BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

SOUTH CENTRAL LOS ANGELES REGIONAL CENTER,

Service Agency.

OAH No. 2022100180

DECISION

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by video conference on December 14, 2022 and on July 19, 2023. Tami Summerville, Appeals and Governmental Affairs Manager, represented South Central Los Angeles Regional Center (SCLARC or service agency). Mother represented Claimant, who was present at the hearing. To preserve privacy and confidentiality neither Mother or Claimant is referenced by name.

The service agency's expert witness, Laurie McKnight Brown, Ph.D., and Mother testified. Documents identified as Exhibit 1 through Exhibit 12 were admitted in evidence. The record closed, and the matter was submitted for decision at the conclusion of the hearing on July 19, 2023.

ISSUE FOR DETERMINATION

1. Whether Claimant is eligible for regional center services and supports under the qualifying category of "autism" as provided for in the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500, et seq.

FACTUAL FINDINGS

Jurisdictional Matters

1. By letter, dated August 9, 2022, SCLARC informed Mother an interdisciplinary team determined Claimant does not have a developmental disability as that term is defined by California Welfare and Institutions Code, Section 4512, subdivisions (a) and(*l*) and the California Code of Regulations, Title 17, Sections 54000 through 54002. (See Exh. 1.)

2. On September 23, 2022, Mother, acting on Claimant's behalf, filed a Fair Hearing Request.

3. All jurisdictional requirements are satisfied.

Claimant's Background

4. Claimant is a 23-year-old female who presents with a diagnosis of Major Depressive Disorder—Recurrent, Severe without psychotic features and Generalized Anxiety Disorder. Claimant's depression and anxiety impaired her academic performance. Since middle school, pursuant to Section 504 of the Rehabilitation Act of

1973 (codified at 29 U.S.C, § 701, et seq.), claimant was home schooled until she completed the twelfth grade.

5. Claimant resides with her parents. During depressive moods, Claimant does not attend to her personal hygiene or household chores. Claimant does not have friends and she is fearful initiating social interactions. Claimant's time is spent playing video games, browsing Instagram, and watching television.

Assessments for Determining Whether Claimant is Eligible for Lanterman Act Services and Supports

6. Laurie McKnight Brown Ph.D., is a licensed clinical psychologist. Dr. Brown serves as SCLARC's lead psychologist consultant. She serves on SCLARC's multidisciplinary team conducting eligibility assessments.

7. At the administrative hearing, Dr. Brown explained the eligibility categories and substantial disability requirement set forth in the Lanterman Act and its regulations. She explained the multidisciplinary team consults diagnostic criteria and identifying characteristics of Autism Spectrum Disorder (ASD) in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) to determine eligibility for services and supports under the Lanterman Act's qualifying category of "autism."

8. The DMS-5 diagnostic criteria for ASD are as follows:

> A. Persistent deficits in social communication and social interaction across multiple contexts, as manifested by the following, currently or by history:
>
> 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:

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 interest in sensory aspects of the environment (e.g., apparent indifference to pain/temperature, adverse response to specific sound or textures, excessive smelling or touching of objects, visual fascination with lights or movement).

C. Symptoms must be present in 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.

(See Exh. 3.)

9. These essential diagnostic features of ASD—deficits in social communication and social interaction (Criterion A) and restricted repetitive patterns of

behavior, interests and activities (Criterion B)—must be present from early childhood and limit or impair everyday functioning (Criteria C and D).

10. At the administrative hearing, Dr. Brown further explained she attended meetings during which SCLARC's multidisciplinary team reviewed Claimant's available school and medical records. According to Dr. Brown's testimony, the multidisciplinary team discussed "in a holistic fashion" the data contained in those records "with references to the Lanterman Act." Three different practitioners assessed Claimant to determine whether Claimant presents with autism. Brown provided the following review and analysis of the accompanying report for each assessment.

ASSESSMENT BY BENJAMIN STEPANOFF, PSY.D.

11. Dr. Stepanoff has no known affiliation with SCLARC. Over a two-day period in January 2022, Dr. Stepanoff observed and assessed Claimant in person at a testing site. Dr. Stepanoff's assessment of Claimant included administration of the Developmental Questionnaire for Parents; the Autism Diagnostic Observation Schedule-Second Edition (ADOS-2), which is an activity-based, standardized assessment of communication, social interaction, play, and restricted and repetitive behaviors; the Millon Clinical Multiaxial Inventory-III (MCMI-III), which is a measurement of personality patterns on a spectrum ranging from adaptive to maladaptive levels of functioning; and the Test of Variables of Attention (T.O.V.A.), which measures attention, inhibitory control and adaptability. Notwithstanding administration of the MCMI-III and the T.O.V.A., the central focus of Dr. Stepanoff's reporting was on results attained from his ministration of the ADOS-2's Module 4 for adolescents with fluent speech to Claimant.

