BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

NORTH LOS ANGELES COUNTY REGIONAL CENTER,

Service Agency.

DDS No. CS0010430

OAH No. 2023120486

DECISION

Taylor Steinbacher, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on May 29, 2024, via Zoom videoconference.

Claimant's Mother (Mother), who is Claimant's authorized representative, represented Claimant at the fair hearing. Claimant was present during the hearing and testified on his own behalf. Names are omitted to protect the privacy of Claimant and his family.

North Los Angeles County Regional Center (NLACRC) was represented by Cristina Aguirre, Due Process Officer.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on May 29, 2024. After the record closed, the ALJ redacted for privacy Claimant's social security number from Exhibit 3.

ISSUE

Is Claimant eligible for regional center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) under the categories of autism or intellectual disability?

EVIDENCE RELIED UPON

Documents: NLACRC Exhibits 1–20; Claimant's Exhibit A.

Witnesses: for NLACRC – Dr. Heike Ballmaier, Psy.D., Senior Clinical Psychologist Specialist; for Claimant – Mother and Claimant.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant is an 18-year-old assigned female at birth who identifies as male and prefers the pronoun "He." Claimant lives with Mother in the catchment area served by NLACRC.

2. NLACRC is a regional center designated by the Department of Developmental Services to provide funding for services and supports to persons with developmental disabilities under the Lanterman Act, among other entitlement programs. (Welf. & Inst. Code, § 4500 et seq.)

3. On May 22, 2023, Mother applied for services from NLACRC. (Ex. 3.) The application noted that Claimant's qualifying developmental disability was Autism Spectrum Disorder (ASD) and Claimant was seeking services for "Autism and ADHD." (*Id.*, p. A26.)

4. On October 17, 2023, NLACRC sent Mother a Notice of Proposed Action stating Claimant was ineligible for regional center services because he did not meet the criteria for a developmental disability under the Lanterman Act. (Ex. 1, pp. A14–A19.)

5. Mother filed a Fair Hearing Request, which was received by NLACRC on October 31, 2023. (Ex. 1, pp. A9–A13.) Following an informal meeting with Mother in November 2023, NLACRC again determined Claimant was ineligible for regional center services. (Ex. 20.) This hearing ensued.

Dr. Heike Ballmaier

6. Dr. Heike Ballmaier, Psy.D., a Senior Clinical Psychologist at NLACRC, testified at the hearing about the requirements for regional center eligibility, the process the NLACRC interdisciplinary committee uses when determining eligibility, and the reasons why NLACRC denied Claimant's request for eligibility. Dr. Ballmaier has worked for NLACRC as a psychologist performing evaluations and assisting with eligibility determinations for over 25 years. (Ex. 2.) Dr. Ballmaier described the records NLACRC reviewed and NLACRC's assessment of Claimant which led to the regional

center's conclusion Claimant is not eligible for services. Dr. Ballmaier also testified about the diagnostic criteria for diagnosing ASD and ID under the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition Text Revision (DSM-5), as well as the interpretation of numerical test results when assessing someone for ASD and ID. (Exs. 16–18.)

Claimant's Medical History, Evaluations, and Assessments

7. Claimant received Early Start Services from NLACRC until the age of three. (Ex. 4, p. A31.) Claimant received speech therapy services from the age of three through the fourth grade. (*Id.*, p. A32.) At age 14, Claimant started having gender identity issues. (*Id.*, p. A31.) Around the same time, Claimant suffered from suicidal ideation and was hospitalized for it. (*Id.*, p. A32; Ex. 10, p. A83; Ex. 12.) There is no evidence Claimant suffers from cerebral palsy or epilepsy. (Ex. 5.)

DR. GAINES'S PSYCHOLOGICAL EVALUATION

8. When Claimant was nearly three years old, Dr. Larry E. Gaines, Ph.D. evaluated him to determine his cognitive and adaptive functioning, specifically to assess for "developmental disabilities, including Mental Retardation and/or Autism." (Ex. 9, p. A77.) Claimant scored in the above-average range for intellectual ability under the Leiter International Performance Scale - Revised. (*Id.*, p. A78.) On the Vineland Adaptive Scale Second Edition evaluation, Claimant scored in the: (1) borderline range for language skills; (2) average range in sensory/motor functioning; (3) low-average range for behavior functioning; and (4) the low-average range for social functioning. (*Id.,* pp. A78–A79.) Dr. Gaines did not observe symptoms of Attention Deficit/Hyperactivity Disorder or idiosyncratic, repetitive, or restrictive behaviors to suggest ASD. (*Id.*, p. A79.) Dr. Gaines concluded Claimant was "currently

functioning within the above-average range of intellectual ability" but was "showing expressive language delays," and thus diagnosed him with Expressive Language Disorder. (*Id.*, pp. A79–A80.)

