

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

In the Matter of the Fair Hearing Request of:

CLAIMANT,

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

DDS No. CS0008408

OAH No. 2023070945

DECISION

Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter by videoconference on April 9 and 16, 2024. The record closed and the matter was submitted for decision at the conclusion of the hearing.

Valerie Vanaman, Attorney, represented claimant. The names of claimant and her family members are omitted to protect their privacy.

Candice Hein, Compliance Manager, represented Westside Regional Center (service agency).

ISSUE

Is claimant eligible for services under the category of autism pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act)?

EVIDENCE RELIED UPON

In reaching this Decision, the ALJ relied upon service agency Exhibits 2 through 17 (official notice was taken of Exs. 14 & 15), claimant's Exhibits A through K, as well as the testimony of Dr. Thompson Kelly, Sharon R. Korobkin, LMFT, Dr. Mitchell Taubman, and claimant's mother.

SUMMARY

Claimant appeals service agency's denial of her request to be deemed eligible for regional center services under the Lanterman Act. Service agency contends claimant does not have a qualifying developmental disability and, even if she does, she is not substantially handicapped. However, claimant met her burden of establishing by a preponderance of the evidence that she is eligible for services under the Lanterman Act based on her diagnosis of Autism Spectrum Disorder (ASD). Claimant also established that her eligible condition causes substantial disability, as she is significantly impaired in the following three areas of major life activity specified by regulations: self-care; self-direction; and capacity for independent living. Finally, service agency's argument that claimant's major life activity impairments are caused by psychiatric disorders was not borne out by the evidence.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Service agency determines eligibility and provides funding for regional center services to persons with developmental disabilities under the Lanterman Act, among other entitlement programs. (Welf. & Inst. Code, § 4500 et seq.; undesignated statutory references are to this code.)

2. Claimant is a 14-year-old female who was referred to service agency for a determination whether she is eligible for regional center services on the basis of suspected autism. (Ex. 5.)

3. On May 18, 2023, service agency issued a Notice of Action (NOA), in which claimant's parents were advised service agency staff concluded claimant was not eligible for regional center services. (Ex. 4.)

4. On July 17, 2023, claimant's mother submitted an Appeal Request Form to the Department of Developmental Services (DDS), requesting a hearing to appeal service agency's denial of claimant's request to be deemed eligible for services. (Ex. 4.)

5. Official notice is taken that, in connection with a continuance request made after the matter was initially scheduled to be heard, claimant's mother executed a written waiver of the time limit prescribed by law for holding the hearing and for the ALJ to issue a decision. (Ex. 2.)

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Claimant's Relevant Background Information

6. Claimant lives at home with her parents and younger brother. Claimant is in the eighth grade at New West Charter School, where she receives special education services as described in more detail below. (Ex. 5.)

7. Her mother's pregnancy and claimant's delivery were basically uneventful. Claimant reached her developmental milestones at age-appropriate times. Her current health status is stable, and her medical history is unremarkable. As discussed in detail below, several years ago claimant was diagnosed with anxiety disorder and attention-deficit/hyperactivity disorder (ADHD). (Exs. 5, 6, 8, pp. A24-25.)

8. Claimant is described as a sweet and shy child. Although she is very intelligent and has an extensive vocabulary, when anxious or uncomfortable she will resort to short answers using few words or sometimes just sounds. She is not interested in reciprocal conversation with others. But she is obsessed with stuffed animals and prefers to have a plushy stuffed animal with her at all times. Claimant has never expressed interest in having friends outside of school; even her relationship with students at school is limited. Claimant appears to others as immature and socially behind other teenage girls. Claimant is a picky eater, is sensitive to loud noises, and exhibits inconsistent eye contact. She often speaks in a soft, high-pitched "baby voice," when either anxious or content. (Testimony [Test.] of mother; Ex. 5.)

Claimant's Treatment and Evaluations from 2016-2022

9. In June 2016, claimant was evaluated by occupational therapist Allison Weiss, who noted claimant had an immature pencil grip, and was active and impulsive during the evaluation. (Ex. 8.)

10. Since claimant was nine years old, she has seen Dr. Irene Koolwijk, a Developmental-Behavioral Pediatrician with UCLA Health. Dr. Koolwijk diagnosed claimant with generalized anxiety disorder and ADHD, Hyperactive-Impulsive primary. (Test. of mother; Ex. 8; Ex. 6, p. A23.) For the last few years, Dr. Koolwijk has monitored the medications she prescribed to claimant for her mental health disorders. (Ex. 8.)

11. Claimant attended elementary school at Goethe International Charter School (Goethe), where she received general education services.

12. In October 2018, Goethe assessed whether claimant was eligible for special education services. At the time, claimant was in the third grade. The assessment included observing claimant in her classroom, interviewing claimant's teacher, and administering to claimant a number of academic tests. Her overall academic achievement was measured to be in the high average range. Claimant demonstrated a relative strength in academic applications, especially reading/writing comprehension and fluency, but a relative weakness in academic skills, especially in math and calculation. (Ex. 11.) Goethe RSP Teacher Roopa Rao, who wrote an Academic Report summarizing this assessment, concluded claimant "is not working below average . . . in any areas assessed . . . [and] may not need special education services to address the deficits stated above." (Ex. 11, p. A130.)

13. Goethe is within the boundary of the Los Angeles Unified School District (LAUSD). In November 2018, LAUSD held an individualized education program (IEP) meeting with claimant's parents concerning its evaluation of claimant's eligibility for special education services. Goethe staff also were present, including claimant's teacher, the school psychologist, and Ms. Rao.

14. During the LAUSD IEP meeting, claimant's academic performance and test results were analyzed. (Ex. 13.) Her teacher reported claimant was exceeding expectations in all subject areas, including math; although claimant was "chatty" and needed redirection, those behaviors did not interfere with her learning. The school psychologist noted claimant's pencil grip was odd, but that it did not impact her learning. Ms. Rao shared her Academic Report results. Overall, the IEP team concluded claimant did not need special education services, and recommended keeping claimant in a general education setting. (Ex. 11, pp. A172-174.)