12. Dr. Stepanoff reported Claimant presented as shy with outward signs of anxiety. Her fleeting eye contact appeared more consistent with ASD than with distractibility associated with attention deficit. Claimant maintained a monotone throughout the assessment. The cadence of her speech was slow and she was slow to respond to questions. She did not engage in strategies to incorporate social interaction. Claimant appeared to have limited understanding of social relationships and her role within them. She frequently fidgeted with her fingers.

13. Dr. Stepanoff assigned Claimant a composite score of 8 for communication and a composite score of 12 for reciprocal social interaction for an overall score of 20 on the ADOS, thus placing Claimant in the autism classification. Dr. Stepanoff summarized his assessment of Claimant stating, "The results of this evaluation are SUGGESTIVE of an Autism Diagnosis. [Claimant's] social and behavior skills are delayed for her age. This mean emotional and regulation and social interactions are challenging for her. [Claimant] needs a consistent and structured environment to help her learn to express and manage her emotions in a healthy manner." (Exh. 3.)

14. Dr. Stepanoff diagnosis for Claimant includes Autistic Disorder, Moderate (Level 2), Major Depressive Disorder, Recurrent, Severe without psychotic symptoms, and Generalized Anxiety Disorder. Dr. Stepanoff sought to rule out Bipolar Disorder and Attention-Deficit Hyperactivity Disorder. Based on Dr. Stepanoff's diagnosis, Claimant requested SCLARC to provide her with services and supports pursuant to the Lanterman Act. Dr. Stepanoff's recommendations for Claimant includes Applied Behavioral Analysis (ABA), interpersonal and social skills training, and personal and family therapy.

15. Dr. Brown is critical of Dr. Stepanoff's evaluation of Claimant. At the administrative hearing, Dr. Brown noted Dr. Stepanoff employed no assessment to ascertain Claimant's cognitive abilities or levels of adaptive functioning and Dr. Stepanoff's evaluation report therefore did not include test scores and interpretation of test scores. Dr Brown testified, "The biggest concern about this report is that adaptive functioning was not measured." Dr. Brown additionally observed Dr. Stepanoff did not identify or report the characteristics of ASD Claimant manifested, if any, during Claimant's developmental period. Dr. Brown testified, "Information from the developmental period and early childhood is not included. It is necessary for diagnosis according to the DSM-5. Thus, this report is limited."

ASSESSMENT BY SANDRA WATSON, PSY.D.

16. Dr. Watson is affiliated with SCLARC. In April and May 2022, Dr. Watson remotely assessed Claimant during three sessions totaling four and one-half hours using a HIPAA-compliant video conferencing platform. Dr. Watson's assessment included administration of the Autism Diagnostic Observation Interview-Revised (ADI-R), which is a semi-structured clinical interview administered to caregivers to ascertain information about an individual's developmental period and current functioning; the Vineland Adaptive Behavior Scales-Third Edition (Vineland-3), which assesses adaptive skill ability in the areas of communication, daily living skills, and socialization; and the Wechsler Adult Intelligence Scale-Fourth Edition (WAIS-IV), which is a standardized intelligence test for measuring cognitive functioning across verbal and nonverbal domains.

17. Dr. Watson reported it was difficult to determine whether Claimant made eye contact online. Claimant, however, was focused and attentive notwithstanding her fidgetiness. Regarding Claimant's cognitive/intellectual functioning, Dr. Watson

reported composite scores in the borderline range for Claimant's verbal comprehension, composite scores in the low average range for Claimant's working memory, and a prorated composite score in the borderline range Claimant's perceptual reasoning. Claimant exhibited relative strength on a task measuring cognitive flexibility and mental alertness, mental manipulation, visuospatial imaging, broad visual intelligence, classification and spatial ability, and knowledge of whole relationships. Dr. Watson concluded Claimant "probably functions at least into [*sic*] the borderline range and quite possibly higher." (Exh. 4 at p. 6.)

