

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

In the Matter Of:

CLAIMANT

v.

SAN DIEGO REGIONAL CENTER, Service Agency

OAH No. 2021090828

DECISION

Robert Walker, Administrative Law Judge, (ALJ) Office of Administrative Hearings (OAH), State of California, heard this matter. The procedural history is outlined below.

As explained below, claimant failed to appear for a hearing set for June 1, 2022. Thus, claimant failed to take advantage of her right to present evidence and argument, and the record was closed on June 1, 2022.

PROCEDURAL HISTORY

A fair hearing request was filed on claimant's behalf. The San Diego Regional Center (SDRC) received it on September 14, 2021.

A hearing was scheduled for November 2, 2021; however, it was continued on the motion of the regional center. As the result of surgery and medical leave, a witness had become unavailable.

By a letter dated November 10, 2021, Donald P. Cole, Presiding Administrative Law Judge, (Presiding ALJ) requested the State Counsel on Developmental Disabilities to assist claimant in finding someone to represent her in this proceeding.

On December 3, 2021, the undersigned ALJ convened a hearing. The proceeding was conducted by video conference. Ronald R. House, Attorney at Law, represented SDRC. Claimant appeared and participated in the proceeding. Claimant said she was not prepared to go forward because she had been unable to find someone to represent her. Further she said she was uncomfortable with the video conference system OAH was using. On December 3, 2021, no evidence was presented. The hearing was continued.

On December 7, 2021, the Presiding ALJ conducted a telephone conference with claimant and Mr. House. Claimant said she was available for hearings only on Mondays between 2:00 and 3:00 p.m. and Wednesdays between 11:00 a.m. and noon. She said, also, that, from among the forms of hearing available, she would prefer that hearings be conducted by telephone conference. To accommodate claimant's preference, all subsequent hearings were conducted by telephone conference. By an order dated December 7, 2021, the Presiding ALJ set a one-hour hearing to be held on a Monday between 2:00 and 3:00 p.m. and three one-hour hearings to be held on Wednesdays between 11:00 a.m. and noon.

On December 15, 2021, the undersigned ALJ convened a hearing. The proceeding was conducted by telephone conference. Mr. House and Neil Kramer, Fair

Hearing Manager, represented the regional center. Paul Starita, Attorney at Law,¹ appeared specially on behalf of claimant. Mr. Starita appeared specially for the purpose of making a motion for continuance. Claimant was present. Mr. Starita made a motion for continuance on the grounds that claimant needed additional time to find someone to represent her. Mr. Starita does not represent clients in regional center matters, but he believed he would be able to find someone to represent claimant. The regional center did not oppose the motion. The motion was granted. On December 15, 2021, no evidence was presented. As of that time, additional one-hour hearings were on calendar for the following dates: December 20 and 22, 2021, and January 5, 2022.

On December 20, 2021, the undersigned ALJ convened a hearing. Mr. House, and Mr. Kramer represented the regional center. Claimant appeared and participated in the proceeding. After a lengthy discussion as to whether to proceed with the hearing, Mr. House made a motion to continue the hearing and the hearing set for December 22, 2021, but leave the hearing set for January 5, 2022, on calendar. That would give claimant more than two weeks to work with Mr. Starita in an effort to find someone to represent her. The matter was continued to January 5, 2022. On December 20, 2021, no evidence was taken. The matter was continued to January 5, 2022.

On January 5, 2022, the undersigned ALJ convened a hearing. Bridgette Webster, Attorney at Law, and Mr. Kramer represented the regional center. Claimant appeared and participated in the proceeding. Mr. Kramer called Rachel Vedder, Psy.D., as a witness and examined her. Also, the regional center's exhibits, Numbers 1 through

¹ Paul Starita, Attorney at Law, Gomez Trial Attorneys, 655 West Broadway, Suite 1700, San Diego, CA 92101.

12, were admitted into evidence, and official notice was taken of Number 13. Dr. Vedder's direct testimony and the regional center's exhibits are the only evidence admitted in this matter.