15. Claimant's mother testified she and her husband did not challenge LAUSD's conclusion that claimant was not eligible for special education services. She and her husband believed claimant was accessing the curriculum well at the time, getting good grades, and did not need help succeeding academically, other than daily parental help with homework.

16. In September 2022, claimant began seeing Sharon R. Korobkin, LMFT. Ms. Korobkin has experience working with autistic individuals, both as an intern and now in her private practice as a psychotherapist. Claimant's parents referred claimant to Ms. Korobkin over concerns with claimant's behavior. (Test. of mother, Korobkin.)

17. Ms. Korobkin was suspicious claimant has autism after their first session. After a few more sessions with claimant in October 2022, Ms. Korobkin concluded ASD should be ruled out. Ms. Korobkin did so because claimant was using a "baby voice," atypical for a teenager; unusually impulsive, even for someone with ADHD; rigid; and unable to engage in reciprocal conversation. Ms. Korobkin shared her concern with claimant's parents and recommended they refer claimant to service agency for an evaluation. (Test. of Korobkin; mother.)

18. On October 17, 2022, claimant's mother took her to see Dr. Koolwijk. She advised Dr. Koolwijk of Ms. Korobkin's concern about claimant possibly having autism. In her note from the visit, Dr. Koolwijk noted that claimant "spoke in a high pitched soft child-like voice throughout today's visit." (Ex. 8, p. A51.) In her assessment from the visit, Dr. Koolwijk noted Ms. Korobkin's concern for possible ASD, and wrote that she "agrees that an evaluation for ASD would be good to do given [claimant's] continued high pitch voice, her high focus on stuffed animals and some social challenges. We spoke about requesting an evaluation through Westside Regional Center." (*Ibid.*)

19. Claimant's mother testified Dr. Koolwijk later expressed to her regret over not "catching this [ASD]," but that she was a busy practitioner with many clients, and claimant's situation was masked by the fact she is a girl, extremely intelligent, and has anxiety.

Service Agency's Evaluation of Claimant

INTAKE ASSESSMENT

20. On a date in either late 2022 or early 2023 not established, claimant's mother contacted service agency for an eligibility assessment of her daughter. Claimant's mother reported she suspected claimant had ASD, and her primary concerns were that claimant is not social with her peers, becomes easily dysregulated, and exhibits sensitivity to loud noises and textures. (Ex. 5.)

21. On January 25, 2023, claimant and her mother had a videoconference with service agency Intake Counselor Jennifer Morales for a psychosocial assessment. Pertinent information was obtained about claimant's background and current functioning. Ms. Morales wrote a report from that assessment. (Ex. 5.)

22. In her report Ms. Morales noted her observations of claimant, including that claimant did not seem interested in engaging with her, and was holding a plushy stuffed animal with her the entire time. (Ex. 5.)

23. Claimant's mother reported to Ms. Morales the following information about her daughter. Claimant has never expressed interest in initiating social interaction. She is sensitive to loud noises, and sensitive to textures such that she is obsessed with soft things. Claimant has many repetitive behaviors, including twirling her hair, chewing on her clothes and blankets to the point of putting holes in them, picking on her skin so as to cause bleeding, and making a sound like a squawk. Claimant often speaks in short sentences, sometimes using one word or sound. She seldom makes eye contact. Nonetheless, claimant has an extensive vocabulary, is a talented writer, and has a creative mind. She gets almost all A's in school. (Ex. 5.)

24. In light of the concerns voiced by claimant's mother, and some of the descriptions of claimant's behaviors and deficits, Ms. Morales recommended a psychological evaluation of claimant to rule out ASD. If claimant was deemed eligible, Ms. Morales recommended applied behavior analysis (ABA), educational support, and referring claimant's parents to the service agency's Family Resource Center. (Ex. 5.)

PSYCHOLOGICAL EVALUATION

25. Claimant was referred to Karen E. Hastings, Psy.D., for a psychological evaluation. Dr. Hastings is a clinical psychologist employed by service agency for the last 12 years. Dr. Hastings met in person with claimant and her mother on two days in April and May 2023, during which she administered to claimant a series of tests, observed claimant's behavior, and interviewed claimant and her mother. Dr. Hastings

also observed claimant at school in April 2023. She reviewed pertinent records. By no later than May 16, 2023, Dr. Hastings issued a report of her findings. (Ex. 6.)

26. Dr. Hastings noted in her report her observations of claimant during their interviews. She noted claimant maintained good eye contact and was fluent in conversation. However, claimant spoke rapidly, and often in a "baby voice." Claimant had with her a stuffed long eared rabbit. During the first session in April, claimant handled the testing well and was conversant. Her facial expressions were expressive and conveyed affect. (Ex. 6.) During the second session, however, claimant had a break-down, curling up in a ball in her chair and yelling loudly for her mother. (Test. of mother.) Dr. Hastings did not document the events of the second session in her report.

27. Dr. Hastings observed claimant at school in April, when claimant was outside for a PE class and then lunch. During the PE class, claimant was mostly alone and had little interaction with others. During lunch, she sat near six to eight other students later identified as her friends. Claimant spoke with a few of her friends at various times during lunch. (Ex. 6.)

28. Claimant was administered the Wechsler Intelligence Scale for Children-Fifth Edition (WISC-V), which measures cognitive and academic functioning. Claimant's verbal comprehension scores were in the superior range. Her visual spatial and fluid reasoning scores were above average. Her working memory and processing speed scores were average. Claimant's full-scale IQ, derived from a combination of her subtest scores, was 131, which is in the superior range. However, because of the statistically significant discrepancy between her scores in verbal comprehension and fluid reasoning, the full-scale IQ is "less meaningful." (Ex. 6, pp. A31-33.)

