

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

In the Matter Of:

CLAIMANT

v.

INLAND REGIONAL CENTER, Service Agency

OAH No. 2021080171

DECISION

Robert Walker, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on September 16 and October 20, 2021. The hearing was conducted by video conference.

Stephanie Zermeño, Fair Hearings Representative, represented Inland Regional Center (IRC).

Claimant's mother represented claimant. Claimant's father has custody of claimant, and the father was present.

The record was closed, and the matter was submitted for decision on October 20, 2021.

THE ISSUE

Is claimant eligible for Lanterman Act¹ services under the eligibility category of autism spectrum disorder?

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant's father applied for Lanterman Act services for him. Claimant's parents are divorced, and his father has legal custody of claimant. Claimant is 15 years old. Claimant's father contends that claimant is eligible for Lanterman Act services under the eligibility category of autism spectrum disorder. An IRC multidisciplinary eligibility-determination team, comprised of a medical doctor, a psychologist, and a program manager, reviewed claimant's records and concluded that claimant was not eligible.

2. IRC sent claimant's father a notice of proposed action (NOPA) dated July 6, 2021, advising him that IRC had determined that claimant was not eligible. The NOPA provided:

[Claimant] does not currently have a "substantial handicap" as a result of Intellectual Disability, Autism, Cerebral Palsy, [or] Epilepsy. And [claimant] also does not appear to have a

1. The Lanterman Developmental Disabilities Services Act is found at Welfare and Institutions Code section 4500 et seq.

handicapping condition closely related to intellectual disability or to need treatment similar to what individuals with an intellectual disability need. Therefore, IRC concluded that [claimant] is not currently eligible for IRC services for people with developmental disabilities, as that term is defined in California Welfare and Institutions Code (WIC) Section 4512.

3. Claimant's father appealed. He filed a fair hearing request dated July 25, 2021, and this hearing followed.

Diagnostic Criteria for Autism

4. The *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5) identifies criteria for the diagnosis of autism spectrum disorder. The diagnostic criteria include persistent deficits in social communication and social interaction across multiple contexts; restricted repetitive and stereotyped patterns of behavior, interests, or activities; symptoms that are present in the early developmental period; symptoms that cause clinically significant impairment in social, occupational, or other important areas of function; and disturbances that are not better explained by intellectual disability or global developmental delay.

5. An individual must have a DSM-5 diagnosis of autism spectrum disorder to qualify for regional center services based on autism.

Claimant's Records

6. Claimant's records include the following:

7. A psycho-educational assessment report by a multi-disciplinary team that included Kristen Williams, School Psychologist, dated October 3, 2018.

8. Three individualized education program (IEP) summaries by East Valley Specialized Education Local Plan Area (East Valley SELPA) dated November 3, 2020, January 19, 2021, and April 16, 2021.

9. A competency psychological evaluation by Shannon Johnson, Psy.D., dated April 17, 2021.

10. A court memorandum by Nicole Scarano, Probation Officer II, dated May 12, 2021.

11. A psychological evaluation by Angelika Robinson, Psy.D., dated July 5, 2021.

Brief History of Claimant's Academic Progress and Social-Emotional Problems

12. A standard intelligence quotient (IQ) test indicated that claimant has an IQ of 127, which is high.

13. In 2013, claimant was in the second grade and was found eligible for special education services based on a specific learning disability and a speech and language impairment.

14. In 2017, when claimant was in the fifth grade, a triennial IEP indicated academic skills ranging from very low to average. Teacher ratings indicated that claimant was at risk of having problems with school, social skills, and functional

communication. Parental ratings showed elevated behaviors in the areas of inattention, hyperactivity, aggression, anxiety, and depression.

15. Claimant transitioned to Cope Middle School, and a September 2017 IEP addressed significant concerns in emotional and behavioral functioning. Claimant was refusing to attend school. He was reported to be aggressive and threatening at home; claimant's mother reported that he attempted to attack her and punched holes in walls. When claimant did attend school, he completed very little work. A November 2017 IEP added counseling to claimant's special education services because he had been hospitalized for a 72-hour hold pursuant to Welfare and Institutions Code section 5150 to assess whether he presented a risk to himself or others. After that hospitalization, he was diagnosed with major depression and recurrent and intermittent explosive disorder.

