

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

In the Matter of:

CLAIMANT,

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH No. 2022080401

DECISION

Julie Cabos-Owen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on October 11, 2022.

Thompson Kelly, Director of Clinical Services, represented Westside Regional Center (WRC or Service Agency). Claimant was represented by her mother. (The names of Claimant and her family are omitted to protect their privacy.)

Testimony and documents were received in evidence. The record closed and the matter was submitted for decision on October 11, 2022.

ISSUE

Does Claimant have a substantially disabling developmental disability entitling her to regional center services?

EVIDENCE

The documentary evidence considered in this case was: Service Agency exhibits 1 - 19. The testimonial evidence considered in this case was that of WRC Intake Manager and Staff Psychologist Kaely Shilakes, Psy. D.; Claimant's mother; and L.D., the special education director of Claimant's school (the witness's name is omitted to avoid indirectly exposing Claimant's personal identifying information, i.e., the school she attends).

FACTUAL FINDINGS

Claimant's Background

1. Claimant is a 17-year-old transgender female. She seeks eligibility for regional center services based on a diagnosis of Autism Spectrum Disorder (ASD).
2. Claimant lives at home with her mother, father, and younger sibling. She attends high school in general education classes.
3. Records from New York City Public Schools (NYCPS) document Claimant's prior assessments and receipt of special education services under the category of Other Health Impairment.

4. In Fall 2014, when Claimant was nine years old, she attended an NYCPS fourth-grade general education class. Both Claimant's mother and teacher observed Claimant had difficulty maintaining attention and was easily distracted. Claimant's attention difficulties appeared to interfere with her access to learning activities. Consequently, she underwent assessments to determine her eligibility for NYCPS special education services.

5. In October 2014, Claimant underwent a psycho-educational assessment through NYCPS. Claimant's cognitive functioning was measured at the high average level (with subtests in verbal comprehension – average to high average; perceptual reasoning – high average to superior; working memory – average to high average; processing speed – average to superior). Claimant's reading, writing, and mathematics skills were in the average range. The evaluator concluded Claimant "presents strong intellectual, cognitive, and educational skills and do[es] not appear to be eligible for special education support and services at this time." (Exhibit 6, p. A99.)

6. In December 2014, Claimant underwent a speech and language evaluation due to concerns about her expressive and receptive language development and her inability to focus. The evaluator did not recommend speech and language therapy because Claimant's overall performance was above average.

7. When Claimant was 10 years old, she was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD).

8. In Fall 2015, Claimant began receiving NYCPS special education services under the category of "Other Health Impairment." (Exhibit 5, p. A27.)

9. At some point between 2015 and 2020, Claimant's family moved to California. Claimant did not receive special education services after she began

attending high school in California. However, as of Fall 2020, Claimant has been receiving school accommodations for her ADHD.

10. During the 2021-2022 school year, Claimant failed the first semester of her literature and her world history classes but obtained passing grades in both classes the next semester.

11. In 2020, Claimant was diagnosed with gender dysphoria. That year, she began transitioning from male to female.

UCLA Diagnosis of ASD

12. In April and May 2021, Rolanda Gott, M.D., conducted an evaluation to determine whether Claimant suffered from ASD. Dr. Gott is a Developmental Behavior Pediatrician and Professor of Pediatrics at University of California Los Angeles (UCLA) Developmental-Behavioral Pediatrics.

13. During the evaluation, Dr. Gott noted Claimant's expressive and receptive language/communication were "adequate." (Exhibit 9, p. A115.) However, her "pragmatic language" was "poor," as she interrupted others and persisted on topic interests. (Exhibit 9, p. A116.) Claimant's intonation was abnormal, and she had a flat affect. During her interview with Claimant, Dr. Gott observed Claimant "exhibited well modulated eye contact." (*Id.* at p. A122.) However, when Dr. Gott observed Claimant interacting with her mother, she noted Claimant "displayed fleeting eye contact [and] poor pragmatic language with perseveration on topics of interests such as computer games. [She] offered detailed information without asking for information, [and she] had poor insight in social situations." (*Id.* at p. A124.)

14. Although Claimant's mother reported Claimant's history of hand flapping and echolalia, Dr. Gott observed neither during the evaluation. Claimant reportedly had a low pain tolerance and preferred soft textures. She reportedly could not tolerate brushing her hair and did not want to take showers.