29. Claimant's mother was interviewed for the Vineland Adaptive Behavior Scales–Third Edition (Vineland-3), a test designed to determine a subject's adaptive functioning in various areas. Claimant was scored as having average receptive and expressive communication skills. However, her daily living skills were deemed to be borderline delayed. For example, claimant has trouble bathing with soap without prompts. She has trouble using utensils and cutting food. She cannot prepare her own food. She does not secure the home when she leaves it. She does not keep track of time. Claimant does not count her change after purchasing items. Her social skills also were scored as borderline delayed. In this area, Dr. Hastings noted claimant does not start small talk, often interrupts others, does not stay on topic, and does not understand hints or indirect cues. She will attend a social function if invited, but will not seek social interaction on her own initiative. She has a hard time controlling her anger when she does not get her way. Overall, claimant's adaptive functioning skills were measured in the borderline delayed range. (Ex. 6.)

30. Claimant also was given module 3 of the Autism Diagnostic Observation Schedule-Second Edition (ADOS-2), a direct observational measure of social communication and behaviors used with other measures to determine the presence of ASD. (Ex. 6, pp. A35-38.) The ADOS-2 is generally accepted as the gold standard in testing for ASD. (Exs. K, I.) While the total score alone will not warrant a diagnosis of ASD, it is suggestive of the presence of the disorder. (*Ibid.*) Claimant's social affect score was 8, her restricted and repetitive behavior score was 1, and her total score was 9. Dr. Hastings noted in her report those scores suggested a "moderate likelihood of autism." (Ex. 6, p. A45.) However, materials from the State of Michigan submitted by claimant indicate a total score of 7 is the cut-off for ASD, and a score of 9 is the cut-off for autism. (Ex. J.)

31. Dr. Hastings in her report reviewed the criteria for a diagnosis of ASD pursuant to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) and concluded claimant fails to meet all the required criteria to warrant a diagnosis. For example, in category A pertaining to social interaction and communication, Dr. Hastings concluded claimant did not show deficits in social/emotional reciprocity, nonverbal communication, or developing relationships. While Dr. Hastings concluded claimant had deficits in three of the four areas in category B pertaining to restrictive or repetitive patterns, she concluded claimant did not have highly restricted or fixed interests that are abnormal. (Ex. 6, pp. A38-40.)

32. In her review of pertinent records, mainly from those discussed above from 2016 through 2022, Dr. Hastings noted claimant's high intelligence, evidence of social interaction and communication with others (though flawed), and history of hyperactivity and anxiety. Based upon all the information available to her, Dr. Hastings reiterated claimant's existing diagnoses of unspecified anxiety disorder and ADHD, but made no diagnosis of a developmental disorder. (Ex. 6, pp. A40-43.)

33. Overall, Dr. Hastings did a thorough and complete evaluation of claimant. Her analysis of the very complex situation claimant presents was solid. However, the inconsistencies discussed below undermine somewhat the overall persuasiveness of Dr. Hastings' conclusion that claimant does not have ASD.

34. Dr. Hastings admitted to claimant's mother, during a telephone call with her before she released her report, that she was "on-the-fence" whether claimant has ASD. (Test. of mother.) As discussed below, that internal conflict is exhibited in passages of Dr. Hastings' report.

35. Dr. Hastings failed to reconcile in her report how claimant's score on the ADOS-2 did not warrant an ASD diagnosis when coupled with the other known information.

36. Dr. Hastings failed to address why she found claimant not deficient in several areas of the DSM-5 criteria when other parts of her report noted behavior suggesting there were deficits. Examples include notations that claimant tended to not reciprocate, had problems with cues or hints and other nonverbal communication, had few friends, and lacked the desire to initiate social intercourse. Dr. Hastings also concluded claimant lacked highly restricted or fixed interests, but yet noted claimant always had a stuffed animal when the two were together (atypical for a teenager), and that claimant wore furry gloves and ears to school to the derision of her fellow classmates but did not care about the social consequences.

37. While Dr. Hastings vaguely linked claimant's exhibited problem behaviors to anxiety or hyperactivity, she failed to explain the connection. For example, it is unclear how these mental health diagnoses would cause claimant's lack of social interest, odd speech patterns (such as her baby talk), or obsession with stuffed animals.

SERVICE AGENCY'S DENIAL OF ELIGIBILITY

38. On May 17, 2023, a multidisciplinary team, comprised of Ms. Morales, a physician, two psychologists, and an autism specialist, met and determined claimant was not eligible for regional center services. (Ex. 7.) Before making that decision, the team reviewed not only Dr. Hastings' report, but also those obtained from claimant's sources, including those discussed in more detail below. (Test. of Dr. Kelly.)

39. The multidisciplinary team concluded claimant does not have a qualifying developmental disability, but the document executed by the team does not provide detail or an explanation. (Ex. 7.) Dr. Thompson Kelly, service agency's current Intake and Psychological Services Director, was not part of that team meeting. However, Dr. Kelly testified that the team, while not conceding claimant has ASD, concluded claimant was not substantially handicapped by ASD even if she has it. Dr. Kelly's testimony concerning the team's reasoning is generally corroborated by the wording contained in the NOA. (Test. of Dr. Kelly; Ex. 4.)

TESTIMONY OF DR. THOMPSON KELLY

40. Because Dr. Hastings was not available, Dr. Kelly testified in her place. Dr. Kelly has extensive experience with developmental disorders and has been a longtime consultant and employee with various regional centers in Southern California. Dr. Kelly became involved in this case after the family filed their appeal with DDS. Since then, he has reviewed Dr. Hastings' report, spoken with her a few times, and evaluated the other available documentation regarding claimant. (Test. of Dr. Kelly.)

41. Dr. Kelly believes claimant does not have ASD. Even if she did, Dr. Kelly does not believe her condition is substantially disabling. Thus, Dr. Kelly concurs with Dr. Hastings' opinions expressed in her report. He believes that Dr. Hastings correctly refused to diagnose claimant with ASD even though her ADOS-2 score was above the cut-off, because that test alone does not warrant such a diagnosis. As for the Vineland-3 scores showing claimant has borderline delays in daily living and social skills, Dr. Kelly believes claimant's deficits may be better explained by her mental health disorders, and thus a deeper look is required in those areas. (Test. of Dr. Kelly.)