9. Dr. Ballmaier explained that NLACRC's interdisciplinary committee reviewed and considered this evaluation in making its determination to deny Claimant's eligibility. Dr. Gaines's finding that Claimant was performing in the above average range of intellectual ability tended to show Claimant did not have ID, and a lack of observations of repetitive, restrictive, or stereotypical actions tended to show Claimant did not have ASD.

DR. GALLO'S EVALUATION FOR AUTISM

10. In December 2021, when Claimant was 15 years old, Dr. Donald Gallo, Ph.D., evaluated Claimant for autism and ADHD at Mother's request. (Ex. 10, pp. A83–A84.) Dr. Gallo observed Claimant for approximately two-and-a-half hours. (*Id.*, p. A84.) Claimant made appropriate eye contact and did not display any repetitive or stereotyped behaviors during that period. (*Ibid.*) Dr. Gallo administered the Social Communication Questionnaire (SCQ) to Claimant, for which Claimant scored 13—a score of 15 or higher suggests a diagnosis of ASD. (*Ibid.*) Dr. Gallo also administered the Childhood Autism Rating Scale, Second Edition (CARS2) assessment for which Claimant scored 34, suggesting severe symptoms of ASD. (*Ibid.*) Finally, Dr. Gallo administered the Vineland Adaptive Behavior Scales, with Claimant and Mother as respondents. (*Id.*, p. A86.) Claimant scored 100 in the Communication Domain, 106 in the Daily Living Skills Domain, and 60 in the Socialization Domain, resulting in an Adaptive Behavior Composite score of 85. (*Ibid.*) Standard scores are based on a mean of 100 and a standard deviation of 15, meaning that scores between 85 and 115 are in the normal range. (*Ibid.*) Dr. Gallo concluded Claimant's communication and daily

living skills were in the adequate range, but Claimant's social skills were equal to that of a three to four-year-old child. (*Ibid.*) Dr. Gallo found that the "information provided by [Claimant] and his mother, combined with a review of records and my interactions and observations of him, supports a diagnosis of [ASD], due to his lifelong history of the social and behavior difficulties which comprise the diagnosis." (*Id.*, p. A85.)

11. According to Dr. Ballmaier, NLACRC will routinely accept diagnoses proffered by medical professionals—and thus will find a claimant is eligible for regional center services on that diagnosis alone—when those diagnoses are well-supported and are made using the appropriate diagnostic testing. NLACRC declined to accept Dr. Gallo's diagnosis of ASD because his evaluation fell short of this standard. First, the tests Dr. Gallo used were screening measures to be used as a starting point for a comprehensive assessment, not used to make a diagnosis on their own. Professional best practices require the use of the Autism Diagnostic Observation Schedule (ADOS) or the Autism Diagnostic Review, Revised (ADI-R), to diagnose ASD, which Dr. Gallo did not use. Second, Dr. Gallo's testing and observations were not entirely consistent with a diagnosis of ASD. As noted above, Claimant's SCQ test result was below the range indicative of an ASD diagnosis. And although Claimant's score in the Socialization Domain score on the Vineland test was low, his composite score was 85 and was within the normal range of 85 to 115. Moreover, in the over two hours Dr. Gallo observed Claimant, he found that Claimant made appropriate eye contact, interacted well with him, and did not observe any repetitive or stereotyped behaviors indicative of an ASD diagnosis. Dr. Gallo's report did not resolve these discrepancies, and the interdisciplinary committee declined to rely entirely on Dr. Gallo's diagnosis, according to Dr. Ballmaier.

CLAIMANT'S SCHOOL RECORDS

12. In February 2022, when Claimant was 15 years old, his high school assessed him for eligibility for an Individual Education Program (IEP). (Ex. 6.) The school district concluded:

> Based upon a current diagnosis and through this current assessment, [Claimant] does demonstrate characteristics that meet the eligibility criteria for a student with Autism. Based upon current assessment results, it is determined that [Claimant] is currently demonstrating significant deficits in social interaction as indicated by assessment results and observations within the academic environment. [Claimant] has demonstrated that the challenges in his social interactions is [*sic*] impeding upon his access and ability to maintain in educational settings at this time. It appears that [Claimant] has demonstrated significant behavioral concerns over his lifespan to include developmental delays which have adversely impacted his educational performance. In addition, [Claimant] meets eligibility for special education services as a student with a disability of an Other Health Impairment (OHI) due to a diagnosis of Attention Deficit Hyperactivity Disorder (ADHD) and evident behavioral concerns noted through observations, rating scales and formal and informal assessment data.

(Ex. 6, p. A38.)