16. A multi-disciplinary team that included Kristen Williams, a school psychologist, completed an assessment and wrote a psycho-educational report dated October 3, 2018. Ms. Williams administered the Autism Diagnostic Observation Schedule, 2nd version (ADOS-2), a standardized assessment of communication, social interaction, and play or imaginative use of materials administered in a semi-structured environment. The ADOS-2 activities allow an examiner to observe behaviors that have been identified as important in the diagnosis of autism spectrum disorder.

17. Ms. Williams reported as follows:

[Claimant's] performance score total in the areas of Communication and Reciprocal Social Interaction was significant. [Claimant] demonstrated the ability to give a reasonable account of a routine event. Little reciprocal

conversation was sustained by [claimant]. He ignored probes by the examiner for [him] to participate in an interchange. [Claimant] made random comments suggesting tangential thought. [Claimant] mostly maintained appropriate gaze for his eye contact but did avert at times, appearing to need relief and reverted to asking "why." Facial expressions were directed toward the examiner; however, atypical facial grimaces observed. [Claimant] showed little pleasure during the interaction, appearing agitated and irritable and lacing conversation with comments such as "this is retarded." [Claimant] demonstrated limited personal insight regarding feelings and relationships. [Claimant's] total score in the area of Restricted and Repetitive Behavior was 3. Observation [*sic*] noted that [claimant] repeated words/and or phrases stated by the examiner; smelled toys and/or objects; and held his hands in a clenched or twisted manner on one occasion. *[Claimant's] Social Affect + Restricted and Repetitive Behavior Total Comparison score was 10, reaching the cutoff for Autism.* Information gathered from the ADOS-2 suggests that [claimant] may display behaviors typical of a student with Autism. (Italics added.)

Juvenile Court Proceedings

18. Early in 2021, claimant was before the Juvenile Court of San Bernardino County on charges of holding his father at knifepoint, charges that grew out of an

incident at home. Claimant, who was not allowed to smoke marijuana, defiantly smoked marijuana in the presence of his father and siblings. Claimant offered marijuana to his older sister. Claimant's father told him to get out of the living room and away from his siblings. Claimant went to his room, returned with a knife, and threatened to stab his father. Claimant's father called the police, and claimant was arrested.

19. The juvenile court ordered an assessment of claimant's competency and general mental health. Dr. Johnson conducted a competency psychological evaluation and wrote a report dated April 17, 2021. She concluded that claimant had sufficient knowledge of the court system and proceedings to be competent to stand trial. On April 22, 2021, the court conducted a mental health review and found that claimant was competent.

20. The court set a special hearing for May 12, 2021, to deal with claimant's increasingly violent and delinquent behaviors. Claimant's father asked that claimant be placed in a locked facility.

21. The court ordered a psychological evaluation to determine whether claimant is eligible for regional center services. Dr. Robinson conducted the evaluation and wrote a report dated July 5, 2021. Dr. Robinson concluded that claimant does not have a developmental disability that would qualify him for regional center services.

22. In the present proceeding, there was no evidence as to whether the juvenile court proceedings have been concluded.

Testimony of Sandra Brooks, Ph.D.

DR. BROOKS'S QUALIFICATIONS AND EMPLOYMENT

23. In 2006, Sandra Brooks, Ph.D., earned a doctorate in clinical psychology from Loma Linda University. She is a licensed clinical psychologist and has been on the IRC staff since 2007. Dr. Brooks conducts psychological evaluations to determine eligibility for services and makes differential diagnoses regarding developmental disabilities versus mental health, communication, social-emotional, and learning disorders. She also frequently serves as a member of an IRC eligibility team and participates in making decisions regarding eligibility. Dr. Brooks is an expert in assessing whether a person meets the DSM-5 criteria for autism and whether a person meets other eligibility criteria for regional center services.

24. Dr. Brooks testified about the criteria for determining whether one is eligible to receive Lanterman Act services. She testified that claimant's records show that he does not have a developmental disability and is not eligible for Lanterman Act services.

