive at school, punching, slapping, choking, and spitting at staff; claimant’s non-compliance, eloping, and property destruction led to police and mental health agency involvement.

13. Dr. Nishii was only able to administer two of the four WRAT-4 subtests, and none of Module 4 of the ADOS-2 due to claimant’s resistance and disrespectful behavior and refusal to cooperate. Dr. Nishii reported WRAT-4 scores in word reading and spelling in the upper extreme and average ranges, respectively. Dr. Nishii could not score the ADOS-2 based on the module’s tasks and interview questions. Instead, he assigned scores based on his behavioral observations of claimant, finding claimant’s score total below the autism cutoff. Dr. Nishii did not explain the degree to which the scores he assigned, which were based on his observation of claimant rather

than on the standard ADOS-2 tasks, were valid, nor his reasons for believing them valid.

14. Dr. Nishii found that claimant's "previous evaluations have suggested the presence of an autism spectrum disorder however, current observations, test results, and interview data did not reveal sufficient evidence to indicate the presence of ASD." During Dr. Nishii's observations, claimant demonstrated the ability to communicate effectively and did not demonstrate restricted, repetitive behaviors and interests. His "overall total on the ADOS-2 fell within the non-spectrum range of classification." (Ex. 11, p. 64.) Claimant's behaviors during one visit were quite different from his behaviors during his second visit; Dr. Nishii interpreted this disparity to mean claimant "is quite in control of his ability to socially engage, when he wants to." Dr. Nishii did not further elaborate on his interpretation, other than to surmise that claimant "did not put his 'best foot forward' during these earlier assessments . . . ." (*Ibid.*)

15. Dr. Nishii diagnosed claimant with Rule Out Oppositional Defiant Disorder and Rule Out Intermittent Explosive Disorder. Dr. Nishii recommended supporting claimant with developing basic living skills, individual therapy to assist with self-esteem and emotional coping skills, and possibly with ABA therapy if claimant's difficult behaviors and emotional outbursts continue.

16. While it is possible that Dr. Nishii's diagnoses are valid, they are not as persuasive as the weight of prior and subsequent evidence supporting an ASD diagnosis, based as they are on incomplete testing, substituting observation for testing measurements, and unsupported conclusions about claimant's behaviors. (See Factual Findings 13, 14.)

## **WRC's 2018 Action**

17. WRC denied claimant eligibility on September 19, 2018.

## **2020 PSYCHOSOCIAL ASSESSMENT**

18. In response to claimant's mother's 2020 request, Maritz Cortez, an intake coordinator at WRC, conducted a new psychosocial assessment of claimant by telephone on July 8, 2020. As a result of the assessment, Ms. Cortez recommended that a psychological evaluation for autism be performed, and that the findings be used to "re-determine" whether claimant is eligible for regional center services.

19. Ms. Cortez noted that claimant's mother informed her that claimant has been hospitalized multiple times due to aggressive behaviors, is under the psychiatric care of Dr. Schmidt-Lackner and is able to perform self-care tasks but needs prompting to shower and brush his teeth. He is able to use public transit. He has a long history of social impairment, is rigid and inflexible, misreads social cues, and overreacts to peers. Claimant has received special education services since he was eight years old, under a school district diagnosis of Autism. He has been expelled from two schools for his behaviors.

## **DR. MEZA'S 2020 EVALUATION FOR WRC**

20. George Jesús Meza, Ph.D., conducted a psychological evaluation of claimant on September 8, 15, 22, and 30, 2020, when claimant was 17 years old. In his evaluation report, Dr. Meza wrote that WRC referred claimant for an assessment "due to his mother's concerns that he may have Autism Spectrum Disorder (ASD). [Claimant] has an educational diagnosis of ASD. [Claimant] was evaluated at age 14 by a Clinical Psychologist and diagnosed with ASD." (Ex. 4, p. 16.)