13. In February 2023, when Claimant was 16 years old, Claimant was assessed again for IEP eligibility after transferring to a new charter high school. (Ex. 7.) The school concluded:

> [Claimant's] primary eligibility is Autism characterized by significant deficits in social interaction. [Claimant] has demonstrated that the challenges in his social interactions is impeding upon his access and ability to maintain in educational settings at this time. It appears that [Claimant] has demonstrated significant behavioral concerns over his lifespan to include developmental delays which have adversely impacted his educational performance. In addition, [Claimant's] secondary eligibility is an Other Health Impairment (OHI) due to a diagnosis of Attention Deficit Hyperactivity Disorder (ADHD). This combination of challenges directly impacts attention, planning, adaptability, and general executive functioning skills which impacts his ability to access the general education curriculum thus requiring Specialized Academic Instruction in addition to appropriate accommodations and related services.
>
> [¶ . . . ¶]
>
> **Communication Development**
>
> Since attending [Charter School], [Claimant] has had no difficulty in the area of communication development. [Claimant's] communication development appears to be age-appropriate. He is able to engage in conversations with

both adults and peers, demonstrates good reciprocity of speech, is easily understood, and is able to communicate his thoughts and ideas. This is not an area of concern; therefore, no goals will be developed in this domain.
[¶ . . . ¶]

Social Emotional/Behavioral

Since enrolling at [Charter School], [Claimant] has displayed positive social and emotional behaviors while on campus, while meeting with his supervising Teacher, while working with tutors, and while working with other students, supervised by a tutor. [Claimant] is kind and respectful to adults/peers and follows prompts/directions from educational staff. [Claimant] has improved greatly with regards to work habits and attendance since attending [Charter School]. At his last IEP held in October of 2022, [Claimant] was having difficulties in the area of social and emotional management skills. However, Mother and [Claimant] reported that they didn't feel he needed to continue individual counseling (or counseling and guidance services). However, it was best practice to monitor this area, so [Claimant] received psychological services, which is a consultative model of counseling instead. In the past few months since enrolling, he has met his previous social emotional goal which states that "[Claimant] will increase his ability to regulate mood from 1x per week to 3x per week by utilizing appropriate communication skills and

> applying effective coping skills as measured by teacher, staff and counselor observation and self-report." The only area he can continue to improve upon is his self advocacy skills when feeling uncomfortable or asking for help when needed. Thus, a new goal will be developed and psychological services will be continued. Mother and [Claimant] both reported that they still don't believe he needs individual counseling at this time. He is attending school regularly and turning in credits and is able to access the curriculum at this time.

(Ex. 7, pp. A46, A54.)

14. NLACRC's interdisciplinary committee reviewed and considered these IEPs in determining whether Claimant was eligible for regional center services. Dr. Ballmaier explained IEPs can be relevant to whether a claimant has a qualifying diagnosis, as there are usually discussions of the person's scholastic performance and detailed observations from a school psychologist or other school employees. Yet, neither of Claimant's IEPs contained information about specific assessments the school performed to determine whether Claimant had ASD; instead, they appeared to rely on Dr. Gallo's diagnosis. Moreover, while the 2022 IEP states Claimant has significant deficits regarding social interaction that are affecting his performance in school, this statement alone, without more, cannot support a diagnosis of ASD, according to Dr. Ballmaier. As for the 2023 IEP, Dr. Ballmaier explained that it more or less used the same general description as the 2022 IEP, but added more detail about how Claimant was performing scholastically. And those findings noted Claimant was performing well in school, his intelligence testing was above average, and he was demonstrating no

difficulties with communication skills or his social/behavior skills. Rather, the only area of improvement for Claimant to work on was his self-advocacy skills when feeling uncomfortable. According to Dr. Ballmaier, neither IEP provides evidence to support a diagnosis of ASD.

15. Claimant's high school transcript shows a significant improvement in his academic success after transferring to the charter school, including high grades in algebra, physics, psychology, and English. (Ex. 8.)

DR. LEVI'S PSYCHOLOGICAL ASSESSMENT

16. In September 2023, when Claimant was 17 years old, clinical psychologist Dr. Anna Levi, Psy.D., conducted a psychological assessment of Claimant. Dr. Levi is a contractor who performs assessments for NLACRC. Dr. Levi administered the Wechsler Abbreviated Scale of Intelligence to assess Claimant's level of cognitive functioning. (Ex. 11, p. A92.) Claimant's brief overall measure of intellectual ability was in the high average range. (*Ibid.*) Dr. Levi concluded Claimant did not have ID based on that test result and other medical records. (*Id.*, p. A93.)