On February 15, 2022, the undersigned ALJ convened a hearing. Mr. House represented SDRC. Claimant appeared and participated in the proceeding. Dr. Vedder was present and available for claimant's cross-examination. However, claimant said that, for a few reasons, she was not prepared to cross-examine Dr. Vedder. Claimant moved for a continuance. Claimant said she could not cross-examine without a transcript of Dr. Vedder's direct testimony. Claimant contended that she had requested transcripts of all proceedings but had not received transcripts. Claimant said that, because of an auditory processing disability, she cannot use audio recordings efficiently and, therefore, needs written transcripts. Claimant contended, further, that, because of her disability, she is on a fixed income and cannot afford to pay for transcripts. The undersigned ALJ advised claimant that, if she wanted to request that OAH waive the cost of written transcripts because she is disabled, she should do that in writing and send the request to the ADA Coordinator as directed in paragraph 6 of Presiding ALJ Cole's February 3, 2022, Order Scheduling Additional Hearings. On February 15, 2022, no evidence was presented. The February 15, 2022, hearing was continued.

On February 25, 2022, the undersigned ALJ convened a hearing. Mr. House represented SDRC. Claimant appeared and participated in the proceeding. Jamie Barea, M.D., a physician consultant with the regional center, was present and was available for claimant to examine him. Claimant contended that she could not examine Dr. Barea because she did not have transcripts of prior proceedings. The undersigned ALJ told claimant that requests for transcripts must be in writing and that OAH does

not have a record of her having submitted a written request for a transcript. On February 25, 2022, no evidence was presented. The hearing was continued.

On March 18, 2022, the undersigned ALJ convened a hearing. Mr. House, represented SDRC. Claimant appeared and participated in the proceeding. Claimant was scheduled to testify, but she said she could not testify without having transcripts of prior proceedings. The undersigned ALJ, again, told claimant that requests for transcripts must be in writing and that OAH had no record of her having submitted a written request for a transcript. Claimant said she wants a transcript but does not know how to request one. The undersigned ALJ said he would communicate with the Presiding ALJ and ask whether the Presiding ALJ could help claimant understand how to request a transcript. The matter was continued to June 1, 2022, in order to provide claimant with time to obtain a transcript. On March 18, 2022, no evidence was presented. The matter was continued to June 1, 2022, in order to provide claimant with time to obtain a transcript.

The undersigned ALJ asked the Presiding ALJ whether he could help claimant understand how to request a transcript. The Presiding ALJ sent claimant a letter dated March 29, 2022, telling her that, if she wanted to request a transcript, OAH needed her request in writing. The Presiding ALJ enclosed a form for requesting a recording or transcript, which he partially completed for claimant. He also enclosed a memorandum containing instructions for ordering recordings or written transcripts. As noted above the Presiding ALJ, in his February 3, 2022, Order Scheduling Additional Hearings, had advised claimant that, if she wanted to request any special accommodations because she is disabled, she should do that in writing and send the request to the ADA Coordinator.

Claimant did not return the form for requesting a recording or transcript. She did not request any special accommodation.

On June 1, 2022, at 9:00 a.m., the undersigned ALJ convened a hearing. Mr. House represented SDRC. Claimant did not appear, and no one appeared on her behalf. The undersigned ALJ had issued an order dated March 21, 2022, setting hearings on June 1 and 2, 2022, at 9:00 a.m. each day. The order contained the correct information for accessing the telephone conference. And claimant was served with the order. On June 1, 2022, after waiting approximately 15 minutes for claimant to join the hearing, the undersigned ALJ arranged for an OAH staff person to call claimant and remind her of the hearing. A member of the staff called and spoke with claimant at approximately 9:25 a.m. He read her the access information concerning how to join the telephone conference. As of 9:35 a.m., claimant still had not appeared, and the undersigned ALJ declared a default and closed the record.

SUMMARY

Claimant contends she is eligible for regional center services under the eligibility category of autism spectrum disorder. At the time she applied for regional center services, she was 47 years old. Without conceding that claimant is autistic, SDRC determined that, if claimant is autistic, the onset of her autism was not before she was 18. Therefore, she does not have a developmental disability and is not eligible for regional center services.

FACTUAL FINDINGS

Jurisdictional Matters

1. Sometime before August 25, 2021, claimant applied to SDRC for Lanterman Act² services. Claimant contends she is eligible for Lanterman Act services under the eligibility category of autism spectrum disorder.

2. An SDRC eligibility determination team reviewed claimant's application. The team consisted of Yi Hui Liu, M.D.; Rachel Vedder, Psy.D.; and Daisy Hernandez, Intake Service Coordinator. The team completed its review on August 25, 2021. An eligibility determination form dated August 25, 2021, provides that the team reviewed a San Diego Regional Center Social Summary dated June 28, 2021; a psychological evaluation by Alan Lincoln, Ph.D., dated March 4, 2020; and a psychological evaluation by Leav, Psy.D., dated March 10, 2020. A definition of developmental disability is attached to the eligibility determination form.