42. Dr. Kelly also questions the propriety of an ASD diagnosis for claimant where her developmental pediatrician, Dr. Koolwijk, was not suspicious of such a condition after four years of treating claimant. (Test. of Dr. Kelly.)

43. Finally, Dr. Kelly believes there is significant evidence of mental health issues causing many of claimant's problems now being attributed to ASD by others. For example, he points to results from an Achenbach Child Behavior Checklist (Achenbach) test, given to claimant by another source, showing an elevated T-score in anxiety/depression for claimant. He also points to scores from a BRIEF test given by the same source showing an executive functioning deficit, which Dr. Kelly believes is explained by either ASD, anxiety, ADHD, or all three. Dr. Kelly also believes claimant's sensory issues can just as easily be explained by anxiety or hyperactivity as ASD. Thus, Dr. Kelly believes many of claimant's social challenges are caused by her mental health disorders and a "non-verbal learning disorder," not ASD. (Test. of Kelly.)

44. In his cross-examination, Dr. Kelly conceded many symptoms consistent with ASD were either exhibited by claimant or described by claimant's mother during the intake interview with Ms. Morales. Examples include inconsistent eye contact, non-reciprocal conversation, extreme attachment to stuffed animals, use of baby talk, sensory sensitivity, rigidity, and repeated use of guttural noises. (Test. of Dr. Kelly.)

45. Dr. Kelly also conceded a special education assessment of claimant done in late 2023 described the kind of repetitive behavior associated with ASD, such as over-reaction to small changes in routine and twirling her hair. (Test. of Dr. Kelly.)

46. Dr. Kelly agreed the DSM-5 TR, the most recent technical revision of the DSM, notes ASD diagnoses for young girls can be delayed because they present more subtle social deficits than boys of the same age. (Test. of Dr. Kelly.)

47. Dr. Kelly admits there is no diagnosis in the DSM-5 for a “non-verbal learning disorder.” (Test. of Dr. Kelly.)

48. Dr. Kelly is hesitant of an ASD diagnosis for claimant, in part, due to Dr. Koolwijk’s failure to rule out it before Ms. Korobkin highlighted this issue. However, Dr. Koolwijk now is either suspicious claimant has ASD or believes she does.

49. Although he believes claimant’s social and communication deficits are caused by her anxiety and ADHD and need to be “teased out of” her overall deficit patterns, Dr. Kelly failed to do so effectively in his testimony.

Evaluations Done at the Request of Claimant’s Parents

UCLA CAN Clinic

50. Claimant’s mother shared Dr. Hastings’ report with Dr. Koolwijk. Dr. Koolwijk noted claimant’s ADOS-2 score was above the cut-off for ASD, and she did not think Dr. Hastings effectively discussed why claimant was not autistic in light of behaviors (such as lack of reciprocity and inconsistent eye contact) noted by Dr. Hastings in her report. Dr. Koolwijk recommended claimant’s parents get a second opinion at UCLA. (Test. of mother.)

51. Dr. Koolwijk referred claimant’s mother to the UCLA Child and Adult Neurodevelopmental (CAN) Clinic. Over parts of two days, claimant and her mother were interviewed, claimant’s behavior was observed, and claimant and her parents were administered a number of tests. Records from the sources noted above also were reviewed. The primary clinician working with claimant and her mother was Patricia Renno, Ph.D., a psychologist, but a multidiscipline team of psychologists, psychiatrists,

and a neurologist contributed to the diagnostic impressions and recommendations. Dr. Renno issued a report dated September 12, 2023. (Ex. 9.)

52. Based on her observations of claimant and reports made to her by claimant's parents, Dr. Renno noted the following problems in claimant's social communication and social interaction. Claimant has difficulty with back-and-forth communication and social chit-chat. She speaks with a loud volume and frequently gives a running commentary. Her speech during testing was notable at times for high-pitch baby talk and jerky rhythm. Claimant struggled having a back-and-forth conversation with Dr. Renno. She did not consistently maintain eye contact when speaking with Dr. Renno. Claimant's conversations are typically one-sided, and she often continues talking even when inappropriate. Claimant and her parents reported claimant had a friend group of six peers that she met at school, but prior to that she did not have a close group of friends. (Ex. 9, p. A56.)

53. Dr. Renno similarly noted claimant's restricted interests and repetitive behaviors, as well as sensory sensitivities and rigidity. Claimant makes repetitive guttural sounds, groans, and clicks her tongue. In testing, her speech was occasionally repetitive. Claimant needs to be prepared for changes to her routine. She also has a restricted interest in animals, as well as stuffed animals known as "plushies" or "furries." For the past several years, claimant carries with her one or more stuffed animals. She talks to, feeds, and gets upset if a stuffed animal is left in a hot car. Claimant's mother reported a long history of sensory sensitivities, including claimant disliking loud unexpected noises, and preferring soft fuzzy clothing. Claimant does not like using utensils and prefers eating with her hands. She also chews her nails and toenails and repetitively bites at her lip. (Ex. 9, p. A57.)

54. Claimant was given the ADOS-2, module 3. Dr. Renno summarized the results as showing atypical qualities in claimant's social interactions and use of communication for social purposes, and that she exhibited restricted, repetitive behaviors indicative of ASD. Although Dr. Renno did not specify in her report the ADOS-2 scores, she concluded claimant's scores met the cut-off for a classification of autism. (Ex. 9, p. A56.)

55. Claimant was given the Differential Ability Scales, Second Edition (DAS-II), a school age battery to measure cognitive abilities across the verbal, nonverbal, spatial, working memory, and processing speed domains. Overall, claimant's general conceptual ability score placed her in the 88th percentile, which is within the above average range. (Ex. 9, p. A57.)

56. The Anxiety Disorders Interview Schedule-Parent and Child Interviews (ADIS) were conducted to examine whether claimant was internalizing and externalizing psychiatric conditions. Claimant met diagnostic criteria for separation anxiety, social anxiety, and ADHD, predominantly inattentive type. (Ex. 9, p. A58.)

