

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

In the Matter of the Fair Hearing Request of:

CLAIMANT

vs.

FRANK D. LANTERMAN REGIONAL CENTER,

Service Agency.

DDS No. CS0012805

OAH No. 2024030091

DECISION

Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on September 25, 2024.

Melissa Lander, advocate and authorized representative, represented claimant. The names of claimant and his family members are omitted to protect the confidentiality of this proceeding.

Cindy C. Lopez, Fair Hearing and Compliance Coordinator, represented Frank D. Lanterman Regional Center (service agency).

The hearing was continued until October 4, 2024, to allow service agency to file a response to claimant's exhibit C. The service agency's response was timely submitted. The hearing concluded, and the record was closed, on October 4, 2024.

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 1 through 17, claimant exhibits A through C, as well as the testimony of Intake Specialist Leighanne Cabrera, Intake Manager Michele Johnson, Dr. Jessica Quevedo, Marlene Dutton, Cidney Dutton, LCSW Nicole McCarthy, claimant's mother, claimant's father, and claimant.

SUMMARY

Claimant appeals service agency's denial of his request to be deemed eligible for regional center services under the Lanterman Act. Service agency determined claimant does not have a qualifying developmental disability. Claimant contends he has autism and is substantially handicapped by that condition. However, claimant failed to meet his burden of establishing by a preponderance of the evidence that he is eligible for services under the Lanterman Act on the basis of autism. Therefore, his appeal is denied.

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.; subsequent undesignated statutory references are to this code.)

2. Claimant is a 40-year-old man referred to service agency by his parents for a determination whether he is eligible for regional center services on the basis of autism. (Ex. 6.)

3. On August 11, 2023, service agency issued a Notice of Action (NOA), in which claimant and his parents were advised that service agency staff concluded claimant was not eligible for regional center services because he does not have a qualifying developmental disability. (Ex. 2.)

4. On February 21, 2024, claimant's advocate and authorized representative 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. 3.)

5. On March 21, 2024, the parties participated in an informal meeting regarding claimant's appeal. (Ex. 17.)

6. Official notice is taken that, in connection with a continuance request made after the matter was initially scheduled to be heard, claimant's advocate and

authorized representative executed a written waiver of the time limit prescribed by law for holding the hearing and for the ALJ to issue a decision.

Claimant's Relevant Background Information

7. Claimant is a single, non-conserved adult who lives at home with his parents. At this time, claimant and his parents are primarily concerned about claimant's daily living skills, self-care, and vocational abilities. (Ex. 5.)

8. Claimant's parents do not report a history of developmental disability in their respective families. Claimant's mother has a history of depression, and one of claimant's grandfathers had depressive disorder. (Exs. 5, 6.) When interviewed at various times, claimant's parents gave a vague but unremarkable chronology of claimant's developmental milestones. (Exs. 5, 6.)

9. Claimant received special education services from his local school district. However, the only record concerning special education presented is a Settlement Agreement between claimant's parents and his school district entered in December 1995. In that agreement, the school district agreed to pay the full costs of tuition and transportation for claimant to attend Landmark West School for the 1994-1995 school year and the first semester of the 1995-1996 school year. The school district also agreed to develop appropriate individualized education program (IEP) documents to facilitate claimant receiving that non-public school placement. The Settlement Agreement does not specify claimant's category of eligibility for special education services. (Ex. 9.)

10. Claimant attended Landmark West School for middle school. His parents report he thereafter attended Help Group Summit View for high school, and that he graduated in 12th grade. (Ex. 5, p. A25.) Help Group Summit View offers a college

preparatory program to students with learning disorders who possess average to above average intellectual capabilities, as well as children with developmental disabilities. (Ex. 10.) Claimant's father reports his son always had difficulty in school, and performed below grade level in all subjects. (Ex. 5, p. A25.)

11. According to a letter from James Lough, Ph.D., the director of ADAPT Therapy Centers, Inc. (ADAPT), claimant received outpatient individual and family therapy from ADAPT from September 1995 through June 1997. Claimant was 11 years old when he started therapy. Dr. Lough indicates claimant received therapy weekly, in-home behavioral interventions, and psychotropic medications prescribed by a medical doctor. (Ex. 7.) Dr. Lough also notes:

[Claimant] met the diagnostic criteria for Autism Spectrum Disorder 299.00 (F84.0), Attention Deficit Hyperactive Disorder 314.00 (F90.0), and Obsessive - Compulsive Disorder, 300.3 (F42). [Claimant's] childhood diagnoses were of course from the DSM-IV and the above are the DSM-V equivalent.

(Ex. 7.)

12. Dr. Lough's letter contains no other information concerning his autism diagnosis of claimant. Claimant's advocate advises Dr. Lough's office was unable to supply any records from his treatment of claimant, and that Dr. Lough was unable to testify because he recently suffered a stroke and is unable to speak.

13. Claimant performed far below basic in standardized academic testing taken by him in the 11th grade. His sub-test scores on the ACT averaged around the 27th percentile of college-bound students. Standardized testing claimant took in the

12th grade were scored as showing he was below college-level in English, and well below college-level in Mathematics. (Ex. 8.)