DR. BROOKS TESTIFIED REGARDING REGIONAL CENTER ELIGIBILITY CRITERIA

25. Dr. Brooks testified that Welfare and Institutions Code section 4512, subdivision (a), sets forth the eligibility criteria for Lanterman Act services. To be eligible, one must have a developmental disability that originates before one attains 18 years of age; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for the individual. The term developmental disability includes intellectual disability, cerebral palsy, epilepsy, and autism. The term also includes disabling conditions closely related to intellectual disability or that require treatment similar to that required for individuals with intellectual disability. In order to

qualify under the category of autism, one must have a diagnosis that meets the DSM criteria. Dr. Brooks testified that claimant's records show that he does not have a qualifying developmental disability.

DR. BROOKS TESTIFIED REGARDING CLAIMANT'S QUALIFICATION FOR SPECIAL EDUCATION SERVICES

26. Claimant began receiving special education services in December 2013; he was in the second grade. Claimant's school district found that he qualified for special education services based on a primary disability of specific learning disability and a secondary disability of speech and language impairment. By November 2020, seven years later, his school district had found that he qualified for special education services based on a primary disability of autism and a secondary disability of emotional disturbance. Dr. Brooks testified that, in order for a school district to find that a student is eligible for special education services based on autism, it is necessary only that the student engages in autistic-like behaviors. Moreover, the supports claimant's school district provided for him were not specifically for children with autism. The district did not provide behavioral intervention or supports for improving social skills.

DR. BROOKS TESTIFIED REGARDING THE OCTOBER 3, 2018, PSYCHO-EDUCATIONAL ASSESSMENT REPORT

27. A psycho-educational assessment was conducted between August and October 2018. Claimant was 12 years old and in the seventh grade. Ms. Williams administered the ADOS-2 as part of that assessment. As noted above, Ms. Williams concluded that claimant achieved a total comparison score of 10, reaching the cutoff for autism. Dr. Brooks testified that Ms. Williams's conclusion may have been

unreliable. In order to achieve a score that is reliable, a subject must be engaged in the testing procedure. A subject's motivation can impact his or her score. When Ms. Williams administered the ADOS-2 to claimant, his level of engagement was low, and that may explain why the results indicated autism. Dr. Brooks referred to Ms. Williams's report of her observations concerning claimant's participation in the test, as follows:

[Claimant] was seen on multiple occasions to complete testing. He came to the test setting in a wary demeanor, asking questions in a perseverative manner. [Claimant] asked "why" repeatedly and consistently requiring redirects and the ignoring of attention seeking behaviors. Additional questions and/or comments included: "No erasing? That's retarded." "What kind of testing is this? What do you see? These are kind of hard, but why, this is retarded?" "This is weird. This last one is gay. What the hell is this?" [Claimant] also commented randomly with profanity, "those dumbasses." He demonstrated atypical facial grimaces that did not appear to match content of discussion. [Claimant's] level of fatigue varied across sessions from alert on preferred tasks, to closing his eyes and holding head to the side. On multiple occasions, [claimant] appeared to be asleep while sitting up and was told that we would discontinue testing for another day. [Claimant] immediately opened his eyes and stated that he wanted to continue rather than go to class.

28. Dr. Brooks testified that Ms. Williams's observations of claimant show that he was not engaged in the administration of the test.

29. Dr Brooks testified that Ms. Williams's observations, including her observation of claimant's use of profanity, also indicate a level of social awareness that is not typical of someone with autism spectrum disorder.

DR. BROOKS TESTIFIED REGARDING DR. JOHNSON'S COMPETENCY EVALUATION

30. As noted above, the juvenile court ordered an assessment of claimant's competency and general mental health, and Dr. Johnson conducted a competency psychological evaluation and wrote a report dated April 17, 2021.

31. Dr. Brooks referred to Dr. Johnson's report on information she obtained concerning claimant's history. Dr. Johnson reported that she was told the following: Claimant became increasingly difficult to manage behaviorally starting in the fifth grade. Prior to that he had occasionally been defiant and difficult to manage. In the fifth grade this escalated to high levels of defiance, argument, and fighting. At home, he began having physical altercations with his mother and siblings. Dr. Brooks testified that these reports of defiance are not consistent with autism spectrum disorder. Autistic children usually are not defiant; they do not demonstrate that level of social awareness.