3. The team concluded that, if claimant had a disability attributable to autism, the records show that it was not a substantial disability that originated before the age of 18 years. The eligibility determination form includes the following comment:

Prior to a recent accident in [claimant's] 40s, that [has] driven [claimant's] anxiety to high levels, [claimant] has been very high functioning. She has a graduate degree, was

² The Lanterman Developmental Disabilities Services Act is found at Welfare and Institutions Code section 4500 et seq.

not receiving special education, owns a home, had a long-term job, and has a support system of friends. There is no evidence of pre-18 disability.

4. On August 26, 2021, Ms. Hernandez spoke with claimant and told her that SDRC had determined she was not eligible for Lanterman Act Services. Ms. Hernandez sent claimant a letter dated August 26, 2021, confirming the conversation. In that letter, Ms. Hernandez said the determination was based on a review of all the information available.

5. Dr. Lincoln filed a fair hearing request dated September 2, 2021, to appeal SDRC's denial of eligibility.³

6. Lisa A. Davidson, Ph.D., wrote a report on a neuropsychological evaluation. The report was finalized September 23, 2020, almost one year before claimant submitted her application for regional center services. There was no evidence as to why claimant did not include that report as part of her documentation in support of her application. In any event, she submitted it after Ms. Hernandez advised her of the regional center's decision that she was not eligible for services.

7. The regional center reevaluated claimant's application. The reevaluation included consideration of Dr. Davidson's report. The eligibility determination team

³ There is a question as to whether Dr. Lincoln was authorized to file a fair hearing request on claimant's behalf. However, there is no need to resolve that issue because the regional center has treated the fair hearing request as though claimant filed it, and neither Dr. Lincoln nor claimant contends that Dr. Lincoln represents claimant.

completed its reevaluation on September 30, 2021. An eligibility determination form dated September 30, 2021, provides that the team reviewed a neuropsychological evaluation by Davidson dated August 3, 2020; the San Diego Regional Center Social Summary dated June 28, 2021; the psychological evaluation by Dr. Lincoln dated March 4, 2020; the psychological evaluation by "Dr. Leave;"⁴ and notes claimant submitted on September 28, 2021. The team, again, concluded that claimant was not eligible because the records showed that, if she had a disability, it did not originate before age 18.

Brief History

8. Claimant was born July 31, 1974.

9. On June 29, 2019, claimant was in a Staples store. She was knocked to the ground by a hand truck full of boxes. The hand truck pushed her some distance, causing numerous injuries. Claimant may have sustained a head injury. On the following day, claimant went to Kaiser urgent care in San Marcos complaining of pain on her right side and pain in connection with walking. Claimant reported pain in her right foot, ankle, leg, thigh, hip, arm, and shoulder.

10. On March 4, 2020, claimant went to Kaiser urgent care. Claimant contends she was seen in the psychiatry department and was diagnosed with autism spectrum disorder. Claimant contends that that is why she has such a difficult time communicating. A medical note in a Kaiser record says claimant spoke by phone with Dr. Ghazi, who wrote that "she [was] seen outside Kaiser Permanente – diagnosed with autism."

⁴ The correct spelling is Leav.

Claimant's Records

PSYCHOLOGICAL REPORT BY DEAN LEAV, PSY.D.

11. On February 25, 2020, Dr. Leav conducted a psychological examination. He wrote a report dated March 10, 2020. Dr. Leav wrote that the reason for his evaluation was to determine whether claimant "meets criteria for Autism Spectrum Disorder"

12. Dr. Leav wrote that the sources of the information on which he relied were:

[Claimant]

Ken Cancelosi (long-term friend)

Examiner's observations

Millon Clinical Multiaxial Inventory-III (MCMI-III)

Wechsler Abbreviated Scale of Intelligence (WASI)

Diagnostic and Statistical Manual of Mental Disorders, 5th
Edition (DSM-5)

13. Dr. Leav wrote that he diagnosed autism spectrum disorder "in accordance with" the DSM-5. He also diagnosed generalized anxiety disorder. In support of the diagnosis of autism spectrum disorder, he found:

[Claimant] exhibits persistent deficits in social communication and social interaction across multiple contexts as manifested by:

deficits in social-emotional reciprocity (abnormal social approach / reduced sharing of emotions or affect),

deficits in nonverbal communicative behaviors used for social interaction (abnormalities in eye contact / struggle to understand and use gestures / constricted facial expressions), and

deficits in developing, maintaining, and understanding relationships (struggle to adjust behavior to suit various social contexts, difficulties making friends).