18. Dr. Watson reported on Claimant's adaptive skill abilities in the areas of communication, daily living skills, and socialization. Regarding Claimant's communication, Dr. Watson observed that Claimant understands the meaning of at least three advanced gestures. Claimant knows to state something in a different way to foster an understanding of what she means to communicate. Claimant is sometimes able to follow directions to do one simple thing, tell the basic parts of a well-known story, and talk about one-time events in detail. Mother reported to Dr. Watson that Claimant "can pay attention if she feels well and is not anxious." (Exh. 4 at p.6.)

19. Regarding Claimant's daily living skills, Mother informed Dr. Watson "there are lots of things that [Claimant] can do but it depends on how she feels as to whether she is going to follow through."

20. In the area of socialization, Dr. Watson reported Claimant "scored just into the moderately low range in this area." (Exh. 4 at p.7.) Claimant is able to congratulate others when good things happened for them, talk with others without interrupting or being rude, play simple card or board games with others. Claimant understands that a friendly acting person may in actuality want to take advantage of her. Claimant understands that somethings conveyed in advertisements might not be

true. Claimant does not try to please others or join a group when they communicate without using words that she is welcomed. Claimant is unable to control her anger or hurt feelings when someone informs her how she might do something better.

21. Using the ADI-R, Dr. Watson assessed Claimant to determine whether she meets the diagnostic criteria for ASD. Dr. Watson reported Claimant's scores for reciprocal social interaction, abnormalities in communication, and restricted, repetitive and stereotyped patterns of behavior "fell below the cut-off score." As a child, Claimant played with her cousins. Claimant was reportedly interested in playing with other children but was shy and concerned about what others thought about her. Then and now, Claimant has few friendships. As a child, Claimant reportedly exhibited some echolalia and, as an adult, Claimant continues to do so at times. Claimant reportedly used few gestures and exhibited limited imitation of others' actions and imitative social play as a child. Claimant reportedly exhibited hand flapping at times when she was excited. Mother indicated no delays in Claimant's speech but reported Claimant had articulation difficulties for a while. Claimant has a history of speech therapy.

22. Dr. Watson noted that Mother reported Claimant's "problems began when she was seven years old." (Exh. 4 at p. 8.)

> At that time, [Claimant] exhibited extreme fear around leaving home to attend school. She was fine at home but became fearful when discussing having to attend school the following day. She was diagnosed with Anxiety at that time and treated with outpatient therapy and eventually medication until this time. In 2020, a diagnosis of Depression was added. . . . [Mother] may have not remembered all of [Claimant's] earlier behaviors, but she

> was very clear that [Claimant's] troubles began at 7 years old in the first grade. She was also clear that the problems were not evident at home but at school. However, [Mother] did report some behaviors at that time that are characteristic of individuals with Autism, but not at a frequency or variety to receive the diagnosis. . . . Another concern is that [Mother] admits . . . she suffered from depression when [Claimant] was younger. [Claimant] . . . blamed her mental health issues on her mother. While it is uncertain specifically what [Claimant] meant by this, it is of note that [Claimant] was close to her mother and her mother was having difficulties at that time. . . . [Claimant] has exhibited some difficulties which have been labeled "shyness." She was able to play with her cousins but unable to play with others. She has also had few friends. This has worsened it seems since she began to reach her teenage years but it was accompanied with worry over how she would be perceived by others. There is a clear element of anxiety here, but there is also enough to make a diagnosis of Social (Pragmatic) Communication Disorder . . . ."

(Exh. 4. at p. 10.)

23. Dr. Watson diagnosed Claimant with Social (Pragmatic) Communication Disorder, Major Depressive Disorder, Recurrent, Severe without Psychotic features (by history), and Generalized Anxiety Disorder (by history). Dr. Watson's recommendations for Claimant include her continuing compliance with her mental treatment plans,

which is to include therapy and medication management, discussions about the possibility of receiving social skills training to assist her with engaging in social interactions, assistance with her job search skills, and exploration of high interest class offerings at a community college.

24. At the administrative hearing, Dr. Brown noted Dr. Watson's assessment and evaluation of Claimant had "some limitations" because it occurred remotely. Dr. Brown noted, however, Dr. Watson compensated for this limitation by employing the ADI-R structured interview format, as opposed to the ADOS with its interactive format. Dr. Brown opined Dr. Watson's assessment and evaluation of Claimant "was more complete but still needed documentation from [Claimant's] developmental period." Dr. Brown opined on Dr. Watson's findings stating, "The entire record shows [Claimant's] difficulties began at age seven when she had anxiety disorder and received treatment through therapy. Overall, she had consistent anxiety disorder and depression during her developmental period. The SCLARC team believes mental health diagnoses can lower adaptive functioning and cause significant functioning impairment. We know when [Claimant's] mood is depressive her adaptive functioning is affected. Not so when she is not depressed. That's how a mental health diagnosis works but is just not how an autism diagnosis works." Dr. Brown noted, for example, Claimant's ability to care for her hygiene and complete chores when motivated and not experiencing any depressive episode. Dr. Brown further noted, "Developmental ability does not operate this way—good on some days and worse on other days." Dr. Brown agreed with Dr. Watson's recommendations for Claimant.