15. Dr. Gott observed Claimant's hyperactivity and impulsivity, and she noted Claimant underachieved academically due to her attention difficulties. Zoom classes during the pandemic caused her anxiety. Claimant was interested in interacting with her peers socially but was unsure how to do so. However, she had some friends with whom she engages online. Claimant suffers from both school and social-related anxiety.

16. Dr. Gott administered the Childhood Autism Rating Scale (CARS), a ratings tool based on direct observation to assist in the clinical diagnosis of ASD and to determine symptom severity. Claimant's total raw score of 31 was above the clinical cut-off value of 27.5, suggesting she is likely to have ASD with mild to moderate symptoms.

17. Dr. Gott concluded, "Based on the results of the clinical interview, the behavioral observation, and rating scales, [Claimant] does meet the diagnostic criteria for [ASD], as defined by the Diagnostic and Statistical Manual [of Mental Disorders], Fifth Edition (DSM-5)." (Exhibit 9, p. A124.) (The ALJ takes official notice of the DSM-5 as a generally accepted tool for diagnosing mental and developmental disorders.) Specifically, Claimant demonstrated "deficits in social communication and social interaction" requiring "Level 1" support, the lowest severity level. (*Ibid.*) Claimant also demonstrated "restricted, repetitive patterns of behavior, interests, or activities," by observation and by history, at a severity of "Level 3 - requires very substantial support." (*Ibid.*)

18. Dr. Gott recommended Claimant's parents contact case management from the regional center and "consider respite care, parent training, [and] social skills training." (Exhibit 9, p. A128.)

WRC Intake Interview

19. Claimant's mother contacted WRC to request an evaluation for eligibility based on a diagnosis of ASD.

20. On January 10, 2022, WRC Intake Coordinator Maritza Cortes conducted and documented an intake interview. According to that interview, Claimant "exhibits rigid behaviors such as talking about her topic of interests; flaps her hands and fidgets her fingers; has an unusual gait and prefers not to make eye contact. She is hyper-focused on one thing, e.g., Looney Tunes video games. She gets upset easily when she is not able to perform tasks." (Exhibit 10, p. A132.) Ms. Cortes noted Claimant "speaks in a clear manner using gestures and simple sentences. [She] needs repetition to follow commands. [She] has difficulty relating to the topic of conversation and tends to talk about her interests only. She engages in conversation but does not provide eye contact consistently." (*Ibid.*) Claimant's mother reported Claimant needs reminders to take care of her personal hygiene. Claimant wants to wear the same clothes. She does not know how to cut her food, but she cooks simple meals using the air fryer. In the community, Claimant understands street signs and the proper way to cross a street. (*Id.* at p. A133.)

21. Ms. Cortes concluded, "Based on her past and present history, [Claimant] has challenges in self-care, communication, and social skills, seems to have behavioral challenges, and struggles with her academic performance." (Exhibit 10, p. A133.) Ms.

Cortes recommended Claimant undergo a psychological evaluation to evaluate for developmental disability.

WRC Psychological Evaluation

22. On April 1 and May 5, 2022, on referral by WRC, licensed clinical psychologist Ruzanna Agamyan, Ph.D., conducted a psychological evaluation of Claimant to determine her level of cognitive and adaptive functioning and to assess for possible Intellectual Disability and ASD. As part of the evaluation, Dr. Agamyan reviewed Claimant's 2014 psychoeducational and speech and language evaluations, and she also reviewed Dr. Gott's evaluation. Dr. Agamyan documented her evaluation findings in a report provided to WRC.

23. Dr. Agamyan observed Claimant's interactions with her mother. She noted Claimant's eye contact was inconsistent and avoidant, her facial expression was limited, and she spoke rapidly and tended to interrupt her mother. Claimant also engaged in mild self-rocking. Claimant noticed asymmetry in the arrangement of furniture. She also tended to persevere about specific topics of her interest.

24. To assess Claimant's cognitive functioning, Dr. Agamyan administered the Wechsler Adult Intelligence Scale – Fourth Edition (WAIS-IV). On the Verbal Comprehension Index, she scored in the average range (score of 107), and on the Perceptual Reasoning Index, she scored in the high average range (score of 119). She scored in the high average range (score of 114) on the Working Memory Index, and she scored in the average range on the Processing Speed Index (score of 100). Claimant's Full Scale Intelligence Quotient (IQ) was in the high average range (score of 112).