57. Claimant's mother completed the Adaptive Behavior Assessment System, Third Edition (ABAS-3) to measure claimant's adaptive functioning. Her overall adaptive functioning placed her in the below average range (9th percentile) compared to same age peers, revealing a clear need for support with activities of daily living. Specifically, claimant's skills in self-direction, socializing, home living, and self-care were in the below average range. (Ex. 9, p. A59.)

58. Based on the information gathered from claimant's parents, her developmental history, collateral information from teachers and providers, and direct observation and interactions with claimant, Dr. Renno concluded claimant meets the

diagnostic criteria of the DSM-5 for ASD. Primarily, Dr. Renno found claimant demonstrated qualitative differences in her use of communication for social purposes and a restricted, repetitive quality to her interests and behaviors throughout development. She demonstrates differences in her social and emotional reciprocity (limited social chat and reciprocity in conversations, limited question-asking, restricted social responses), nonverbal communication (inconsistent eye contact), and social relationships and play (difficulty developing and maintaining friendships, modulating her behavior across social contexts, challenges with cooperative play). Dr. Renno also found claimant shows clear evidence of restricted and repetitive patterns of behaviors, including repetitive speech (repeating sounds and phrases), insistence on sameness (needing to be prepared for changes in her routine), highly fixated interests (animals, furies), and marked sensory aversions (sounds, textures). (Ex. 9, pp. A60-63.)

59. In addition, Dr. Renno diagnosed claimant with ADHD, predominantly inattentive presentation; Separation Anxiety Disorder; Social Anxiety Disorder; and Excoriation (skin-picking) Disorder. (Ex. 9, p. A62.)

60. Dr. Renno recommended a number of services in light of her diagnoses, including the following aimed at the social and communicative deficits noted above: modified cognitive behavior therapy; ABA; and social skills intervention and activities. (Ex. 9, p. A64-70.)

NEW SPECIAL EDUCATION EVALUATIONS

61. By the time Dr. Renno issued her report in September 2023, claimant was enrolled in eighth grade general education classes at New West Charter School (New West). Claimant's mother shared with New West the UCLA CAN Clinic's ASD diagnosis

of claimant, and she requested claimant be evaluated for special education services. (Test. of mother.)

62. New West convened a psycho-educational assessment of claimant in late September and early October 2023, led by school psychologist Kenna Healy. Ms. Healy issued a report on November 7, 2023. Ms. Healy reviewed the UCLA CAN Clinic report, as well as Dr. Hastings' report. She reviewed claimant's progress at New West, and noted claimant had received all A's during the sixth and seventh grades. Ms. Healy interviewed claimant and her parents, as well as claimant's teachers. Ms. Healy observed claimant in the classroom and during outdoor activity. Ms. Healy also administered to claimant and her parents seven different tests. (Ex. 10, p. A75-100.)

63. Of particular note in the testing was the administration of the Autism Spectrum Rating Scales (ASRS), which is designed to measure behaviors of children and youth that are associated with ASD. Claimant's total score fell within the "very elevated" range, demonstrating a significant level of behavioral characteristics associated with ASD. (Ex. 10, pp. A91-102.) Ms. Healy also noted many of the tests displayed claimant struggled with ADHD, anxiety, stress, and impulsivity. (*Id.*, p. A103.) The academic and cognitive tests showed claimant was functioning in the high average to superior range in most domains, and average range in mathematics. (*Id.*, p. A103-106.)

64. Based on the above, and other information described in her report, Ms. Healy concluded claimant was eligible for special education services due to the following disabilities: a Specific Learning Disability, Autism, Other Health Impairment, and Emotional Disturbance. (Ex. 10, p. A107.)

65. New West is within the El Dorado County Charter special education local plan area (SELPA). In December 2023, an IEP meeting was convened to design claimant's special education services. In her IEP, Autism is listed as claimant's primary category of eligibility. Six goals and objectives were established for claimant, including peer interaction during class, organizing her tasks, and communicating with minimal adult prompts. However, claimant was to remain in her general classroom setting 96 percent of the school day. (Ex. G.)

DR. MITCHELL TAUBMAN

66. On a date not specified, claimant's parents hired Dr. Mitchell Taubman to evaluate their daughter. Dr. Taubman is a licensed psychologist, and currently one of the principals of Actum Clinical and Behavioral Services (Actum). Actum is a consulting agency that works with local education agencies and SELPAs; autism is a sub-specialty of Actum's. In addition, Dr. Taubman has vast experience working with, and diagnosing, autistic people, dating back to the late 1970s at UCLA's early autism project. He has worked closely with those described as being in the upper end of the autism spectrum. (Test. of Dr. Taubman.)

67. Dr. Taubman interviewed claimant's mother twice, observed claimant at school, interviewed claimant's teachers at school, and interviewed claimant virtually. He reviewed pertinent records, including many of those described above, after his initial work was done. He did not administer tests to claimant or her parents because they have been extensively tested in the recent past. Dr. Taubman issued a report of his findings on January 31, 2024. He also testified at hearing. (Test. of Taubman; Ex. 12.)

68. Dr. Taubman analyzed the criteria specified in the DSM-5 for ASD. In category A pertaining to social communication and interaction, Dr. Tauman concluded claimant meets all three of the required criteria, including communication and social deficits, lack of initiation and reciprocity, inconsistent eye contact, and a problem in developing relationships. In category B pertaining to restricted and repetitive behaviors, Dr. Taubman concluded claimant demonstrates deficits in all four criteria, including restricted patterns of behavior and speech, insistence on sameness, fixated interests, and hypersensitivity to sensory stimuli, such as loud sounds and textures. Dr. Taubman also concluded claimant meets category C, as she had a history of similar problems in early development that have been masked due to claimant's intelligence, anxiety, and the fact young girls can have delayed ASD diagnoses because they can present more subtly than boys their age. Dr. Taubman concluded claimant meets category D, in that she has significant impairment in her social interactions, such as lack of reciprocal friendships or lack of desire to socially initiate with others. (Test. of Dr. Taubman; Ex. 12.)