ASSESSMENT BY LISA MENESHIAN, PH.D.

25. Given Dr. Stepanoff and Dr. Watson's conflicting diagnoses, Mother obtained an additional assessment and evaluation of Claimant. Dr. Meneshian has no

known affiliation with SCLARC. Beginning in December 2022 and continuing through March 2023, Dr. Meneshian conducted clinical interviews and administered the following assessments to Claimant: the WAIS-IV; the MCMI-IV; the ADOS-2; the ADI-R; the Vindland-3; the Woodcock Johnson Tests of Achievement, Fourth Edition, which is a comprehensive battery of individually administered tests measuring academic achievement in reading, mathematics, and written language; the Speed and Capacity of Language Processing Test (SCOLP), which is an assessment measuring the slowing in cognitive processes experienced by individuals with brain damage; the Continuous Performance Test, Third Edition (CPT-3), which is an assessment of visual attention; the Conners' Adult ADHD Rating Scales, Self-Report (CAARS), which is a self-report measurement of attention, inattention, hyperactivity/restlessness, impulsivity/emotional lability and problems with self-concept; the Delis-Kaplan Executive Function System (D-KEFS), which evaluates verbal and non-verbal higher level executive functions; the Delis Rating of Executive Functions; Self-Report (D-REF), which is a measure of deficits in executive functioning; the Wechsler Memory Scale (WMS), which measures various domains of memory; the Beery-Buktenica Developmental Test of Visual-Motor Integration (Beery VMI), which assesses motor coordination abilities; the Minnesota Multiphasic Personality Inventory-3 (MMPI-3), which is a self-report measure of personality and psychopathology; the Rorschach Inkblot Test, which examines personality characteristics and emotional functioning; the Sensory Profile-2; the Social Communication Questionnaire, Lifetime Measure (SCQ), which is an evaluation for concerns related to autism; and the Quick Test, which assesses cognitive speed.

26. Dr. Meneshian noted Claimant's chief complaint as "difficulties with depression, anxiety, social problems and difficulties with communication." (Exh. 5 at p. 1.) Dr. Meneshian reports Claimant disclosed having "a lot of fears around talking to

people and communicating" and not having friends. Claimant reportedly attributed her depression "to various factors," including her grandmother's death, her stolen dog, and coping with the COVID-19 pandemic. Claimant told Dr. Meneshian about her history of severe anxiety and her feelings that " her anxiety is a lot better now, as she is better able to manage it." (Exh. 5 at p. 1.)

27. Dr. Meneshian's evaluation report identifies Claimant's symptoms as follows:

> Easily distracted; diminished pleasure in activities; changes in appetite; fatigue or loss of energy; depressed/irritable mood; feelings of hopelessness; social isolation; history of suicidal thoughts; inability to relax; persistent avoidance of being alone; history of engaging in self-harming behavior; marked inability to relax; racing thoughts; frequently running late; feeling discouraged about her future; feeling she has failed more that she have; self-critical.

(Exh. 5 at p. 25.)

28. The results of Dr. Meneshian's assessment of Claimant are reported as follows:

> [Claimant's] overall cognitive abilities placed her in the borderline range (FSIQ=70) as suggested by her performance on the WAIS-IV, indicating significant difficulties with her verbal comprehension, working memory, and processing speed abilities. In contrast, her perceptual reasoning abilities appear to be average to low

average. Results from her SCOLP also indicated difficulties with a low vocabulary and mild impairment in processing speed. Furthermore, her performance on the [Woodcock Johnson] was indicative of impaired academic knowledge . . . indicating significant difficulties with fluency. Overall, [Claimant's] performance indicates significant concerns for her cognitive and academic abilities, specifically in the areas of verbal comprehension, oral language, processing speed, and fluency with academic tasks.