25. To assess Claimant's adaptive functioning, Dr. Agamyan administered the Vineland Adaptive Behavior Scales – Third Edition (Vineland-3), with Claimant's mother providing the responses. Her report of Claimant's adaptive skills to Dr. Agamyan was similar to the reports she gave during Dr. Gott's evaluation and the WRC intake interview. According to Dr. Agamyan, Claimant's overall adaptive skills were in the borderline range (Adaptive Behavior Composite Score 75). In the Communication domain, her standard score of 56 indicated a mild deficit. In the Daily Living Skills domain, her standard score of 89 was low-average. In the Socialization domain, her standard score of 85 was in the borderline range.

26. To address autism concerns, Dr. Agamyan administered the Autism Diagnostic Observation Schedule – 2 (ADOS-2). Claimant's score fell below the range of ASD.

27. Dr. Agamyan also administered the Autism Diagnostic Interview – Revised (ADI-R), which was completed by Claimant's mother. Her responses resulted in scores above the necessary cutoff scores in all areas including Reciprocal Social Interaction, Communication, and Restricted, Repetitive and Stereotyped Patterns of Behavior. These scores indicated a diagnosis of ASD was likely.

28. Dr. Agamyan noted: "[Claimant's] adaptive skills are much lower when compared with her intellectual functioning. Despite her adequate verbal comprehension, her pragmatic communication, and especially her receptive communication is in the low range. She functions well below her age level with regard to her personal skills and functioning in the home environment. Yet, she has well above average functioning in the community, which includes her decision making, sense of self-direction and social judgement. It is estimated that [Claimant's] social interactions are well below her age level as well as her ability to cope with novel and

stressful situations. [Claimant] appears to have wide range of interests and can occupy herself with leisure activities, although she tends to hyperfocus on certain topics and themes." (Exhibit 11, p. A141.)

29. After analyzing the DSM-5 diagnostic criteria for ASD, Dr. Agamyan found Claimant, by observation or history, met all three criteria in the category of "Persistent deficits in social communication and social interaction across multiple contexts," with Level 1 support required, and met all four criteria in the category of "Restricted, repetitive patterns of behavior, interests, or activities," with Level 1 support required. (Exhibit 11, p. A142.) Additionally, Claimant met the criterion that "Symptoms cause clinically significant impairment in social and educational areas of current functioning." (*Ibid.*)

30. Dr. Agamyan diagnosed Claimant with ASD "by history." (Exhibit 11, p. A142.)

31. Dr. Agamyan recommended, "Independent Living Skills including self-help and household related tasks will be beneficial for [Claimant] in order to help expand her adaptive functioning." (Exhibit 11, p. A143.)

Notice of Proposed Action and Fair Hearing Request

32. On July 14, 2022, WRC sent Claimant a Notice of Proposed Action (NOPA), finding her ineligible to receive regional center services because she did not meet eligibility criteria.

33. Claimant's mother filed a Fair Hearing Request to appeal the denial of eligibility.

Multidisciplinary Assessment

34. On August 12, 2022, while awaiting fair hearing, WRC conducted a multidisciplinary assessment to gather additional information about Claimant's diagnostic presentation and functioning level. The assessment was conducted remotely via Zoom. During the observation, Claimant and then her mother were interviewed by Kaely Shilakes, Psy.D., WRC Intake Manager. WRC psychology consultant, Mayra Mendez, Ph.D., L.M.F.T., also participated in and documented the observation.

35. According to the report of the multidisciplinary assessment, Claimant presented as a calm, well-engaged, articulate, and forthcoming participant. The report noted, "She was observed to maintain emotional regulation, positive demeanor, and cooperative interactions." (Exhibit 14, p. A151.) Claimant "spoke in full sentences. She expressed emotion, she shared thoughts, feelings, experiences, and she expressed depth of content as she responded to all questions posed and provided elaboration of thoughts and information. . . . [Claimant] shared information about her interests, preferences, social experiences, school life, and emotional challenges. Expressive and receptive language skills presented as unimpaired and age appropriate." (*Ibid.*)

36. Claimant reported several times that school was a stressful experience, and she noted her difficulties in ninth grade. However, she also reported taking the summer break to relax and to "regroup" and is now "doing great." (*Ibid.*) Claimant reported engaging in social activities with several identified friends.

37. Claimant uses the Metro train with a friend on Fridays after school. Claimant's mother drives her to the train station, and Claimant relies on her friend to get around the community. Her mother gives her small amounts of money to make

purchases. Claimant independently brushes her teeth, puts on her clothes, and takes her medications with a list in the bathroom to remind her.