69. Dr. Taubman believes the report from the UCLA CAN Clinic and IEP documents from New West are highly consistent with his own opinions, and are sound and comprehensive. Dr. Taubman notes Dr. Hastings' report contained testing results and information also consistent with these other evaluations. Dr. Taubman is critical in how Dr. Hastings interpreted her results of the ADOS-2 test for claimant. Dr. Taubman believes the other sources he reviewed, including aspects of Dr. Hastings' report, clearly point to the same findings he made, which is that claimant has ASD. (Test. of Dr. Taubman; Ex. 12.)

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70. Finally, Dr. Taubman does not believe claimant's mental health disorders are causing the social and communication impairments claimant is now exhibiting. Many people with ASD have co-morbid mental health diagnoses like claimant. Dr. Taubman believes that while claimant's anxiety and ADHD may explain some of her behaviors, the bulk of them are better explained by ASD. Examples are her lack of social interest and reciprocity, and her restricted interests in stuffed animals. (Test. of Dr. Tauman.)

Testimony of Claimant's Mother

71. Claimant's mother testified at hearing. She provided testimony supporting the findings above where indicated. Her testimony was generally consistent with the information she supplied to the various sources discussed above described in their reports. In addition, she offered testimony concerning the level of her daughter's disability, discussed in detail below where pertinent.

72. Claimant's mother first noticed developmental issues with claimant when she was 20 months old. At that time, claimant's mother noticed claimant was not like other children.

73. Claimant's mother testified her daughter has never been interested in making friends, and she does not want to initiate socialization. Claimant has never been like other girls her age. She is socially far behind teenage girls now.

74. Claimant does not have any friends outside of school. Her relationships with her friends at school are not deep or meaningful. Claimant has no interest in interacting with them when school is over. Years ago, claimant's mother gave up on scheduling playdates or social opportunities for claimant because she did not seem interested in them; claimant never asked why they stopped.

75. Claimant struggles conversing with others. She is loud and often interrupts the other speaker. She only wants to talk about her interests. She does not reciprocate or understand give-and-take during conversations. She cannot chit-chat. Sometimes she does not use full sentences; instead, she will use a word or two, or just grunt or make a noise. She uses a high-pitched baby voice often. She is inconsistent with her eye contact when speaking with others.

76. Claimant has always been fixated with animals and stuffed animals. These interests have not decreased, even though they can be the source of embarrassment at school. Claimant also repeatedly flaps her hands and twirls her hair.

77. Claimant is sensitive to loud noises. She wears headphones at school because the din of the classroom is too noisy for her. When out of school, she sometimes wears ear plugs.

78. Claimant's mother does not believe her daughter's anxiety or ADHD is the cause of her social and communication problems because she has not seen a reduction in claimant's social and communication deficits after claimant was diagnosed with those mental health disorders and taken medications prescribed for them.

79. Since claimant was diagnosed with ASD by the UCLA CAN Clinic, the family has sought ABA for her. Claimant is on a wait list. The family also has sought social skills training for claimant. She is currently in an intake process for that service.

Weighing Expert Opinion Evidence

80. All of the experts who have been involved in this case are well qualified and offered valid opinions (either through reports, testimony, or both) that were well

supported. On balance, however, the expert opinions that claimant has ASD sufficiently refuted the service agency's opinion (and those of Drs. Hastings and Kelly) that claimant does not have ASD. (See Legal Conclusions 4-7 below.)

81. For example, the experts opining claimant has ASD are independent sources, such as Dr. Renno of the UCLA CAN Clinic, Dr. Taubman of Actum, and Ms. Healy of New West. The experts opining claimant does not have ASD work for service agency, i.e., Drs. Hastings and Kelly.

82. The scope of claimant's experts' work was more comprehensive. Both Drs. Renno and Taubman interviewed claimant and her parents. Dr. Renno interviewed Ms. Korobkin and a family friend who is a licensed psychologist. Dr. Taubman observed claimant at school and spoke with her teacher. On the other hand, Dr. Hastings interviewed claimant and her mother, and observed claimant at school, but she did not speak with other collateral sources. Dr. Kelly had no contact with claimant or her mother.

83. While Drs. Renno and Taubman were clear in their opinions, Dr. Hastings admitted to claimant's mother that she was "on-the-fence," indicating some uncertainty.

84. As noted above, there are some inconsistencies in Dr. Hastings' report that somewhat undercut the persuasiveness of her opinions. Dr. Kelly also made a number of concessions and admissions during his cross-examination that somewhat undercut the persuasiveness of his testimony.

85. Drs. Hastings and Kelly believe claimant's mental health disorders explain many of her social and communication deficits, but they did not effectively detail which ones or explain how they are caused by anxiety or ADHD.

86. Overall, the opinions of Drs. Renno and Taubman better comport with claimant's developmental history, particularly in the last few years, than do the opinions of Drs. Hastings and Kelly. Claimant exhibits most of the hallmarks of autism, such as lack of social interest, inconsistent eye contact, inability to engage in age-appropriate communication or social intercourse, and restricted fixation with objects and stereotypical behaviors. Claimant's experts' explanation that ASD is causing those behaviors is more supported by the record than service agency's experts who point to mental health disorders. Claimant's late diagnosis of ASD also is reasonably explained by the phenomena accepted by the DSM-5 that older girls and younger women present more subtle symptoms than boys or young men of the same age.

Impairments in Claimant's Major Areas of Life Activity

87. As discussed in the Legal Conclusions below, eligibility for services under the Lanterman Act also requires the eligible condition to cause a substantial disability. In making that determination, each of the seven areas of major life activity listed below must be analyzed for the presence of a significant functional limitation.

88. The Association of Regional Center Agencies (ARCA) developed guidelines entitled "Clinical Recommendations for Defining 'Substantial Disability' for the California Regional Centers." (Ex. 17, hereinafter "ARCA guidelines.") The ARCA guidelines advise how regional centers determining eligibility should consider the seven major areas of life activity specified in the Lanterman Act. The document, while not binding, is a helpful way of analyzing the seven major life activities, and therefore is probative. Indeed, both parties presented evidence in response to most of the major life activities discussed in the ARCA guidelines.