32. Dr. Johnson reported that claimant's father recalled claimant's behavior when claimant transferred to Cinnamon Hill School. Claimant initially tested limits, but once he understood that there were consequences for misbehavior, he made a consistent choice to avoid defiance and aggression. Dr. Brooks testified that this suggests a level of social awareness that is inconsistent with autism spectrum disorder.

33. Claimant's parents separated in 2009, when claimant was three years old. After they separated, claimant lived with his mother. However, when claimant was in the fifth grade and became physically aggressive and defiant, his behaviors posed a threat to his mother and siblings, and claimant moved to live with his father. Claimant's father told Dr. Johnson that claimant says he misses his mother and wants to live with her; however, claimant says these things only when he is arguing with his father or his father is enforcing consequences for claimant's defiant behavior. Dr. Brooks testified that this manipulative conduct demonstrates a greater level of social awareness than one would expect from a person with autism spectrum disorder.

34. Dr. Johnson reported that, during her evaluation, claimant was defiant and rude. However, at times, he shifted to pleading for Dr. Johnson's help and protection. He asked Dr. Johnson "how he came across." He said he was worried because he did not want the court to put him in a restricted placement. Dr. Brooks testified that claimant's being aware that his answers to Dr. Johnson's questions would have an impact on the outcome of his legal proceeding shows a level of social awareness and manipulation that is inconsistent with claimant's having an autism spectrum disorder.

35. Dr. Johnson talked with claimant about the unacceptable behaviors he exhibited with his father. Claimant said he would stop those behaviors if the court would not put him in a restricted placement. Dr. Brooks testified that claimant's ability to negotiate is inconsistent with a diagnosis of autism.

36. When the examination was finished, Dr. Johnson spent approximately 15 minutes with claimant waiting for his father to come to pick him up. A security guard was present, and claimant repeatedly approached the guard and expressed an interest in the guard's gun, which claimant referred to as a "Glock." Claimant said he had

always wanted one. During the 15 minutes, claimant called his father repeatedly and swore at him abusively. Dr. Brooks testified that all of this demonstrates a level of social awareness that is inconsistent with autism.

37. Dr. Brooks read excerpts from Dr. Johnson's "Behavioral Observations."

[Claimant] presented as deliberately rude and offensive at times. He appeared to enjoy testing the limits and trying to make the evaluator feel uncomfortable. Examples of this behavior ranged from pulling out his cell phone and telling the examiner to wait while he handled important business to wandering away from where he was told to remain for his safety. *[Claimant] presented with a tough guy set of mannerisms intended to assert dominance and intimidate.* (Italics added.)

[¶] . . . [¶]

While [claimant] could not settle on a strategy of how he wanted to interface with the examiner, he was settled on his overarching plan of avoiding incarceration or locked confinement. He demonstrated a consistent ability to refrain from providing information that the examiner had not already previously indicated an awareness of and to avoid disclosing information that he felt could lead to new charges but that there was not currently any evidence to back up what his father had provided in statement. *[sic]* He was further able to maintain a hard line on not providing

any names of other parties such as friends. [Claimant] was impulsive and inconsistent in many ways but demonstrated a capacity for impulse control and strategic interaction.

38. Dr. Brooks testified that presenting with a “tough-guy set of mannerisms intended to assert dominance and intimidate” is inconsistent with being autistic. Individuals with autism spectrum disorder are not concerned with how other people see them.

39. Dr. Brooks noted that Dr. Johnson concluded that “[claimant] does have sufficient knowledge of the court system and proceedings” and that “[claimant] is competent to stand trial.”

40. Dr. Brooks testified that a primary characteristic of autism disorder is a deficit in social communication. Individuals with an autism spectrum disorder find it difficult to do the following: express themselves, have a reciprocal conversation, read social cues such as facial expressions and gestures, understand the nature of social relationships, understand that behavior can have social consequences, and describe emotions. Individuals with autism spectrum disorder do not have sufficient social awareness to “push people’s buttons,” recognize the impact of having done that, and then change their behavior. Individuals with autism spectrum disorder tend to be stilted, to use language in a repetitive manner, and to be rigid and robotic. They do not use profanity in “appropriate” ways.