38. The multidisciplinary assessment report concluded:

[Claimant] presented as a bright and engaging teen with lots of social motivation. She is capable of performing self-care tasks and navigating the community. She is learning to handle and save money. There are no motor or language concerns. She frequently engages with her friends. Her academic challenges have been reported to be tied to the gender dysphoria and mental health issues. Reported challenges reflect a child impacted by mental health conditions. She has a history of significant depression and anxiety. The consensus of the team was that overall presentation did not reflect a child substantially disabled by a developmentally-informed disability.

(Exhibit 14, p. A153.)

Testimony at Fair Hearing

39. WRC eligibility is a “team” decision, with the team consisting of Dr. Shilakes, a psychologist consultant, a Board-Certified Behavior Analyst / autism behavior specialist, and a physician consultant. Dr. Shilakes testified at the fair hearing, and she noted the eligibility team questioned Claimant’s ASD diagnosis, instead believing Claimant “has presented in a way that seems to the team more heavily impacted by mental health conditions.” Dr. Shilakes conceded an individual with ASD could have co-occurring mental disorders. She did not specify how Claimant’s mental

health issues, her ADHD, or her gender dysphoria were the cause of Claimant's presentation (e.g., avoidant eye contact, limited facial expression, mild self-rocking, etc.), nor did she explain how Claimant's mental health conditions "more heavily impacted" her presentation such that ASD must be ruled out.

40. Dr. Shilakes pointed out that Dr. Agamyan was "not clear" whether she "was just documenting that Claimant's had been diagnosed with [ASD] historically or whether she actually diagnosed her with ASD." Dr. Shilakes also noted Claimant's score on the ADOS-2 fell below the ASD range. However, Dr. Agamyan's report documented Claimant's ADI-R score indicating a likely diagnosis of ASD. Dr. Agamyan's report also documented her observations of ASD symptoms (e.g., inconsistent and avoidant eye contact, limited facial expression, mild self-rocking) and her finding that Claimant, by observation or history, met all the criteria for an ASD diagnosis.

41. During the multidisciplinary assessment, Dr. Shilakes observed Claimant to be bright, engaged, and open to responding to questions. Dr. Shilakes did not observe any repetitive behaviors or sensory issues demonstrating characteristics of an ASD diagnosis. Dr. Shilakes conceded the assessment was limited to what could be observed via Zoom videoconferencing.

42. Given Dr. Gott's and Dr. Agamyan's diagnoses of ASD following comprehensive in-person psychological evaluations of Claimant, the evidence established Claimant suffers from ASD.

43. WRC also asserted Claimant does not qualify for regional center services because she does not have a "substantial disability," which is defined as a condition resulting in significant functional limitations, as appropriate to the age of the person, in three or more of the following areas of major life activity: receptive and expressive

language; self-care; learning; mobility; self-direction; capacity for independent living; and economic self-sufficiency. (See Legal Conclusions 12 and 13.)

44. According to Dr. Shilakes, the eligibility team did not believe Claimant had substantial disabilities in three or more areas of major life activity.

45. Claimant does not have established significant functional limitations in receptive and expressive language. No testing or evaluations were presented to establish otherwise. She also has no significant functional limitations in mobility.

46. During the multidisciplinary assessment, Claimant reported a capacity to perform self-care tasks. However, Claimant's mother testified credibly at the fair hearing that Claimant has significant limitations in her self-care skills. For example, she is unable to brush her own hair due to sensory issues with her scalp. Claimant requires some prompting and assistance when selecting weather-appropriate clothing and putting on clothes correctly. She must be reminded to change her dirty clothes. She also needs prompting to bathe and to wash her hair properly. Claimant requires reminders to take medicine as directed. The evidence established Claimant has significant functional limitations in self-care.

47. Claimant has a history of limitations in learning but does not appear to have current significant limitations. The special education director at Claimant's current high school testified credibly at the fair hearing, and he confirmed Claimant does not receive special education services but receives accommodations for her ADHD. He noted Claimant is "very capable and intelligent but [has] difficulty completing things if they do not fall under her viewpoint." He confirmed Claimant is "struggling in school due to lack of motivation, and [being] overwhelmed, and perfectionism.

48. Dr. Shilakes opined that, given Claimant's history of high academic achievement scores and high cognitive scores, her current academic struggles appeared tied to her mental health issues, including depression and anxiety, her ADHD, and her gender dysphoria. However, Dr. Shilakes did not specify how Claimant's mental health issues, her ADHD, or her gender dysphoria were the sole cause of Claimant's learning limitations. Nevertheless, there is insufficient evidence to establish Claimant currently has a significant functional limitation in learning. Although she had two failing grades during the first semester of the 2021-2022 school year, she passed all her substantive classes during the spring 2022 semester. While Claimant continues "struggling" in school, the evidence did not establish current significant learning limitations.