21. Dr. Meza performed a records review, conducted a clinical interview, observed claimant in the community, and applied the following testing instruments: the Wechsler Adult Intelligence Scale – 4th Edition (WAIS-IV), the Wide Range Achievement Test – 5th Edition (WRAT-5) (attempted), the Adaptive Behavior Assessment Scale – 3rd Edition (ABAS-3), and the Autism Diagnostic Interview – Revised (ADI-R).

22. Dr. Meza wrote that, according to claimant’s mother, claimant first displayed behavioral problems in preschool, consisting of aggression toward his peers, and exhibited impaired social skills development. “Behaviors were identified as a low frustration threshold, angry outbursts, cursing, and aggression towards others. [Claimant] has physically assaulted his family members on several occasions. [¶] [Claimant] has been dismissed from multiple schools due to behavioral problems. . . . [C]urrently attending . . . High School, . . . [he] has an Individual Education Plan under the category of Autism.” (Ex. 4, p. 17.) Dr. Meza wrote that claimant does not participate in any organized social recreational activities and has no employment history.

23. In his records review, Dr. Meza found that claimant has no history of medical issues, and was assessed by mental health professionals several times:

a. Jared Maloff, Psy.D., in March 2018, diagnosed claimant with Autism Spectrum Disorder and Major Depressive Disorder, Recurrent, Severe Without Psychotic Symptoms.

b. Jeffrey Nishii, Psy.D., in August 2018, diagnosed claimant with Rule Out Oppositional Defiant Disorder and Rule Out Intermittent Explosive Disorder.

c. Dr. Schmidt-Lackner wrote in June 2020 that she applied the CARS-3, the results of which demonstrated that claimant met the DSM-5 criteria for ASD.

24. Dr. Meza interviewed and tested claimant, who was at first non-compliant. Eventually, claimant completed the cognitive testing. Claimant has a restricted affect but spoke in complete phrases with appropriate syntax. Dr. Meza then observed claimant at home, using Zoom on September 30, 2020. Claimant was resistant and noncooperative. When questioned about Dr. Meza's findings that claimant is properly diagnosed with ASD, and the similar findings of claimant's psychiatrist, his previous psychologist, and the school district, claimant disputed the diagnosis, became increasingly oppositional, and terminated the call.

25. Dr. Meza reported that, on the WAIS-IV, claimant scored in the very superior range in verbal comprehension abilities, in the superior range in perceptual reasoning abilities and in processing speed, and in the average range in working memory, with an overall score in the superior range. Dr. Meza was unable to assess claimant's academic skills using the WRAT-5, due to claimant's noncooperation.

26. Claimant's mother completed the rating scale on the ABAS-3, which assesses adaptive behavior. Claimant scored in the below average range. He talks too much or too little in conversations, loses track of appointments, does not clean or tidy up at home and does not keep his belongings clean, does not initiate games by himself, and does not plan for recreational activities during school breaks. Claimant can travel by himself in the community using public transportation, and can dress himself and perform toileting tasks, but he does not consistently bathe or brush his teeth. He never completes tasks and never controls his temper when he does not get

what he wants. He does not show sympathy for others when they are sad or upset, and he says and does things that embarrass and hurt others.

27. On the ADI-R, a standardized clinical interview conducted with claimant's mother, claimant's scores met the cutoff for Autism. In the area of social interaction, claimant has a minimal range of facial expressions, has no stable group of friends, does not share things, presents with minimal empathy for others, and will not interact unless he sees some benefit to doing so. When he was young, claimant rarely engaged in imaginative play. In the area of communication, claimant never uses gestures, infrequently engages in reciprocal conversation, and uses socially inappropriate statements and questions. He engaged only in parallel or solitary play when younger. Regarding behaviors and interests, claimant lined up objects as a child, now assembles and disassembles computers, becomes fixated on certain ideas, and repeats phrases over and over. Dr. Meza observed claimant making finger movements and tapping his head repeatedly.

28. Dr. Meza found the test results valid and reported the following conclusions. The test results, records review, and observations:

support a diagnosis of Autism Spectrum Disorder, without accompanying intellectual impairment. There was evidence of impairment in social interactions and social reciprocity, in addition to perseveration. Although he scores in the superior range on intelligence testing, his adaptive functioning, particularly in the social skills area, is significantly under the appropriate limits for his age and developmental stage.