17. Dr. Levi also administered the Adaptive Behavior Assessment System to assess Claimant's adaptive functioning. (*Ibid.*) Claimant's overall score for adaptive skills was in the low average range, with low average scores in conceptual skills, social skills, practical skills, and communication skills. (*Ibid.*) Claimant's social, self-direction, and self-care skills were rated in the average range. (*Ibid.*) Finally, Dr. Levi administered the ADOS-2, Module 4 to Claimant. Claimant's overall ADOS-2 score was below the autism or autism-spectrum range; it did not show significant symptoms of ASD. (*Ibid.*) Claimant's communication and social interaction scores were also below the autism or

autism spectrum range as well. (*Ibid.*) Dr. Levi stated Mother did not report any significant autism-spectrum symptoms during the interview. (*Ibid.*)

18. Dr. Levi's report also summarized the available evidence from previous medical assessments and evaluations regarding Claimant's deficits relevant to a diagnosis of ASD. (Ex. 11, pp. A88–A90.) Dr. Levi's review of records and her testing caused her to conclude Claimant showed a sustained deficit in the area of social-emotional reciprocity, but only a mild deficit in the areas of nonverbal communicative behaviors or developing, maintaining, and understanding relationships. (*Id.*, pp. A92–A95.) Nor was there evidence of: (1) stereotyped or repetitive motor movements, use of objects, or speech; (2) insistence on sameness, inflexible adherence to routines, or ritualized patterns of behavior; (3) highly restricted, fixated interests that are abnormal in intensity or focus; or (4) hyper- or hypo reactivity to sensory input or unusual interest in sensory aspects of environment. (*Id.*, pp. A93–A96.) In sum, Dr. Levi concluded Claimant's demonstration of a single sustained deficit in social-emotional reciprocity alone was insufficient to meet the requirements of a diagnosis of ASD under the DSM-5. (*Id.*, p. A96.) Instead, Dr. Levi diagnosed Claimant with social anxiety disorder and gender dysphoria in adolescents and adults, and she ruled out a diagnosis of persistent depressive disorder. (*Ibid.*)

19. Dr. Ballmaier explained that NLACRC gave great weight to Dr. Levi's conclusions and diagnosis because Dr. Levi's report systematically discussed the available evidence and diagnostic criteria, and it did not present inconsistencies as with Dr. Gallo's report. Based on all the records available to NLACRC, the regional center's interdisciplinary eligibility committee determined that Claimant was not eligible for regional center services. (Ex. 13.)

20. Dr. Ballmaier further explained that making a diagnosis of any disorder requires consistency with what the client is reporting, what their care provider is reporting, and what the psychologist has personally observed. As a person gets older, more weight can be placed on their self-reported symptoms, but a diagnosis still requires self-reported symptoms to be consistent with the psychologist's observations.

Claimant's Evidence

CLAIMANT'S RESPONSE TO DR. LEVI'S REPORT AND DR. LEVI'S REPLY

21. Claimant wrote a detailed response refuting Dr. Levi's report. (Ex. 14.) Claimant asserted the report had "many grammatical and structural issues" and was "hard to follow." (*Id.*, p. A121.) Claimant disputed the report's statement that he was a fan of anime, as he is not an anime fan and did not say that during the interview. (*Ibid.*) Claimant disputed the report's conclusion he did not have sensory issues based solely on his lack of a negative reaction to the sound of a fan in the room during the interview. (*Ibid.*) Claimant said sensory issues disrupted his ability to attend his previous high school and caused him to quit a job. (*Ibid.*) Claimant loves music but had to quit the school marching band and cannot perform live music because of sensory issues. (*Id.*, p. A123.) Claimant was insulted that Dr. Levi called his sensory issues "alleged" because she did not personally observe them. (*Ibid.*) According to Claimant, his sensory issues are "primarily [auditory], but are also based in scent and texture as well." (*Id.*, p. A131.)

22. As for Claimant's social skills, Claimant stated he masks and polices behaviors he exhibits demonstrating ASD by using a "conscious social algorithm"—he does this to avoid ridicule at school. (Ex. 14, pp. A123, A127.) Claimant is "not great" at this, however, and he often says things that are socially inappropriate or upsetting to

others, despite not intending to give offense. (*Id.*, p. A127.) Claimant often takes things literally, which can make it difficult to perceive social cues and jokes. (*Id.*, p. A133.) As for scheduling sensitivities, Claimant stated he has a great deal of trouble dealing with changes in his schedule. (*Id.*, p. A127.) Schedule changes can cause him to experience a "meltdown"—this concern is especially acute when dealing with the unpredictability of his work schedule. (*Ibid.*)