49. WRC conceded Claimant has a substantial functional limitation in self-direction. Dr. Shilakes noted the self-direction deficiency impacts Claimant's social emotional development, relationships, and coping skills. However, she noted the eligibility team believes Claimant's self-direction limitations are "informed by anxiety and depression, ADHD, and gender dysphoria." Dr. Shilakes did not specify how Claimant's mental health issues, her ADHD, or her gender dysphoria were the sole cause of Claimant's limitations in self-direction. The evidence established Claimant has significant functional limitations in self-direction.

50. Claimant has some limitations in the capacity for independent living. She requires supervision when using household products and when utilizing the stove and the oven. However, she can use some public transportation, and she is learning how to handle money. There is insufficient evidence to establish Claimant currently has a significant functional limitation for a person her age in the area of capacity for independent living.

51. Given Claimant's age, she does not have a substantial functional limitation in the area of economic self-sufficiency.

52. The preponderance of the evidence established Claimant has significant functional limitations for a person her age in the areas of self-care and self-direction.

LEGAL CONCLUSIONS

Jurisdiction and Burden of Proof

1. An administrative hearing to determine the rights and obligations of the parties is available under the Lanterman Developmental Disabilities Services Act (Lanterman Act) to appeal a regional center decision. (Welf. & Inst. Code, §§ 4700-4716.) Claimant timely requested a hearing following the Service Agency's denial of eligibility, and therefore, jurisdiction for this appeal was established.

2. When a party seeks government benefits or services, she bears the burden of proof. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits].) Where a change in services is sought, the party seeking the change bears the burden of proving that a change in services is necessary. (Evid. Code, § 500.) The standard of proof in this case is a preponderance of the evidence because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.)

3. In seeking eligibility for regional center services, Claimant bears the burden of proving by a preponderance of the evidence that she meets all eligibility criteria. Claimant has failed to meet her burden of proof in this case.

Determination of Claimant's Eligibility under Lanterman Act

4. To be eligible for regional center services, a claimant must have a qualifying developmental disability. As applicable to this case, Welfare and Institutions Code section 4512, subdivision (a), defines "developmental disability" as:

a disability that originates before an individual attains 18 years of age; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for that individual. . . [T]his term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability, but shall not include other handicapping conditions that are solely physical in nature.

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

6. Although the first four categories of eligibility are very specific, the disabling conditions under the residual fifth category are intentionally broad to encompass unspecified conditions and disorders. However, this broad language is not intended to be a catchall, requiring unlimited access for all persons with some form of

learning or behavioral disability. The Legislature requires the fifth category qualifying condition to be "closely related" to intellectual disability (Welf. & Inst. Code, § 4512) or "require treatment similar to that required" for individuals with intellectual disability (Welf. & Inst. Code, § 4512). The definitive characteristics of intellectual disability include a significant degree of cognitive and adaptive deficits. Thus, to be "closely related" to intellectual disability, there must be a manifestation of cognitive and/or adaptive deficits which render that individual's disability like that of a person with intellectual disability. However, this does not require strict replication of all the cognitive and adaptive criteria typically utilized when establishing eligibility due to intellectual disability. If this were so, the fifth category would be redundant. Eligibility under this category requires an analysis of the quality of a claimant's cognitive and adaptive functioning and a determination of whether the effect on her performance renders her like a person with intellectual disability. Furthermore, determining whether a claimant's condition "requires treatment similar to that required" for persons with intellectual disability is not a simple exercise of enumerating the services provided and finding that a claimant would benefit from them. Many people could benefit from the types of services offered by regional centers (e.g., counseling, vocational training, living skills training, speech therapy, or occupational therapy). The criterion is not whether someone would benefit. Rather, it is whether someone's condition requires such treatment.

8. Claimant did not assert fifth category eligibility, and the evidence did not demonstrate her disability was "closely related to intellectual disability" or required "treatment similar to that required for individuals with an intellectual disability."

9. The Lanterman Act and its implementing regulations contain no definition of the qualifying developmental disability of "autism." Consequently, when

determining eligibility for services based on autism, that qualifying disability has been defined as congruent to the DSM-5 definition of "Autism Spectrum Disorder."