41. Dr. Johnson elaborated on why she concluded that claimant is competent to stand trial.

[T]here is an obvious awkwardness to [claimant]. His expressive abilities are limited though he presents as

hypervocal, and his intelligence is high. He presents with a questionable ability to empathize with the feelings and emotions of others. However, he presents with an adequate ability to read the emotions of others because he appears to enjoy triggering reactions of frustration or discomfort. He was reported to [be] late to develop speech, and his writing continues to convey expressive language challenges. It is possible that there is a neuro atypical diagnosis to be found here – though, if so, he would be at a very high functioning level. It is also possible that [claimant] may be experiencing anxiety or depression. At this time, it is difficult to tell for a couple of reasons. First, he was not forthcoming in a discussion of his emotional experiences. Second, youth often present with less stereotypical ways such as presenting anger in place of sadness or depression.

42. Dr. Johnson diagnosed the following: conduct disorder childhood onset type, alcohol use disorder, cannabis use disorder, attention deficit hyperactivity disorder, and unspecified communication disorder. She concluded that there is a question as to whether [claimant] has autism spectrum disorder and recommended that a diagnosis of autism be ruled out. Dr. Johnson wrote:

Inadequate evidence was present at the time of this interview to give a diagnosis of autism. He is pending a Regional Center Assessment. In this case that may provide greater insight.

[¶] . . . [¶]

{Claimant} should be evaluated further by the Regional Center. Beyond his set pattern of deliberate defiance and aggression there lies a set of difficult-to-pin-down symptoms. The Regional Center Assessment may be able to increase clarity.

DR. BROOKS TESTIFIED REGARDING DR. ROBINSON'S PSYCHOLOGICAL EVALUATION

43. As noted above, the court ordered an evaluation to determine whether claimant is eligible for regional center services, and Dr. Robinson conducted a psychological evaluation and wrote a report dated July 5, 2021.

44. Dr. Brooks testified that Dr. Robinson's evaluation was comprehensive. Dr. Robinson reviewed assessment results from prior administrations of certain instruments, including autism spectrum rating scales completed by claimant's parents and teachers. In those earlier rating scales, the parents, particularly claimant's mother, reported higher levels of autistic behaviors than the teachers reported.

45. Dr. Robinson administered the ADOS-2. As noted above, Ms. Williams administered the ADOS-2 in 2018 and reported that "[claimant's] Social Affect + Restricted and Repetitive Behavior Total Comparison score was 10, reaching the cutoff for Autism." Dr. Robinson, however, concluded that claimant had a score of three, which is significantly below the cutoff for diagnosing autism. Dr. Robinson reported on her observations that led to her giving claimant a score of three. She wrote:

[Claimant] was able to participate in age level reciprocal conversations during the assessment and was able to talk on a variety of topics. He did not use overly formal or stilted

language. He did not repeat speech and was not observed to use stereotyped utterances, or odd words/phrases.

[¶] . . . [¶]

[Claimant] did tend to ramble during the course of the assessment; however, this improved significantly as the interview progressed, and he was able to allow for a back-and-forth interaction without interrupting or talking over the evaluator. [Claimant] was able to offer spontaneous information about offered topics and was able to switch easily back and forth in conversation. As part of the ADOS-2, [claimant] was asked to identify situations that would cause basic emotions such as anger, sadness, happiness, and fear. He showed no difficulty naming examples of situations or describing what certain emotions feel like for him. For example, he espoused that he feels happy when: "I see my family, jokes make me happy, people helping me" and identified feeling happy as: "you have a smile on your face, you feel calm." He described becoming angry when: "I don't get to see my family, when people insult me," and described the affective experience as: "I feel a heat in my chest . . . and you know, adrenaline." At that point, he placed the palm of his hand on his chest, moved it in circles and took a deep breath, which showed an ability for appropriate, demonstrative gestures.