(Ex. 4, p. 7.)

29. Dr. Meza wrote that autism may not be easily detected in high-functioning and high IQ individuals when they are young, which may have resulted in Dr. Nishii's diagnosis of behavioral opposition, common in some adolescents and serving to disguise core issues. "When one explores [claimant's] entire developmental context, i.e., early childhood, it becomes clear that there was a pervasive pattern of atypical development, beginning in early childhood." (Ex. 4, p. 8.) Claimant has difficulty understanding social cues, uses hurtful language, engages in injurious and aggressive behavior, lacks empathy, has poor academic performance for someone with his high IQ, and lacks friends. His "behavioral symptoms, atypical social presentation, impaired social skills, lack of reading social cues, etc., all present since early childhood, are best explained by an ASD diagnosis rather than a mental health disorder." (*Ibid.*)

30. Dr. Meza explored the DSM-5 criteria for intellectual disability and for ASD. He found that claimant did not meet the DSM-5 criteria for intellectual disability.

31. Claimant did, however, meet the criteria for ASD. Claimant exhibited persistent deficits in social communication and social interaction across multiple contexts, as manifested by impairment in social reciprocity (abnormal social interactions, reduced sharing of affect), deficits in nonverbal communication behaviors used for social interaction, (socially awkward with inconsistent eye contact and a flat or restricted affect), and deficits in developing, maintaining, or understanding relationships (difficulty adjusting behavior to suit various social contexts). Claimant exhibited restricted, repetitive patterns of behavior, interests, or activities, as manifested by stereotyped or repetitive motor movements and use of objects, or speech (atypical prosody, childhood lining up of objects, current finger posturing and head tapping). He insists on sameness and exhibits inflexible adherence to routines or

ritualized patterns of verbal or nonverbal behavior (rigidity, difficulty with change, greeting rituals). He exhibits highly restricted, fixated interests (perseverates on different topics, uses video games as his primary source of socialization, assembles and disassembles computers). He does not, however, display hyper- or hypo-reactivity.

32. Dr. Meza found the severity level of claimant's social communication and restricted, repetitive behavior deficits to be at "level 1" which according to the DSM-5, as reported by Dr. Meza, signifies "requiring support." (Levels 2 and 3 require substantial or very substantial support.) Dr. Meza recommended claimant ask WRC about services and support, including in the areas of supportive living services, employment services, and ABA services, mental health treatment, and medication support.

### **Dr. Schmidt-Lackner's Findings and Correspondence with WRC**

33. On November 9, 2020, Dr. Schmidt-Lackner, claimant's treating psychiatrist, wrote an email to and spoke with Kaely Shilakes, Psy.D. at WRC, to state that "[t]he only diagnosis I have given [claimant] is autism. All of his other symptoms including demoralization and mood disturbance are a result of autism. In my opinion, he has never had a major depression." (Ex. B.)

34. Dr. Schmidt-Lackner testified at hearing that she obtained her medical degree in 1981, and is a clinical professor at UCLA, where she is also Medical Director of an early childhood program for children on the autism spectrum. Her private practice focuses exclusively on children diagnosed with ASD and other developmental disabilities. She is vendored with WRC and has worked with claimant since 2017, when she diagnosed claimant with ASD.

35. Dr. Schmidt-Lackner testified that claimant meets the DSM-5 criteria and CARS-2 criteria for ASD, a diagnosis also consistent with claimant's early developmental history and clinical presentation. Claimant displays aggression because he is impulsive and rigid; when things do not go his way, he escalates rapidly and lashes out.

36. Dr. Schmidt-Lackner recommended that claimant apply for WRC services in 2018 and, after he was denied eligibility, in 2020. She emailed Dr. Shilakes in November 2020 because she believes claimant qualifies for and needs to receive regional center services and supports in order to progress in his life. She testified that claimant is cognitively intact, but is one of the most rigid, violent, explosive clients she has ever treated, all due to autism. He is not able to pick up on social cues and lacks empathy, which substantially impairs his functioning. He has twice been expelled from school and has social difficulty. He has trouble getting ABA services because providers do not wish to work with him. He is "one of the most impaired kids due to autism" Dr. Schmidt-Lackner has treated.