[Claimant] also exhibits restricted, repetitive patterns of behavior, interests, or activities, as manifested by:

Stereotyped or repetitive motor movements, insistence on sameness or inflexible adherence to routines, difficulties with transitions, ridged thinking patterns, fixated interests, and hyperactivity to sensory input (sound and texture).

These symptoms have been present since childhood and have caused significant impairment in social and occupational functioning.

14. It appears that Dr. Leav used the WASI to conclude that claimant's disturbances are not better explained by intellectual disability because, according to the results of the WASI, claimant's general intellectual functioning is in the average range. And Dr. Leav used the MCMI-III to diagnose generalized anxiety disorder. Thus,

for Dr. Leav's diagnosis of autism spectrum disorder, it appears he relied on claimant's self-reporting, his own observations, and Mr. Cancelosi's reporting.

15. Dr. Leav does not specify what he observed. He does not specify what claimant reported to him. And he does not specify what information he obtained from Mr. Cancelosi or how he obtained it.

16. Thus, there is no evidence as to specifically what Dr. Leav relied on in arriving at his findings and conclusions. It is particularly significant that he failed to specify the grounds he relied on for his findings that claimant's "symptoms have been present since childhood and have caused significant impairment in social and occupational functioning." Obviously, Dr. Leav could not have relied on his own observations as grounds for those findings. That leaves the information claimant and Mr. Cancelosi provided. With regard to the information claimant provided, there is a serious issue as to bias and self-interest. And there is no evidence as to whether Mr. Cancelosi's reporting is reliable.

ASSESSMENT BY ALAN LINCOLN, PH.D.

17. In an assessment dated March 4, 2020, Dr. Lincoln wrote about his review of records, his observations of claimant, a Wechsler Abbreviated Scale of Intelligence – Second Edition (WASI-II) that Dr. Leav administered, and an Autism Diagnostic Observation Schedule – Second Edition (ADOS-2) – Module 4 that Dr. Lincoln's colleague, Lisa Mash, M.S., administered.

18. Dr. Lincoln wrote that claimant "suffers from multiple disorders at the present time. Her history is complex, and she has recently been injured in an accident that had neurologic, orthopedic, and psychological consequences."

19. Dr. Lincoln wrote:

[Claimant] reportedly spoke with her mother about her early development. Her mother recalled that [claimant] met major developmental milestones on time (e.g., toileting, walking, talking), but that she was slightly late in sitting upright. Her mother also told [claimant] that as a child, she was talkative and friendly with adults, but that she had very few same-age peers. Furthermore, her mother reportedly said that [claimant] engaged in repetitive behaviors as a child, including rocking repeatedly on a rocking chair, as well as spinning the wheels on her bicycle and scooter. She also reported that as a child, [claimant] had sensory sensitivities related to certain types of clothing and that she was a picky eater.

20. Dr. Lincoln wrote, "[claimant] also experienced significant psychological trauma until she finally left home in late adolescence. This trauma has never been effectively diagnosed or treated."

21. Dr. Lincoln reported that, in Dr. Leav's administration of the WASI-II, claimant earned an overall score in the high average range. Claimant's subtest scores were relatively consistent across verbal comprehension and nonverbal reasoning.

22. Dr. Lincoln reported that Ms. Mash's administration of the ADOS-2 – Module 4 indicated a high likelihood of an autism spectrum disorder.

23. Dr. Lincoln's diagnostic impression was "Autism Spectrum Disorder without accompanying intellectual or language impairment and [rule out] Anxiety Disorder."

24. Dr. Lincoln did not discuss the matter of the onset of claimant's autism spectrum disorder.

**REPORT ON A NEUROPSYCHOLOGICAL EVALUATION BY LISA A. DAVIDSON,
PH.D. AND RENEE K. PRINCE, PH.D.**

25. On June 27 and July 3 and 21, 2020, Dr. Davidson and Dr. Prince conducted a neuropsychological evaluation. A report concerning the evaluation is dated "August 3, 2020, (finalized September 23, 2020)." Dr. Davidson signed the report.