23. Concerning special interests, Claimant stated he is abnormally interested in certain topics, like 1990s grunge and punk music or politics, and can speak about them for up to 10 hours at a time. (Ex. 14, p. A129.) Claimant spends most of his free time researching music or politics and does not find that unusual—he has been told his interest in those topics is obsessive. (*Ibid.*)

24. Claimant stated he spends at least three hours a day pacing in his room to regulate his senses. (Ex. 14, pp. A129, A131.) Claimant claimed he needs to pace to function; if he cannot pace, he has trouble regulating himself and feels overwhelmed. (*Ibid.*) As a child, in addition to pacing, Claimant would swing his arms around in a circular motion to "stim" himself but stopped because of ridicule. (*Id.*, p. A131.) Claimant now wears necklaces or bracelets to stim discretely. (*Ibid.*)

25. Claimant also stated that although he identifies as male, he lived as a female until the age of 14. (Ex. 14, p. A123.) According to Claimant, this is significant because autistic females are diagnosed later in life compared to males and are underdiagnosed compared to males. (*Id.*, p. A125.)

26. Dr. Levi responded to Claimant's refutation, stating:

> As per previous records as consistent with [Claimant's] letter, [Claimant] reports a lot of ASD-like symptoms about

himself. However, historically and in my assessment, there was a lack of observed symptoms, thus, ADOS-2 shows scores in the non-autism range currently and as per evaluation at the age of 2-11 by Dr. Gaines. I will address specific concerns from the letter below:

- [Claimant] was unhappy I mischaracterized him as a "fan of Anime" - I never said that it was my observation. This was reported in Kaiser's assessment by Dr. Gallo and was referred to in review of records. Although [Claimant] brings up music as a fixated interest, he did not show it as such in the evaluation and was able to sustain conversations well on a variety of topics. Also, his mother did not report any fixated interests in the past.

- [Claimant] brings up pacing as a repetitive behavior, but neither Dr. Gallo nor I nor the school records report any repetitive behaviors. There is no developmental history (Dr. Gaines' report) to support [Claimant's] claim for repetitive behaviors.

- Regarding sensory sensitivity to noise. He reports that I misstated him regarding having sensory issues. My statement is based on what his mother reported (childhood and current observation by other than the client). Lack of symptoms in that area was also based on my observation, such as him not being bothered by the loud fan or printer/fax printing in the same office. I understand that he

> reports extreme sensitivity to noise, but it cannot be considered a sustained deficit solely based on a client's report (without parental, examiner's observation or records).
>
> - [Claimant] reported difficulty with a favorable plan falling through or not having a consistent work schedule, but that does not satisfy the criterion of inflexibility to sameness or nonfunctional routines.
>
> There are definite social issues, however, there is a complexity of other factors, such as social anxiety due to previous social trauma and gender change implications on social acceptance. I understand that [Claimant] is seeking a confirmation of the ASD diagnosis and is upset that I could not make this diagnosis. [¶ . . . ¶]

(Ex. 15.)

CLAIMANT'S TESTIMONY

27. Claimant credibly and articulately testified at the hearing and was an effective self-advocate. Claimant testified he has terrible sensory issues—his grades in school only improved once he was allowed to transfer to a high school that required limited in-person instruction. Claimant continued to dispute Dr. Levi's report, claiming she never observed him have a meltdown in class, and the meltdowns he experiences cannot reasonably be compared to being disturbed by the sound of a fan.

28. Claimant fears for his future. He is unsure whether he will ever be able to hold down a long-term job, as there is not much he can do where he does not get

overwhelmed and anxious. He had to quit a job working at an amusement park because it was overwhelming. He currently works at a frozen yogurt shop for 16 to 20 hours a week but is having trouble working there too; he is seeking new employment. He does not know if he will be able to cope with the increased number of people and sensory inputs in a university setting. He worries about his ability to be self-sufficient.

29. With respect to pacing, Claimant reiterated he has been told to mask this behavior and not do it around others. There are no records that he paces because he has been told to do it in private. He has also been told to stop engaging in other unusual behaviors in public that may show symptoms of autism.

30. Claimant stated it is difficult for him to perform simple tasks, such as going to a grocery store and purchasing something by himself. He does not like being alone and instead prefers to be around people. Claimant finds confrontation to be overwhelming, so he works especially hard to be obedient and subservient to avoid those types of situations.

MOTHER'S TESTIMONY

31. Mother also provided credible testimony at the hearing. She testified that Claimant has engaged in repetitive behaviors since the age of two or three. Claimant's younger brother is severely autistic and suffers from epilepsy. Mother would tell Claimant to go to his room if he engaged in repetitive behaviors that would upset his brother to avoid situations in which the two siblings would "set each other off." When Claimant was in a traditional high school setting, Claimant would regularly request to come home early because he could not handle the sensory environment. Claimant's new high school is very supportive of Claimant's issues—he now only needs to go to

school two days a week for two hours. Since switching schools, Claimant's grades have improved dramatically.