### **The Service Agency's January 2021 Multidisciplinary Team Observation**

37. On January 7, 2021, the multi-disciplinary team that was to determine claimant's eligibility for regional center services met with Ms. Lander and Ms. Haro from Stand Out Advocates, claimant's mother, and claimant. The meeting was conducted by a video connection using the Zoom computer application. Team members participating were facilitators Kaely Shilakes, Psy.D., and Rita Eagle, Ph.D., as well as Aril Zeldin, M.D., Jessica Haro, BCBA, and Mayra Mendez, Ph.D.

38. Dr. Shilakes wrote a summary report of the meeting. She noted that claimant "spent a major portion of the time insulting the facilitators with flat affect. As the session continued, he began to respond minimally." (Ex. 6, p. 32.) Claimant's mother said claimant refuses to attend school remotely during the Covid-19 pandemic, though he attends therapy sessions remotely. Claimant expressed concern about receiving an eligible diagnosis because it might mean a surrender of control of his well-being and a loss of freedom. He said he would agree to a diagnosis reached by a third-party psychologist who does not receive information from his mother.

39. The team noted Dr. Meza's findings that claimant demonstrates cognitive functioning in the very superior range, and findings that claimant demonstrates spelling and reading skills in the average to very superior range. "During the observation, [claimant] demonstrated an extensive and above average vocabulary and knowledge about a range of topics." (Ex. 6, p. 33.)

40. Dr. Shilakes wrote that claimant "was quite oppositional, demeaning, and verbally hostile toward his mother and the facilitators. His behaviors corresponded with observations noted in previous reports. . . . [He] was observed to display negative social interactions during the video conference. [Claimant] demonstrated attention to topics discussed and sometimes questions were repeated until he answered them. [Claimant] also asked the facilitators questions. Restricted, repetitive behaviors were not observed." (Ex. 6, pp. 33-34.) This failure to observe restricted, repetitive behaviors is not determinative, however; those behaviors have been observed by mental health professionals applying diagnostic instruments during other assessments and as related by claimant's mother.

41. Dr. Shilakes found that claimant "did not present with deficits in receptive or expressive language. Based on a review of [prior] psychological evaluations, . . .

[claimant] demonstrates communication skills in the average range.” (Ex. 6, p. 34.) This conclusion, however, is of doubtful persuasiveness. It contradicts Dr. Meza’s findings of communication skills deficits (see Factual Finding 31), and Dr. Shilakes’s own observations of claimant’s flat affect, minimal responses, failure to respond unless questions were repeated, and negative social interactions.

42. Dr. Shilakes noted that claimant has no motor skills concerns and is capable of most self-care tasks. She noted that claimant demonstrated to Dr. Nishii in 2018 daily living skills in the adequate range; though he does not perform chores, claimant is able to take public transportation, and is economically dependent upon his caregivers as is appropriate for his age.

43. In summary, Dr. Shilakes wrote, claimant “presented as a young man with emotional issues and mental health concerns based [on] this multidisciplinary observation. The consensus of all participants of the consultation is that [claimant] would benefit from intensive individual and family therapy. He presents with well above average cognitive skills and consensus was that profile does not reflect substantial impact due to a developmental disability.” (Ex. 6, pp. 34-35.)

44. The multidisciplinary team observed as the facilitators questioned and engaged claimant. No diagnostic tests were administered. The team’s conclusions contradicted findings made by Drs. Meza and Maloff and were, in part, internally contradictory. The team noted that, when determining eligibility, it is fallacious to focus on what services and supports might benefit claimant, as many of the same services and supports could be useful in treating other conditions. The team’s conclusion (see Factual Finding 37) on the services claimant and his family would benefit from is, therefore, not persuasive in determining claimant’s eligibility. Neither is



the team's impression of claimant's above-average cognitive skills, because strong intellectual ability is not inconsistent with a DSM-5 diagnosis of ASD.