[Claimant] was asked if he ever felt loneliness, to which he replied: "Yeah, sometimes, like when it feels that no one is thinking about you . . . but I always have my family and my dad with me, when I get a little lonely, I just work through it."

46. Dr. Brooks commented on Dr. Robinson's observations. Autistic individuals tend to have overly formal or stilted language. Dr. Robinson reported that claimant did not use overly formal or stilted language. Autistic individuals tend to be unable to offer information about themselves. Claimant gave Dr. Robertson a substantial amount of information about himself. Individuals on the autism spectrum find it difficult to talk about emotions in any detail. Claimant had no such difficulty. Individuals on the autism spectrum find it difficult to use gestures appropriately; claimant placed his hand on his chest to emphasize the heat he feels in his chest when he is angry.

47. Dr. Robinson asked claimant questions that provided him an opportunity to talk about his emotions. Dr. Robinson wrote that claimant showed empathy for others and offered appropriate helpful behaviors; she wrote that recognizing that a situation calls for empathy and compassion is typically confusing for individuals with autism.

48. Dr. Brooks testified that the report shows that claimant talked coherently about his emotions, his understanding of interpersonal relationships, and his understanding of the emotions of others. Claimant was able to tell a story in a clear, coherent manner; individuals with autism have difficulty "picking up on" the subtleties of storytelling. Dr. Robinson wrote that when she asked claimant to talk about an incident that had embarrassed him, he related an incident involving his mother,

referred to his affective states, and alluded to the emotional experiences of others. Dr. Brooks testified that this was inconsistent with an autistic individual's understanding.

49. Claimant told Dr. Robinson about claimant's dog having died and identified emotional states of grief, sadness, and anger. Claimant asked Dr. Robinson whether she had ever lost a pet. When she said she had, claimant responded, "I feel for you. They take a piece of your heart." Dr. Brooks testified that it would be unusual for a person with autism to be interested in another person's feelings.

50. Claimant told Dr. Robinson that he wanted to have a girlfriend eventually and get married "because a girlfriend or a wife truly cares about you. She sees something special in you, and I could look out for her." Dr. Brooks testified that, if an autistic person gave a reason for getting married, it would likely be something very concrete and would not involve social relationships.

51. Dr. Robinson reported that claimant did not display restricted or repetitive behaviors or abnormal body movements. He did not evidence an abnormal visual response such as prolonged gazing or seeking specific objects. He maintained socially appropriate eye contact. Dr. Brooks testified that these behaviors are inconsistent with a diagnosis of autism.

52. To assess claimant's adaptive functioning, Dr. Robinson used the Adaptive Behavior Assessment System, Third Edition (ABAS-3). This is a measure of information provided by someone who knows the subject well, for example, a parent or teacher. An examiner may have the reporter complete a written form or respond orally to the examiner's reading of the ABAS-3. Here, claimant's father was the reporter and Dr. Robinson obtained his responses during a telephone interview. Dr. Brooks testified that a score of 70 or below indicates a significant deficit in adaptive

functioning. Claimant's conceptual, social, and practical scores were 80 and 81, which are not in the substantial handicapping range, and claimant's general adaptive composite of 79 is borderline.

53. Dr. Robinson's diagnostic impressions were: attention deficit-hyperactivity disorder (ADHD), by history; oppositional-defiant disorder, by history; depressive disorder, by history; and obsessive-compulsive disorder, by history.

54. Dr. Robinson's summary and recommendations included the following:

It is clear that [claimant] has many profound and complicated struggles that substantially affect his functioning in multiple realms, which was substantiated by his father However, these significant impairments appear to be psychiatrically based as opposed to a developmental disorder. Although [claimant] reportedly evidenced a multitude of autism-like symptoms during childhood, these symptoms and behaviors were not evident to this evaluator or to Dr. Johnson. Therefore, based on review of collateral information, behavioral observations, structural clinical interview, and psychological testing, it is opined that [claimant] is primarily impacted by previously identified psychiatric disorders and possibly ADHD, as opposed to autism spectrum disorder.

Eligibility for regional center services requires the presence of a qualifying disability prior to age 18 with substantial deficits in several areas of functioning. This evaluator opines

that [claimant] does not meet criteria for regional center services as defined in Welfare and Institutions Code, Section 4512, and Title 17, California Code of Regulations, Section 54000.