On the tests measuring executive functioning, [Claimant] demonstrated overall impaired abilities. Specifically, regarding her attention, results on the CPT-3, CAARS, and D-KEFS do support significant concerns for dysfunction in her attention skills. Moreover regarding her higher level executive functions for reasoning and problem solving, results on the D-KEFS, Quick Test, and DREF indicate that she has difficulties with cognitive flexibility, working memory, and processing speed. Regarding her memory, WMS results indicated significant impairments in her immediate memory, in contrast to her low average delayed memory abilities. Finally, her motor skills displayed difficulties in motor coordination and visuomotor integration. In sum, the aforementioned issues relate to her attention and high-level executive functions are likely correlated with ongoing symptoms of anxiety, and stress that negatively impact her ability to concentrate, focus, and

> complete tasks effectively, as well as impacted by a neurodevelopmental disorder.
>
> [Claimant's] endorsements on the social and emotional assessments also support she is experiencing significant anxiety, depression, and suicidal ideation that interfere with her social and emotional functioning. Additionally, her responses indicated difficulties with social communication, limited social skills that support depressive symptoms. Lastly, she demonstrates some difficulties with reality testing and low self-esteem. In sum, [Claimant] qualifies for Generalized Anxiety Disorder and Major Depressive Disorder.
>
> Lastly, [Claimant] was administered assessments to evaluate the presence of Autism Spectrum Disorder. Scores on the ADOS-2, ADI-R, and SCQ indicate significant impairments in communication and social interaction that have been over her lifespan that are similar to those with Autism Spectrum Disorder. In sum, [Claimant] does qualify for Autism Spectrum Disorder.

(Exh. 5 at pp.7-9.)

29. Dr. Meneshian diagnosed Claimant with Autism Spectrum Disorder, Level 1 Requiring Support, with accompanying intellectual impairment, Generalized Anxiety Disorder, and Major Depressive Disorder, recurrent, moderate. Dr. Meneshian's treatment recommendation includes support from an individual therapist experience

with working with adult females on the autism spectrum, neurofeedback to treat anxiety, ongoing psychiatric support to manage symptoms of depression and anxiety, accommodations such as additional time on tests, a less distracting environment, and extra support on subjects or tasks as needed, and participation in a social skills group to foster social communication and age-appropriate peer interactions.

30. At the administrative hearing, Dr. Brown noted that "information from [Claimant's] developmental period was still need to show [Claimant's] condition was present at that time." Regarding Dr. Meneshian's treatment recommendations, Dr. Brown opined, "None of the recommendations are [*sic*] specifically to treat autism." Dr. Brown explained treatment for autism includes ABA "to change maladaptive behaviors," supported living services, independent living services, adaptive skills training, and social skills group.

Mother's Testimony

31. Mother testified that when Claimant was a seven-year-old, Dr. Cooper, a clinical psychologist, diagnosed Claimant with pervasive developmental delays. Mother claimed Dr. Cooper told her "it was like mild autism." Mother additionally testified, "It's hard because [Claimant] doesn't have severe autism. It is mild and she can hide it. I was told that autistic girls can hide their symptoms." Mother testified she did not pay attention to Dr. Cooper's diagnosis because she was paying attention to Claimant's anxiety. Mother testified, "I lost time thinking [Claimant] only had anxiety. No one guided me about her autism. [Claimant] is now 23. It is my fault she was never treated because I didn't know. I agree she doesn't qualify. I accept that." Mother is seeking "therapy to help [Claimant] to be independent."

32. Claimant did not testify at the administrative hearing.

LEGAL CONCLUSIONS

Standard and Burden of Proof

1. As Claimant is seeking to establish eligibility for Lanterman Act supports and services, she has the burden of proving by a preponderance of the evidence she has met the Lanterman Act's eligibility criteria. (*Lindsay v. San Diego Retirement Bd*. (1964) 231 Cal.App.2d 156, 161[disability benefits]; *Greatorex v. Board of Admin*. (1979) 91 Cal.App.3d 54, 57 [retirement benefits]; Evid. Code, § 500.)

2. "'Preponderance of the evidence means evidence that has more convincing force than that opposed to it.' (Citations.) . . . [T]he sole focus of the legal definition of 'preponderance' in the phrase 'preponderance of the evidence' is the *quality* of the evidence. The *quantity* of the evidence presented by each side is irrelevant." (*Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314, 324-325, original italics.) In meeting the burden of proof by a preponderance of the evidence, Claimant "must produce substantial evidence, contradicted or un-contradicted, which supports the finding." (*In re Shelley J*. (1998) 68 Cal.App.4th 322, 339.)

Applicable Law

3. The Lanterman Act defines "developmental disability" to mean the following:

> [A] disability that originates before an individual attains age 18 years, 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 intellectual disability, but shall not include other handicapping conditions that are solely physical in nature.