45. During the observation, the team was able to see that "[claimant] is a very bright individual with oppositional behaviors, verbal aggression, and hostility. His challenges are viewed as predominantly informed by mental health issues and intensive individual and family therapy is recommended at this time." (Ex. 7, p. 37.) Noting that the team unanimously disagreed with Dr. Meza's diagnosis based solely on its observations during the Zoom meeting, Dr. Shilakes wrote that the ineligibility decision remains unchanged and that claimant may appeal.

46. When examined in the context of all the evidence, the conclusion of the multidisciplinary team is less persuasive than the conclusion of various mental health providers, after thorough psychological evaluations that included clinical interviews, records reviews, application of appropriate assessments, and thorough exploration of the appropriate diagnostic criteria, that claimant meets all of the DSM-5 Autism Spectrum Disorder criteria at this time.

47. Claimant's mother testified that as a child, claimant lined toys end to end. He maintained a flat expression through kindergarten. Claimant's mother was not aware these behaviors might indicate autism. Claimant's behaviors resulted in him being dismissed from preschool and kindergarten. He eventually received good support for his behaviors through his IEP, but the behaviors persisted, and he was again dismissed from his school. He changed schools several times, thereafter, not perceiving how his insulting language and aggressive behaviors affected others.

48. At age 11, claimant was subject to his first 5150 hold; he “melted down” and was hospitalized at UCLA to stabilize. At age 13, claimant was again placed on an involuntary hold at the California Hospital emergency department.

49. Claimant’s ABA providers, including Beautiful Minds and SLEA ABA, found claimant’s behaviors, rigidity, and fixations were consistent with autism. But ABA providers kept changing, and it was difficult to find anyone to work with claimant due to his aggression. Claimant currently receives ABA services through Magellan Healthcare, Inc. Max Blum, M.S., a BCBA supervisor at Magellan Healthcare, Inc., reported on December 23, 2020, on claimant’s treatment and progress. He recommended that, “[d]ue to the severity of [claimant’s] challenging behaviors and the dangers posed to himself, his family, and the community, an increased level of support is recommended.” (Ex. C.)

50. Claimant’s mother testified that claimant is enrolled in high school, but he has stopped attending online classes. His room is messy, filthy, and foul-smelling. He has a pet hamster but does not clean its cage; there are hamster feces all over his room. He leaves the house naked and does not understand how people in the neighborhood perceive him. Claimant’s mother urges WRC to accept his eligible diagnosis of ASD.

## **LEGAL CONCLUSIONS**

1. Cause exists to grant claimant’s request for regional center services, as set forth in Factual Findings 1 through 50 and Legal Conclusions 2 through 4.

2. The party asserting a claim generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners*

(1998) 17 Cal.4th 763, 789, fn. 9.) In this case, claimant bears the burden of proving, by a preponderance of the evidence, that he is eligible for government benefits or services. (See Evid. Code, § 115.)

3. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 et seq.) To establish eligibility for regional center services under the Lanterman Act, claimant must show that he suffers from a developmental disability that “originate[d] before [he] attain[ed] 18 years of age; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for [him].” (Welf. & Inst. Code, § 4512, subd. (a); see also Cal. Code Regs., tit. 17, §§ 54000, 54010.) There are five categories of developmental disability that may be used to establish eligibility for regional center services. (Welf. & Inst. Code, § 4512, subd. (a); Cal. Code Regs., tit. 17, §§ 54000) The categories are cerebral palsy, epilepsy, autism, intellectual disability, and “disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature.” (Welf. & Inst. Code, § 4512, subd. (a).)

4. Claimant established by a preponderance of the evidence that he is eligible for regional center services under the Lanterman Act based on a diagnosis of substantially handicapping ASD. (Factual Findings 1-50.)

## **ORDER**

Claimant's appeal is granted. Westside Regional Center's decision denying claimant's request for regional center services is reversed.

DATE:

HOWARD W. COHEN

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.