32. Mother is concerned that Claimant will not be able to thrive in a university environment due to increased stimulation. Mother is also concerned about Claimant's ability to hold a job—Claimant often needs to leave his shift early due to overstimulation, but his current job at the frozen yogurt shop supports him and allows him to take breaks when he is overstimulated.

33. Mother also testified that Claimant has trouble performing household tasks. For example, if she asked Claimant to do yard work outside, Claimant would not know where to begin—instead, he needs specific instructions for each step of the task to be performed.

LETTERS OF SUPPORT

34. Claimant submitted two letters of support. (Ex. A.) Claimant's shift leader at the frozen yogurt shop submitted a letter stating Claimant brings earplugs to the store because the loud noise of work and customers can trigger his sensory issues; he often needs to take a break in the back of the store to block out the sound. (*Id.*, p. B1.) When Claimant is overwhelmed, overstimulated, and cannot take a break, it "causes [Claimant] not to show his best of work at times." (*Ibid.*) The second letter is from Claimant's close friend. (*Id.*, p. B2.) The close friend states Claimant has always been easily susceptible to auditory overstimulation; Claimant transferred schools because he "couldn't deal with the amount of loud noises" and he could not "work around being overstimulated" at his previous school. (*Ibid.*)

LEGAL CONCLUSIONS

Jurisdiction

1. The Lanterman Act governs this case. (Welf. & Inst. Code § 4500 et seq.) (All further statutory references are to the Welfare and Institutions Code, unless otherwise stated.) Under the Lanterman Act, an administrative proceeding, also known as a "fair hearing," is available to determine the rights and obligations of the parties, including regional center decisions to which the claimant disagrees. (§§ 4700–4717.) Claimant timely requested a fair hearing, and jurisdiction for this case was established. (Factual Findings 1–5.)

Standard and Burden of Proof

2. The party asserting a condition that would make the individual eligible for a benefit or service has the burden of proof to establish he or she has the condition. (*Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 160–161.) Here, Claimant bears the burden of proving by a preponderance of the evidence that he has a developmental disability as defined by the Lanterman Act and is eligible for regional center services. (Evid. Code, § 115.) This standard is met when the party bearing the burden of proof presents evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

The Lanterman Act

3. The Legislature enacted the Lanterman Act to provide a pattern of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage

of life. The purpose of the statutory scheme is twofold: To prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.)

4. The Department of Developmental Services (DDS) is the state agency charged with implementing the Lanterman Act; DDS, in turn, may contract with private, non-profit community agencies called "regional centers" to provide developmentally disabled persons with access to the services and supports best suited to them throughout their lifetime. (§§ 4416, 4620.)

Lanterman Act Eligibility Requirements

5. Section 4501 outlines the state's responsibility for persons with developmental disabilities and the state's duty to establish services for those individuals. A person must have a developmental disability that is substantially disabling, as defined by the Lanterman Act and its implementing regulations, to be eligible for regional center services.

6. A developmental disability is a disability that originates before an individual turns 18 years old and is expected to continue indefinitely. Developmental disabilities are limited to the specific conditions of cerebral palsy, epilepsy, autism, intellectual disability (ID), or a disabling condition found to be closely related to ID or to require treatment similar to that required for an individual with ID. (§ 4512, subd. (a).) Developmental disabilities do not include other handicapping conditions that are

solely physical in nature, or which are solely psychiatric disorders or learning disabilities. (*Ibid.*; Cal. Code Regs., tit. 17, § 54000.)

7. Along with the requirements listed above, the condition must also constitute a substantial disability for the individual. (§ 4512, subd. (a)(1).) In this context, "substantial disability" means:

> (1) A condition which results in major impairment of cognitive and/or social functioning, representing sufficient impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential; and
>
> (2) The existence of significant functional limitations, as determined by the regional center, in three or more of the following areas of major life activity, as appropriate to the person's age: (A) Receptive and expressive language; (B) Learning; (C) Self-care; (D) Mobility; (E) Self-direction; (F) Capacity for independent living; (G) Economic self-sufficiency.

(Cal. Code Regs., tit. 17, § 54001, subd. (a).)

8. Section 4643, subdivision (b), provides:

> In determining if an individual meets the definition of developmental disability contained in subdivision (a) of Section 4512, the regional center may consider evaluations and tests, including but not limited to, intelligence tests,

adaptive functioning tests, neurological and neuropsychological tests, diagnostic tests performed by a physician, psychiatric tests, and other tests or evaluations that have been performed by, and are available from, other sources.