RECEPTIVE AND EXPRESSIVE LANGUAGE

89. Claimant contends, but failed to establish by a preponderance of the evidence, that she has a significant functional limitation in receptive and expressive language.

90. For example, LAUSD's testing of claimant in 2018 showed her receptive and expressive language skills were average to above average. (Ex. 10, p. A78.) The VABS-3 administered by Dr. Hastings more recently shows her receptive and expressive communication skills are in the average range. (Ex. 6, p. A33.)

91. Dr. Renno's ASD diagnosis of claimant under the DSM-5 is "299.00 (F84.0) Autism spectrum disorder, without accompanying intellectual impairment, *without language impairment.*" (Ex. 9, p. A63; emphasis added.)

92. Most telling is Dr. Taubman who, when asked about this topic, testified claimant has very good expressive and receptive language, and that "it is tougher to say she is impaired or substantially disabled, [because] she has good skills here." (Test. of Dr. Taubman.)

LEARNING

93. Claimant contends she has a significant functional limitation in learning. She argues that although she has a high IQ, testing shows she has an executive functioning deficit that limits her access to education unless supports are in place. Her recent eligibility for special education services is just such a support. Claimant also contends her mother's enormous support after-school also demonstrates her impairment here.

94. The ARCA guidelines state that for learning the “individual must be substantially impaired in the ability to acquire and apply knowledge or skills to new situations even with special intervention.” The ARCA guidelines suggest considering general intellectual ability; academic achievement levels; retention (e.g., short and/or long-term memory); and reasoning (e.g., ability to grasp concepts, to perceive cause and effect relationships, ability to generalize information and skills from one situation to another). (Ex. 17, p. A186.)

95. In this case, the ARCA guidelines indicate claimant is not significantly impaired in her learning. Her general intellectual ability is high. Her academic achievements are high, as she consistently receives all A’s. The testing in evidence does not show claimant has a significant impairment in her retention or reasoning.

96. Though she is now eligible for special education services, claimant spends 96 percent of her day in general education classes. The special education supports she receives are aimed at her social communication, not necessarily her academic ability or access to learning.

97. Claimant’s parents do spend a lot of time with claimant on her homework. So do many other parents. That dedication is a partial reason claimant receives all A’s at school. But there is no doubt that without that extra attention, claimant still would be able to access her education and do well in school, albeit without straight A’s.

98. Finally, Dr. Taubman testified claimant “is a good learner,” and “she does well academically.” Dr. Taubman targeted claimant’s learning issues to her attention difficulty, which is explained by her ADHD, and difficulty with social learning, which is explained by her ASD. It is not clear that a delay in social learning is the type of

learning impairment covered by this major area of life activity. Even if so, claimant's difficulty with social learning is not enough to be deemed a significant impairment with her overall learning ability.

99. Based on the above, claimant failed to establish by a preponderance of the evidence that she has a significant functional limitation in learning.

SELF-CARE

100. Claimant contends she has a significant functional impairment in her self-care skills. Service agency contends that although she needs prompting to do many such tasks, she is not functionally impaired in self-care overall.

101. When analyzing self-care, the ARCA guidelines recommend considering the individual's personal hygiene (e.g., toileting, washing and bathing, brushing teeth), grooming (e.g., dressing, undressing, hair and nail care), and feeding (e.g., chewing and swallowing, eating, drinking, use of utensils). (Ex. 17, p. A185.)

102. Claimant has skills in personal hygiene, grooming, and feeding. She generally can bathe, dress, and feed herself.

103. However, claimant is impaired in her self-care. For example, the VABS-3 test administered by Dr. Hastings shows claimant has a borderline delay in daily living skills. The ABAS-3 test administered by Dr. Renno shows claimant has below average range scores in adaptive functioning, particularly in home living and self-care.

104. According to claimant's mother, claimant needs constant prompting to get dressed, eat, take her medications, get ready for school, and bathing with soap. As a young woman entering puberty, claimant has trouble managing her menstruation. She generally will not use the restroom at school and therefore will not urinate for

hours at a time, leading to her not hydrating to avoid that issue. Claimant cannot use utensils well. She is unable to properly grip her fork. She does not know how to use her knife to cut food. Thus, for most meals, claimant eats with her fingers.

105. The word "significant" is commonly defined as being "important, large, or great, especially in leading to a different result or to an important change." (See, e.g., Cambridge Academic Content Dictionary, dictionary.cambridge.org/us/dictionary/english/significant.) In this case, claimant's impairment has an important, large, or great impact on her ability to execute her overall self-care skills. Therefore, her impairment is significant.

106. Based on the above, it was established by a preponderance of the evidence that claimant has a significant functional limitation in self-care caused by ASD.

MOBILITY

107. Claimant does not contend she has a significant functional limitation in mobility.

SELF-DIRECTION

108. At hearing, service agency conceded claimant "probably" has a significant functional limitation in self-direction. Indeed, the ABAS-3 test given to claimant by Dr. Renno measured her self-direction skills as below average (Ex. 9, p.A59), and Dr. Taubman concluded claimant's self-direction is substantially deficient (Ex. 12, p. A135). Perhaps Dr. Taubman best described this deficiency when he testified that claimant's "life is directed by others." Thus, claimant established by a preponderance of the evidence that she has a significant functional limitation in self-direction.

CAPACITY FOR INDEPENDENT LIVING

109. Section 4512, subdivision (/)(1), provides that the “areas of major life activity” should be applied “as appropriate to the age of the person.” Therefore, claimant’s degree of independent living skills should be viewed in comparison to those of other young people around her age.