55. Dr. Brooks testified that she agrees with Dr. Robinson's conclusions.

56. Dr. Brooks was asked about claimant's father's contention that Dr. Robinson's psychological evaluation was rushed. Dr. Brooks testified that, to the contrary, the records show that Dr. Robertson's evaluation was comprehensive.

57. Dr. Brooks testified that claimant's responses to Dr. Robinson during the administration of the ADOS demonstrated that claimant understands that other people have minds, thoughts, theories, and perspectives that are different from his. This allows claimant to understand and predict the behaviors of others based on what he thinks others might be thinking. Claimant demonstrated a great deal of social awareness. He understands and can predict the emotions and behaviors of others. He can modify his own behaviors in order to try to manipulate other people's behaviors. That level of social sophistication is inconsistent with autism spectrum disorder.

Testimony of Claimant's Father

58. Claimant's father testified as follows: Claimant is in juvenile detention. He cannot engage in self-care; he refuses to bathe or put on clothes. He does not go to classes regularly. He will never be economically independent.

59. As noted above, Dr. Robinson used the ABAS-3 to as a measure of claimant's adaptive functioning, and claimant's father was the reporter. An examiner may have the reporter complete a written form or respond orally to the examiner's

reading of the ABAS-3. Here, Dr. Robinson obtained the father's responses during a telephone interview. Claimant's father testified that Dr. Robinson's telephonic interview was not exhaustive or specific. Claimant's father was driving when Dr. Robinson called, and he pulled over to the side of the road. She asked only five or six questions, and they involved little detail.

60. When claimant was in the residential program at Cinnamon Hill School and was receiving services, he did well. He was stable and able to function.

Testimony of Claimant's Mother

61. Claimant's mother testified as follows: She has been caring for claimant since he was born. Claimant's mother contended that, as part of the regional center's evaluation of claimant's application, the regional center should have asked claimant's mother about his behaviors and what he has been going through since he was very young.

62. Recently, one of claimant's siblings was diagnosed with autism.

63. Claimant had speech and language problems and had speech therapy for years. No one in the family could understand him. He was not able to read until he was in the fourth grade. He wet his bed until he was 11 years old. He would not express his emotions or feelings. The family stopped going to church or birthday parties because claimant could not socialize.

64. Claimant has limitations in three or more areas. He has functional deficits in language, learning, and capacity to be independent and self-sufficient. His behaviors are because of autism.

65. More than five professionals have told claimant's parents that he is autistic. When claimant was in the seventh grade, the school psychologist said he was autistic. Dr. Chat diagnosed autism. When claimant was in Utah, they confirmed that he was bi-polar and autistic. A doctor who saw claimant in juvenile confinement called and told claimant's mother that claimant was autistic.

66. Claimant's mother is a clinical social worker and has worked with autistic children. It is clear to her that claimant needs regional center services.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he or she is asserting." (Evid. Code, § 500.) Claimant has the burden of proving that he is eligible for Lanterman Act services.

2. The standard of proof is proof by a preponderance of the evidence. (Evid. Code, § 115.)

The Law Regarding Eligibility

3. Welfare and Institutions Code section 4512, subdivision (a), defines developmental disability.

"Developmental disability" means 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. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this 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.

4. Welfare and Institutions Code section 4512, subdivision (l)(1), defines substantial disability as that term is used in Welfare and Institutions Code section 4512, subdivision (a).

“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.

5. Welfare and Institutions Code section 4642, subdivision (a)(1), provides for eligibility for initial intake and assessment services.

Any person believed to have a developmental disability, and any person believed to have a high risk of parenting a developmentally disabled infant shall be eligible for initial intake and assessment services in the regional centers. In addition, any infant having a high risk of becoming developmentally disabled may be eligible for initial intake and assessment services in the regional centers. For purposes of this section, "high-risk infant" means a child less than 36 months of age whose genetic, medical, or environmental history is predictive of a substantially greater risk for developmental disability than that for the general population.

6. Welfare and Institutions Code section 4643, subdivision (a), provides that assessment may include collection and review of historical diagnostic data.