26. Claimant reported to Dr. Davidson and Dr. Prince that, as a very young child, she "did not meet [her] sitting milestone." She was so eager to "crawl and walk" that she "didn't take time to sit." Dr. Davidson and Dr. Prince concluded from this that "apparently, [claimant] was delayed in motor development." Claimant reported that, at 10 months she was running. She reported that she was a fussy eater and would eat the same thing over and over. "She would throw tantrums if she did not get her way." Claimant reported a very long list of physical ailments.

27. Dr. Davidson reported on Ms. Mash's administration of the ADOS-2 – Module 4, which indicated a high likelihood of an autism spectrum disorder.

28. Claimant reported to Dr. Davidson regarding problems she had in the past. Claimant said, "I got over all that. The biggest thing that caused a problem was the injury. It changed everything for me."

29. Regarding claimant's educational history, Dr. Davidson wrote:

[Claimant] calls herself "a perfectionist," and had a 3.98 GPA at Torrey Pines High School. She obtained a bachelor's degree in sociology with a minor in art history and a master's in education from UCSD. When asked what her best subjects in school were, she wrote "I don't know. I just tried to get all As and did most of the time." However, her worst subjects were PE and Spanish. She thinks she might have a learning disability but has never been diagnosed with one.

30. Dr. Davidson administered a number of tests. She diagnosed autism spectrum disorder; major neurocognitive disorder due to traumatic brain injury, major depression, mild with anxious distress, severe; generalized anxiety disorder; and developmental coordination disorder.

31. Like Dr. Lincoln, Dr. Davidson did not discuss the matter of the onset of claimant's autism spectrum disorder. Dr Davidson made eight specific recommendations, including treatments and therapies but did not mention regional center services.

REGIONAL CENTER INTAKE INTERVIEW REPORT – SOCIAL SUMMARY

32. On June 28, 2021. Ms. Hernandez conducted a regional center intake meeting with claimant. The meeting was conducted by Zoom. Ms. Hernandez wrote a report, a "Social Summary," which is in evidence. The Social Summary indicates the following concerning claimant's accomplishments.

33. In the intake meeting, claimant communicated in complete sentences. The records show that, before her accident in 2019, she accomplished many things, including the following: In middle school, she worked in the cafeteria lunch line. She worked part-time while in high school. She got a driver's license when she was 16. After high school, she attended college and earned a bachelor's degree in sociology and a master's degree education. She attended a community college but transferred to the University of California at San Diego where she earned her bachelor's and master's degrees. While she was in college, she lived in her car for some time but later was able to afford a small apartment. Claimant owns a car. After earning her master's degree, claimant obtained a teaching position in a middle school and taught for 15 years. Occasionally, she served on a panel that interviewed potential new teachers. She had high expectations of students. As a teacher, she earned approximately \$90,000 per year. She helped her mother with housework and took her mother on outings. Claimant has had the same best friend for years and continues to communicate with her. Claimant owns her home, and continues to live in it alone. She completes all of her self-care needs independently – including bathing, dressing, toileting, and hygiene.

Dr. Vedder's Testimony

34. Dr. Vedder is the coordinator of psychological services at SDRC. She is highly experienced in assessing individuals with developmental disabilities. Dr. Vedder testified as follows:

35. Claimant's records do not contain much information about claimant's functioning before she was 18.

36. Claimant's Social Summary shows that she has accomplished many things and does not suggest that she had a substantial disability before she was 18 years old.

37. The Social Summary shows that claimant's life changed dramatically after her 2019 accident. Since the accident, she has had problems with organizing, memory, concentrating, and reading. And she has had limited capacity for maintaining relationships with friends. After the accident, she stopped teaching. Simple things such as paying bills and grocery shopping take longer than they did before the accident and are exhausting. Since the accident, claimant has had visual problems.

38. Dr. Vedder testified that Dr. Leav's report is very brief. It contains no broad test data. Before one can diagnose a developmental disability, one must explore the individual's developmental period, the period before he or she turned 18. But in Dr. Leav's report, there is very little information concerning claimant's background.

39. Dr. Lincoln's report provides a better history. Claimant reported that her mother told her that claimant "met major developmental milestones on time (e.g., toileting, walking, talking), but that she was slightly late in sitting upright."