110. When analyzing the capacity for independent living, the ARCA guidelines recommend considering whether an individual has significant difficulty performing age-appropriate, simple household tasks; significant difficulty managing multiple-step domestic activities (e.g., grocery shopping, meal planning and preparation, laundry, care and selection of clothing, home repair and maintenance); age-appropriate capacity to be left unsupervised (e.g., lack of safety awareness); significant difficulty with money management (e.g., using bank accounts, making small purchases independently) and budgeting; and significant difficulty taking the basic steps necessary to obtain appropriate health care (e.g., obtaining medication refills, obtaining medical attention when needed). (Ex. 17, p. A187.)

111. While claimant is not at an age to live independently, she is at an age where an average functioning teenager of equivalent age would be allowed to go to school or into the community unescorted, left home alone for brief periods of time, or to care for younger children unsupervised (either siblings or as a babysitter). In this case, claimant is not allowed to go into the community alone, stay at home alone for any period of time, or care for her younger brother unsupervised. Claimant is unable to transport herself to and from school.

112. According to claimant’s mother, claimant cannot do simple household tasks, such as laundry or meal planning. She cannot carry out other household chores

without significant prompting. Claimant cannot manage her money. She is not allowed to make purchases on her own because she would pay no mind to the cost of the object. Claimant needs prompting to take her medications. She tries to refuse required medical interventions, such as blood draws.

113. Based on the above, claimant established by a preponderance of the evidence that she has a significant functional limitation in her capacity for independent living caused by ASD.

ECONOMIC SELF-SUFFICIENCY

114. Claimant does not contend this major life activity is applicable to her at this time.

LEGAL CONCLUSIONS

Jurisdiction

1. An administrative hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Act to appeal a contrary service agency decision. (§§ 4710-4714.) Claimant's mother requested a hearing to contest service agency's denial of claimant's eligibility for services under the Lanterman Act and therefore jurisdiction for this appeal was established. (Factual Findings 1-5.)

2. One is eligible for services under the Lanterman Act if it is established she is suffering from a substantial disability attributable to intellectual disability, cerebral palsy, epilepsy, autism, or what is referred to as the fifth category. (§ 4512, subd. (a).) The fifth category condition is specifically defined as "disabling conditions found to be closely related to intellectual disability or to require treatment similar to

that required for individuals with an intellectual disability.” (§ 4512, subd. (a).) A qualifying condition must originate before one’s 18th birthday and continue indefinitely. (§ 4512.)

3. Pursuant to California Code of Regulations, title 17, section (regulation) 54000, subdivision (c)(1), a developmental disability shall not include handicapping conditions that are “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.” (*Ibid.*)

Burden and Standard of Proof

4. Generally, when an applicant seeks to establish eligibility for government benefits or services, the burden of proof is on her. (See, e.g., *Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits].)

5. Regarding eligibility for regional center services, “the Lanterman Act and implementing regulations clearly defer to the expertise of the DDS [Department of Developmental Services] and RC [regional center] professionals and their determination as to whether an individual is developmentally disabled.” (*Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, 1129.) In *Mason*, the court focused on whether the applicant’s expert witnesses’ opinions on eligibility “sufficiently refuted” those expressed by the regional center’s experts that the applicant was not eligible. (*Id.* at pp. 1136-1137.)

6. In this case, claimant bears the burden of establishing she is eligible for services because she has a qualifying condition that is substantially disabling. In that regard, claimant’s evidence regarding eligibility must be more persuasive than the service agency’s evidence in opposition.

7. The standard of proof in this case is the preponderance of the evidence because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) Preponderance of the evidence means evidence that has more convincing force than that opposed to it. (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 324-325.)

Claimant Has the Qualifying Condition of Autism

8. The Lanterman Act and its implementing regulations contain no specific definition of the neurodevelopmental condition of "autism." However, the DSM-5, which came into effect in May 2013, provides ASD as the single diagnostic category for the various disorders previously considered when deciding whether one has autism, i.e., Pervasive Developmental Disorder Not Otherwise Specified, Asperger's Disorder, and Autistic Disorder. Therefore, a person diagnosed with ASD should be considered someone with the qualifying condition of "autism" pursuant to the Lanterman Act.

9. In this case, claimant met her burden of proving by a preponderance of the evidence that she has the qualifying condition of ASD, or for purposes of the Lanterman Act, autism. (Factual Findings 6-86.)

Claimant is Substantially Disabled by Autism

10. A qualifying condition also must cause a substantial disability. (§ 4512, subd. (a); reg. 54000, subd. (b)(3).) A "substantial disability" is defined by regulation 54001, subdivision (a), as:

(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.

11. Claimant established by a preponderance of the evidence that her ASD results in major impairment of her social functioning, which requires interdisciplinary planning and coordination of special or generic services. (Reg. 54001, subd. (a)(1).) Ms. Morales in her psychosocial assessment report recommend ABA services for claimant. In her report, Dr. Renno recommended ABA and social skills services. Ms. Healy of New West recommends claimant's special education services include goals and objectives to improve her social skills, such as peer interaction in class and communicating with minimal prompts. These are all services typically received by children with ASD. Thus,

claimant will require, and benefit from, a coordination of special and generic services to assist her in achieving maximum potential. (Factual Findings 6-86.)

12. Claimant also established by a preponderance of the evidence that she has significant functional limitations in three areas of major life activity caused by ASD, i.e., self-direction, self-care, and the capacity for independent living. (Reg. 54001, subd. (a)(2).) By doing so, claimant established that her eligible condition is substantially disabling. Service agency's argument that claimant's functional impairments are solely or primarily caused by her psychiatric disorders was not borne out by the evidence. (Factual Findings 6-114.)

Claimant is Eligible for Services

13. Since claimant established she has the qualifying developmental disability of autism, and that her condition is substantially disabling, it was established by a preponderance of the evidence that she is eligible for regional center services under the Lanterman Act. (Factual Findings 1-114; Legal Conclusions 1-12.)

ORDER

Claimant's appeal is granted. Claimant is eligible for services under the category of autism pursuant to the Lanterman Developmental Disabilities Services Act.

DATE:

ERIC SAWYER
Administrative Law Judge
Office of Administrative Hearings

NOTICE

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