Assessment may include collection and review of available historical diagnostic data, provision or procurement of necessary tests and evaluations, and summarization of developmental levels and service needs and is conditional upon receipt of the release of information specified in subdivision (b).

7. Welfare and Institutions Code section 4643, subdivision (a), provides that a regional center may consider evaluations and tests from other sources.

In determining if an individual meets the definition of developmental disability contained in subdivision (a) of Section 4512, the regional center may consider evaluations and tests, including, but not limited to, intelligence tests, adaptive functioning tests, neurological and neuropsychological tests, diagnostic tests performed by a physician, psychiatric tests, and other tests or evaluations that have been performed by, and are available from, other sources.

8. Thus, without administering any tests, a regional center may be able to determine whether an applicant is eligible for services. A regional center may be able to do that based on historical data and based on evaluations and tests that have been performed by, and are available from, other sources.

Analysis

9. The fact that claimant received special education services as a child based on a finding of autism does not mean he qualifies for Lanterman Act services. Dr. Brooks testified that, in order for a school district to find that a student is eligible for special education services based on autism, it is necessary only that the student engages in autistic-like behaviors. Regional centers, however, require a medical diagnosis of autism based on DSM diagnostic criteria, and there is no evidence that anyone has diagnosed claimant with autism based on DSM diagnostic criteria. Moreover, Dr. Brooks pointed out that the supports the school district provided for

claimant were not specifically for children with autism. The district did not provide behavioral intervention or supports for improving social skills.

10. On September 21, 2018, Ms. Williams administered the ADOS-2, and claimant's "Social Affect + Restricted and Repetitive Behavior Total Comparison score was 10 reaching the cutoff for Autism." Ms. Williams concluded that "information gathered from the ADOS-2 suggests that claimant may display behaviors typical of a student with Autism." Three years later, in July, 2021, Dr. Robinson administered the ADOS-2, and claimant obtained a total score of 3, which is not in the autism range. Dr. Brooks testified about the significant difference between the two scores. She implied that Ms. Williams's conclusion was unreliable. Dr. Brooks said that, in order for a subject's score to be reliable, the subject must have been engaged in the administration of the test. Ms. Williams's report suggests that claimant was not appropriately engaged in the test when Ms. Williams administered it, and Dr. Robinson's report suggests that he was appropriately engaged when Dr. Robinson administered it. Thus, the score of 3, which claimant obtained when Dr. Robinson administered the test, is more reliable. During Dr. Robinson's administration of the ADOS-2, claimant repeatedly displayed behaviors that were inconsistent with a diagnosis of autism. Claimant engaged in reciprocal conversations; talked about a variety of topics; spontaneously offered information; spoke of situations that cause certain basic emotions such as happiness and loneliness; demonstrated an ability to use demonstrative gestures; expressed empathy for others; told a story in a coherent manner; expressed an interest in Dr. Robinson's feelings; and maintained appropriate eye contact. It is unusual to find individuals with autism spectrum disorder displaying such behaviors.

11. Certain behaviors are characteristic of individuals with autism spectrum disorder, but claimant did not display them. He did not use overly formal or stilted language, repeat speech, use stereotyped utterances, or engage in abnormal visual responses.

12. Dr. Robinson's diagnostic impressions were: ADHD, by history; oppositional-defiant disorder, by history; depressive disorder, by history; and obsessive-compulsive disorder, by history. Dr. Robinson concluded that claimant is primarily impacted by psychiatric disorders and possibly ADHD, as opposed to autism spectrum disorder. Dr. Brooks agreed with Dr. Robinson's conclusions.

13. Claimant's mother testified that more than five professionals have told claimant's parents that claimant is autistic. But no evidence was presented that anyone qualified to diagnose autism made a diagnosis based on the DSM-5 criteria.

14. Claimant failed to prove that he is eligible for Lanterman Act services based on a diagnosis of autism spectrum disorder.

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ORDER

Claimant's appeal from IRC's determination that claimant is not eligible for Lanterman Act services is denied. The regional center's determination is affirmed.

DATE: November 1, 2021

ROBERT WALKER

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.