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

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

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

2. Deficits in nonverbal communicative behaviors used for social interaction, ranging, for example, from poorly integrated verbal and nonverbal communication; to abnormalities in eye contact and body language or deficits in understanding and use of gestures; to a total lack of facial expressions and nonverbal communication.

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

B. Restricted, repetitive patterns of behavior, interests, or activities, as manifested by at least two of the following, currently or by history (examples are illustrative, not exhaustive; see text):

1. Stereotyped or repetitive motor movements, use of objects, or speech (e.g., simple motor stereotypies, lining up toys or flipping objects, echolalia, idiosyncratic phrases).

2. Insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior (e.g., extreme distress at small changes, difficulties with transitions, rigid thinking patterns, greeting rituals, need to take same route or eat same food every day).

3. Highly restricted, fixated interests that are abnormal in intensity or focus (e.g., strong attachment to or preoccupation with unusual objects, excessively circumscribed or perseverative interests).

4. Hyper- or hyporeactivity to sensory input or unusual interests in sensory aspects of the environment (e.g., apparent indifference to pain/temperature, adverse response to specific sounds or textures, excessive smelling or touching objects, visual fascination with lights or movement). [¶] . . . [¶]

- C. Symptoms must be present in the early developmental period (but may not become fully manifest until social demands exceed limited capacities, or may be masked by learned strategies in later life).
- D. Symptoms cause clinically significant impairment in social, occupational, or other important areas of current functioning.
- E. These disturbances are not better explained by intellectual disability (intellectual development disorder) or global developmental delay. Intellectual disability and autism spectrum disorder frequently co-occur; to make comorbid diagnoses of autism spectrum disorder and intellectual disability, social communication should be below that expected for general developmental level.

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

11. As determined by Drs. Gott and Agamyan, Claimant meets the criteria under the DSM-5 for a diagnosis of ASD.

12. A claimant must prove the existence of a developmental disability within the meaning of Welfare and Institutions Code section 4512. Thus, in addition to falling within an eligibility category, a claimant must show that she has a "substantial disability." Pursuant to Welfare and Institutions Code section 4512, subdivision (j)(1):

"Substantial disability" means the existence of significant functional limitations in three or more of the following

areas of major life activity, as determined by a regional center, and as appropriate to the age of the person:

- (A) Self-care.
- (B) Receptive and expressive language.
- (C) Learning.
- (D) Mobility.
- (E) Self-direction.
- (F) Capacity for independent living.
- (G) Economic self-sufficiency.

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

(a) "Substantial disability" means:

- (1) A condition which results in major impairment of cognitive and/or social functioning, representing sufficient impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential; and
- (2) The existence of significant functional limitations, as determined by the regional center, in three or more of the following areas of major life activity, as appropriate to the person's age:

- (A) Receptive and expressive language;
- (B) Learning;
- (C) Self-care;
- (D) Mobility;
- (E) Self-direction;
- (F) Capacity for independent living;
- (G) Economic self-sufficiency.

14. A claimant's substantial disability must not be solely caused by an excluded condition. The statutory and regulatory definitions of "developmental disability" (Welf. & Inst. Code, § 4512; Cal. Code. Regs., tit. 17, § 54000) exclude conditions that are solely physical in nature. California Code of Regulations, title 17, section 54000, also excludes conditions that are solely psychiatric disorders or solely learning disabilities. Therefore, a person with a "dual diagnosis," that is, a developmental disability coupled either with a psychiatric disorder, a physical disorder, or a learning disability could still be eligible for services. However, someone whose conditions originate only from the excluded categories (psychiatric disorder, physical disorder, or learning disability, alone or in some combination) and who does not have a developmental disability would not be eligible.

15. Claimant has significant functional limitations for a person her age in two areas: self-care and self-direction. However, she does not meet the Lanterman Act's requirement that she demonstrate significant functional limitations in three areas of major life activity. Consequently, Claimant has failed to establish her ASD constitutes a

substantial disability as defined by Welfare and Institutions Code section 4512, subdivision (1), and California Code of Regulations, title 17, section 54001.

16. The preponderance of the evidence established Claimant is not eligible to receive regional center services under the diagnosis of autism because she does not have a substantial disability as defined by the Lanterman Act.

17. Given the foregoing, WRC's denial of eligibility for Claimant to receive regional center services was appropriate.

ORDER

Claimant's appeal is denied. Westside Regional Center's denial of Claimant's eligibility to receive regional center services is upheld.

DATE:

JULIE CABOS-OWEN

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.