9. There appears to be no dispute that Claimant does not suffer from the developmental disabilities of cerebral palsy, epilepsy, or a disabling condition found to be closely related to ID or require treatment similar to that required for an individual with ID. Accordingly, the legal analysis of eligibility is limited to eligibility under the categories of autism and ID.

Diagnosing Autism Spectrum Disorder and Intellectual Disability

10. According to the DSM-5, the diagnostic criteria for ASD consists of two parts. The first set of criteria, Part A, requires persistent deficits in social communication and social interaction across multiple contexts, as manifested by all the following: (1) deficits in social-emotional reciprocity; (2) deficits in nonverbal communicative behaviors used for social interaction; and (3) deficits in developing, maintaining and understanding relationships. The second set of criteria, Part B, requires restrictive, repetitive patterns of behavior, interests, or activities, as manifested by at least two of the following: (1) stereotyped or repetitive motor movements, use of objects, or speech; (2) insistence of sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behaviors; (3) highly restricted, fixated interests that are abnormal in intensity or focus; and (4) hyper- or hypo-reactivity to sensory input or unusual interest in sensory aspects of the environment. (Ex. 16, pp. A140–A141.)

11. According to the DSM-5, ASD

> is diagnosed three to four times more often in males than in females, and on average, age at diagnosis is later in females. In clinic samples, females tend to be more likely to show accompanying intellectual developmental disorder as well as epilepsy, suggesting that girls without intellectual impairments or language delays may go unrecognized, perhaps because of subtler manifestation of social and communication difficulties. In comparison with males with autism spectrum disorder, females may have better reciprocal conversation, and be more likely to share interests, to integrate verbal and nonverbal behavior, and to modify their behavior by situation, despite having similar social understanding difficulties as males. Attempting to hide or mask autistic behavior (e.g., by copying the dress, voice, and manner of socially successful women) may also make diagnosis harder in some females. Repetitive behaviors may be somewhat less evident in females than in males, on average, and special interests may have a more social (e.g., a singer, an actor) or "normative" focus (e.g., horses), while remaining unusual in their intensity.

(Ex. 16, p. A149.)

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12. Furthermore, the DSM-5 states that persons with ASD

> are at greater risk for suicide death compared with those without autism spectrum disorder. Children with autism spectrum disorder who had impaired social communication had a higher risk of self-harm with suicidal intent, suicidal thoughts, and suicide plans by age 16 years as compared with those without impaired social communication. Adolescents and young adults with autism spectrum disorder have an increased risk of suicide attempts compared with age- and sex-matched control subjects, even after adjustments for demographic factors and psychiatric comorbidities.

(Ex. 16, p. A149.)

13. To receive a diagnosis of ID under the DSM-5, a person must meet the following diagnostic criteria: First, an individual must have deficits in intellectual functions, such as reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience, confirmed by both clinical assessment and individualized, standardized intelligence testing (Criterion A). Individuals with ID have Full-Scale Intelligence Quotient (IQ) scores between 65 to 75, including a five-point margin for measurement error. The DSM-5 cautions that IQ tests must be interpreted in conjunction with considerations of adaptive function. The DSM-5 explains that a person with an IQ score above 70 may have such severe challenges in adaptive behavior, such as problems with social judgment or social understanding, that the individual's actual functioning is comparable to that of individuals with a lower IQ score. Second, the DSM-5 definition of ID requires individuals with ID to have

deficits in adaptive functioning that fail to meet developmental and socio-cultural standards for personal independence and social responsibility, and which, without ongoing support, limit functioning in one or more activities of daily life, such as communication, social participation, and independent living, across multiple environments, such as home, school, work, and community (Criterion B). This criterion is met when at least one domain of adaptive functioning – conceptual, social, or practical – is sufficiently impaired such that the individual requires ongoing support to perform adequately in one or more life settings at school, at work, at home, or in the community. The levels of severity of ID are defined based on adaptive functioning, and not IQ scores, because adaptive functioning determines the level of supports required. Third, individuals with ID must experience the onset of these symptoms during the developmental period (before reaching 18 years of age) (Criterion C). (Ex. 17, pp. A156-A157.)

Evaluation of Evidence

QUALIFYING DIAGNOSIS – ASD

14. Although Dr. Gallo diagnosed Claimant with ASD, Dr. Ballmaier provided persuasive testimony that Dr. Gallo's diagnosis was unreliable. Dr. Gallo's diagnosis contained inconsistencies and did not use the "gold standard" for ASD testing by using the ADOS or the ADI-R tests. On the other hand, Dr. Levi's evaluation used the ADOS-2 and, based on that test and a review of all other information in the record, concluded that Claimant demonstrated only one of the Part A clinical criteria, and none of the Part B clinical criteria required to diagnose ASD. (Factual Findings 10–11, 16–19.)