(Welf. & Inst. Code, §4512, subd. (a).)

4. California Code of Regulations, title 17 (CCR), section 54000 further defines "developmental disability" as follows:

> (a) "Developmental Disability" means a disability that is attributable to intellectual disability, cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with intellectual disability.
>
> (b) The Developmental Disability shall:
>
> (1) Originate before age eighteen;
>
> (2) Be likely to continue indefinitely;
>
> (3) Constitute a substantial disability for the individual . . .;
>
> (c) Developmental Disability shall not include handicapping conditions that are:
>
> (1) Solely psychiatric disorders where there is impaired intellectual or social functioning which originated as a result of the psychiatric disorder or treatment given for such a

disorder. Such psychiatric disorders include psycho-social deprivation and/or psychosis, severe neurosis or personality disorders even where social and intellectual functioning have become seriously impaired as an integral manifestation of the disorder.

(2) Solely learning disabilities. A learning disability is a condition which manifests as a significant discrepancy between estimated cognitive potential and actual level of educational performance and which is not a result of generalized mental retardation, educational or psycho-social deprivation, psychiatric disorder, or sensory loss.

(3) Solely physical in nature. These conditions include congenital anomalies or conditions acquired through disease, accident, or faulty development which are not associated with a neurological impairment that results in need for treatment similar to that required for mental retardation.

5. Establishing the existence of a developmental disability within the meaning of the Lanterman Act and promulgated regulations requires Claimant additionally to establish by a preponderance of evidence the developmental disability is a "substantial disability," defined in section 4512, subdivision (*l*), to mean "the existence of significant 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: (1) Self-care. [¶] (2) Receptive and expressive language. [¶] (3) Learning. [¶] (4) Mobility. [¶] (5) Self-direction. [¶] (6) Capacity for independent living. [¶] (7) Economic

self-sufficiency." (See also CCR, § 54001, subd. (a); CCR, § 54002 defines "cognitive" as "the ability of an individual to solve problems with insight to adapt to new situations, to think abstractly, and to profit from experience.")

Discussion

6. A preponderance of the evidence does not establish Claimant exhibited deficits in social communication and social interaction across multiple contexts during her early developmental period. Individuals with autism typically exhibit such pervasive deficits by age three. To the extent Claimant exhibited any such deficits during her childhood, the emergent consensus among the three professionals who evaluated Claimant is that onset of any such deficit did not occur until age seven at a time when Claimant was diagnosed with General Anxiety Disorder and Major Depressive Disorder. Notably, Claimant's exhibition of any such deficits was limited to her school environment. The preponderance of the evidence did not establish persistent deficits in social communication or social interaction in any other domains. During her childhood, for example, Claimant regularly engaged in play with her cousins.

7. Reportedly, Claimant engaged in echolalic speech as a child and continues to do so as an adult. No such behavior was confirmed in clinical settings where Claimant was subjected to the administration of multiple assessments. A preponderance of the evidence does not establish Claimant has sensory, stereotyped, or repetitive behaviors which substantially disable Claimant's adaptive functioning. As Dr. Brown credibly testified, any impairment or limitation of Claimant's adaptive functioning is more likely caused by the anxiety and major depression Claimant has been experiencing since she was at least a seven-year-old. The preponderance of evidence establishes Claimant difficulties with daily living, including intellectual and social functioning, occurs during or relative to those occasions when she is

experiencing psychiatric distress. In other words, the very real difficulties impacting Claimant's capacity for self-care, learning, self-direction, independent living, or economic self-sufficiency are integral manifestations of the anxiety and major depression with which she has been diagnosed.

8. By reason of Factual Findings 4 through 32 and Legal Conclusions 1 through 7, cause exists to deny Claimant's appeal. Claimant has not met her burden of establishing by a preponderance of evidence her eligibility for Lanterman Act services and supports under section 4512, subdivision (a), of the Welfare and Institutions Code on the basis of autism.

ORDER

1. Claimant's appeal is denied

2. South Central Los Angeles Regional Center's determination that Claimant is ineligible for Lanterman Act services and supports on the basis of autism is affirmed.

DATE:

JENNIFER M. RUSSELL
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. Each party is bound by this decision. Pursuant to Welfare and Institutions Code section 4713, subdivision (b), either party may request in writing a reconsideration within 15 days of receiving the decision or appeal the decision to a court of competent jurisdiction within 180 days of receiving the decision.