40. Dr. Davidson's report contains numerous summaries of claimant's physical complaints, which are useful in understanding what was happening. Dr. Vedder testified that an entry in Dr. Davidson's report concerning a February 5, 2022, appointment at Kaiser is important. It is as follows:

On 2/5/22, [claimant] had an appointment with the Comprehensive Pain Program at Kaiser to "evaluate patient for potential benefit from Cognitive Behavioral therapy or other behavioral, complimentary, or alternative treatments

specifically for chronic pain." The initial evaluation stated [that] her neurologist, Dr. Delgado, suggested [that] anxiety was a contributory factor in her migraine symptoms and functioning. Psychologist Dr. Goldwaser wrote that her behavior/manner was negativistic, resistant, adversarial, and argumentative." "Ample pain behaviors were at times inconsistent," like her guarding her right arm initially, then using her arm to express herself by "readily" lifting and using her arm. She appeared frustrated, angry, and depressed, with pressured speech. She "refused to answer clinically relevant questions and indicated that the evaluator "should have read my entire chart." Dr. Goldwaser concluded that, based on her behavior, she would not be a good candidate for the pain program and "would better (be) served by general psychiatry for further evaluation." Dr. Goldwaser stated the psychiatry evaluation would need to rule out a personality disorder (Cluster B), Functional Neurological Symptom Disorder, mood disorder, anxiety disorder, and Somatic Symptom Disorder with Predominant Pain.

41. Dr. Vedder noted claimant's statement to Dr. Davidson: "I got over all that. The biggest thing that caused a problem was the injury. It changed everything for me."

42. Dr. Vedder said claimant's statement to Dr. Davidson about her educational history is very important with regard to her developmental period and the

years just after her developmental period. Dr. Davidson wrote that claimant referred to herself as a perfectionist. She had a 3.98 GPA at Torrey Pines High School. She obtained a bachelor's degree in sociology with a minor in art history and a master's in education from UCSD.

43. Dr. Vedder concluded that claimant's records do not show that she had a substantial disability before the age of 18.

Specific Factual Finding

Claimant failed to prove that, before she attained the age 18 years, she had a substantial disability attributable to autism.

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 she 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 regional center's decision is: If claimant has a disability that is attributable to autism, it was not a substantial disability that originated before age 18. Thus, the evidence that claimant is autistic is irrelevant except to the extent it might bear on the issue of when a disability originated. The issue is: Did claimant prove that she was autistic before the age of 18.

10. Claimant's Kaiser records do not address the issue of when a disability originated. Only one expert report addresses the issue of when a disability originated. Dr. Lincoln does not address that issue. Dr. Davidson does not address that issue.

11. Only Dr. Leav addresses that issue, but his report does not establish, by a preponderance of the evidence, that claimant had a substantial disability attributable to autism that originated before age 18.

12. In support of Dr. Leav's diagnosis of autism spectrum disorder, he found that claimant had certain deficits – deficits in social communication and social interaction; in social-emotional reciprocity; in nonverbal communicative behaviors; and in developing, maintaining, and understanding relationships. And he found that claimant exhibits restricted, repetitive patterns of behavior, interests, or activities. Finally, he found that these symptoms have been present since childhood.

13. It appears that Dr. Leav used the WASI to conclude that claimant's disturbances are not better explained by intellectual disability, and he used the MCMI-III to diagnose generalized anxiety disorder.

14. For Dr. Leav's conclusion that claimant's symptoms have been present since childhood, the only things he could have relied on were claimant's self-reporting, his own observations, and Mr. Cancelosi's reporting. Dr. Leav does not specify what claimant reported to him, and with regard to claimant's reporting, there is a serious issue of bias and self-interest. Dr. Leav does not specify what information he obtained from Mr. Cancelosi or how he obtained it. There are no grounds for determining whether Mr. Cancelosi was competent to provide whatever information he provided or whether it was credible. And finally, it is obvious that Dr. Leav could not have observed whether claimant's symptoms have been present since childhood. On this record, Dr.

Leav's statement that claimant's symptoms have been present since childhood is nothing more than an assertion he makes.

15. Further, there is evidence of claimant's achievements before and shortly after she turned 18 that tends to show that she did not have a substantial disability attributable to autism that originated before age 18.

16. Claimant did not prove by a preponderance of the evidence that she had a substantial disability attributable to autism that originated before age 18.

ORDER

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

DATE: June 14, 2022

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.