15. Although both Dr. Levi and Dr. Ballmaier stated that a diagnosis cannot solely be based on Claimant's self-reported symptoms, Dr. Ballmaier also stated that self-reported symptoms are entitled to greater weight as a person ages—Claimant is now over the age of 18 and is an adult. Evidence proffered by Claimant could tend to demonstrate he meets at least two of the Part B diagnostic criteria for a diagnosis of ASD. These include, for example: (a) Claimant testified he needs to self-regulate by spending three hours per day pacing in his room; this could meet the criteria regarding stereotyped or repetitive motor movements (Factual Findings 24, 29); (b) Claimant's hypersensitivity to sound shown through his testimony, Mother's testimony, and the letters submitted by his work supervisor and friend, could meet the criteria requiring hyper-reactivity to sensory input (Factual Findings 21, 27–28, 32, 34); (c) Claimant's testimony that he can have a meltdown due to schedule changes could meet the criteria regarding insistence of sameness or inflexible adherence to routines (Factual Finding 22); and (d) Claimant's "obsessive" interest in music and politics could meet the criteria for highly restricted, fixated interests that are abnormal in intensity or focus (Factual Finding 23).

16. And as Claimant pointed out, the DSM-5 states that diagnosing females with ASD appears to be harder, for various reasons, and he was born biologically female—his masking and large portion of life living as female possibly made it more difficult to diagnose him with ASD. (Factual Findings 22–25, 29, 31; Legal Conclusion 11.) Moreover, Claimant's medical records show that he was hospitalized for suicidal ideation—another factor that the DSM-5 notes occurs more often in those who have been diagnosed with ASD. (Factual Finding 7; Legal Conclusion 12.)

17. But a diagnosis of ASD requires a finding at of least two of the Part B criteria and all three of the Part A criteria. (Legal Conclusion 10.) Claimant did not meet

his burden to prove he also suffers from the remaining Part A criteria of sustained deficits in nonverbal communicative behaviors used for social interaction and deficits in developing, maintaining, and understanding relationships. (Factual Finding 11.)

18. And even assuming Claimant had proffered sufficient evidence to satisfy all the criteria necessary for a diagnosis of ASD, a qualifying diagnosis alone is not enough to be eligible for regional center services. (Legal Conclusion 5.) Rather, the qualifying diagnosis must also accompany evidence of significant functional limitations in at least three of the following areas: (A) receptive and expressive language; (B) learning; (C) self-care; (D) mobility; (E) self-direction; (F) capacity for independent living; and (G) economic self-sufficiency. (Legal Conclusion 7.) Although the available evidence shows that Claimant may have mild functional limitations in some of these areas, there is insufficient evidence showing he has a significant functional limitation in three of those areas. On the contrary, the available evidence shows: (1) Claimant is of above-average intellectual ability and can excel in school when placed in the right learning environment (Factual Findings 8, 13–16, 27, 31); (2) there is no evidence Claimant cannot ambulate independently; (3) Claimant fears being unable to attend a university or hold a job because of sensory issues, but has shown the ability to work for 16-20 hours per week (Factual Findings 28, 32); and (4) Claimant may need help and direction with self-care tasks or simple household tasks (Factual Findings 30, 33), but there is no evidence of Claimant's *significant* limitations in performing those tasks.

19. Accordingly, as described in Legal Conclusions 14–18, Claimant did not prove by a preponderance of the evidence he has ASD or that, even assuming he has a qualifying diagnosis of ASD, he has significant functional limitations in at least three areas such that a diagnosis of ASD would be substantially disabling.

QUALIFYING DIAGNOSIS – ID

20. Although Claimant did not specifically request eligibility for a diagnosis of ID, NLACRC found that Claimant had no qualifying diagnosis, including ID, that would make him eligible for regional center services under the Lanterman Act. (Factual Findings 4–5.) NLACRC submitted evidence at the hearing to support the conclusion Claimant did not have ID. Dr. Gaines concluded Claimant was functioning in the above-average range of intellectual ability as a child. (Factual Finding 8.) And Dr. Levi concluded Claimant did not have ID. (Factual Finding 16.) Other evidence also supports this conclusion: Claimant's school testing showed he has above average intelligence, Claimant began receiving A and B grades in challenging, senior-level courses after switching high schools, and he gave credible, articulate, and effective testimony on his own behalf at the hearing. (Factual Findings 8, 14, 27.) Claimant did not meet his burden to demonstrate he has ID.

Conclusion

21. Claimant did not prove by a preponderance of the evidence he is eligible for regional center services.

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ORDER

Claimant's appeal is denied.

DATE:

TAYLOR STEINBACHER
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.