14. Claimant's parents testified they have few records from claimant's school years or healthcare treatment because they lost or discarded many such items when they moved residences and have downsized.

Service Agency's Assessment of Claimant

INTAKE ASSESSMENT

15. On a date in early 2023 not established, claimant's father requested service agency to conduct an assessment of claimant's eligibility for regional center services. Claimant's father reported to service agency that he suspected claimant has autism spectrum disorder (ASD). (Ex. 6.)

16. The request for an eligibility assessment initially was handled by Intake Specialist Leighanne Cabrera. She interviewed claimant's parents and claimant's advocate, and reviewed the above-described Settlement Agreement from claimant's school district and standardized academic test results. Because Ms. Cabrera was unable to establish from that information claimant has a developmental disability, she referred claimant for a psychosocial assessment to be conducted by SMILE Pediatric Therapy and Diagnostics (SMILE), a third-party vendor of the service agency. (Testimony [Test.] of Cabrera.)

17. On March 21, 2023, Suzy Manuelian, an Assessment Coordinator of SMILE, conducted a videoconference psychosocial assessment for claimant. She interviewed claimant's father and advocate, and obtained pertinent information about claimant's background and current functioning. Ms. Manuelian wrote a report from

that assessment on the same date. (Ex. 5.) In her report, Ms. Manuelian noted claimant's father advised her that claimant was diagnosed with ASD in 1995. Ms. Manuelian made no meaningful recommendations in her report. (Ex. 5.)

18. For reasons not established, Ms. Cabrera decided to refer claimant for a psychological assessment. (Test. of Johnson; Ex. 4.)

PSYCHOLOGICAL ASSESSMENT

19. Claimant was referred to Jessica Quevedo, Psy.D., for a psychological assessment. Dr. Quevedo is a clinical psychologist for a telehealth care company and for two other regional centers, in addition to consulting for service agency. (Test. of Dr. Quevedo; Ex. 15.) Dr. Quevedo met in person with claimant on two days in April and July 2023; claimant's father and advocate also were present. Dr. Quevedo interviewed all three during those meetings. She also interviewed claimant's mother by telephone. During the in-person sessions, Dr. Quevedo administered to claimant a series of tests, and observed claimant's behavior. She also reviewed pertinent records. On July 3, 2023, Dr. Quevedo issued a report of her findings. (Ex. 4.)

20. Dr. Quevedo noted in her report observations of claimant during their interviews. It was easy for her to establish rapport with claimant. She found him engaging and reciprocal in their discussions. Dr. Quevedo describes claimant as an effective communicator. Claimant maintained good eye contact with her and did not engage in any repetitive speech patterns or odd behaviors. In short, claimant said or did nothing that made Dr. Quevedo suspect he has ASD. (Ex. 4, p. A13-14.)

21. Dr. Quevedo gave Claimant the Wechsler Adult Intelligence Scale, 4th Edition (WAIS-4), which measures cognitive and academic functioning. Claimant obtained a composite score in the average range. (Ex. 4, p. A14-15.)

22. Claimant's parents were 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 severely delayed range abilities in communication, profoundly delayed range abilities in daily living skills, and profoundly delayed range abilities in socialization. Claimant's composite score fell within the severely delayed range. However, Dr. Quevedo noted in her report the results of the VABS-3 should be interpreted with caution because there was a significant discrepancy between claimant's abilities as reported by his parents and what Dr. Quevedo had observed during her interactions with claimant. (Ex. 4, p. A16.)

23. Dr. Quevedo also performed module 4 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. 4, pp. A17.) The ADOS-2 is generally accepted as the gold standard in testing for ASD. (Test. of Dr. Quevedo.) The sub-test and composite scores for claimant were well below the cut-off for suspecting claimant has ASD. (Test. of Dr. Quevedo; Ex. 4, pp. A17-18.)

24. Dr. Quevedo 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 any of the required criteria to warrant a diagnosis. For example, in category A pertaining to social interaction and communication, Dr. Quevedo concluded claimant did not show deficits in social/emotional reciprocity, nonverbal communication, or developing relationships. In category B, Dr. Quevedo concluded claimant showed no restrictive or repetitive patterns or highly restricted or fixed interests that are abnormal. In category C, Dr. Quevedo concluded claimant did not exhibit symptoms in his early developmental

period. In category D, Dr. Quevedo concluded claimant did not exhibit symptoms causing clinically significant impairment in social, occupational, or other important areas of current functioning. (Ex. 4, pp. A18-19.)

25. Based upon all of the information available to her, Dr. Quevedo concluded claimant does not have ASD. However, based on comments made by claimant and his parents, she advised Depressive Disorder Not Otherwise Specified should be ruled out for claimant. (Ex. 4, p. A21.)

26. Dr. Quevedo testified at hearing. She reiterated her major findings in her report. The only additional information provided in her testimony was that she reviewed many of the documents submitted to service agency by claimant's advocate and she found they do not substantiate an ASD diagnosis for claimant.

SERVICE AGENCY'S DENIAL OF ELIGIBILITY

27. On August 9, 2023, a multidisciplinary team, comprised of Intake Manager Michele Johnson, Ms. Cabrera, a physician, and a psychologist, met and determined claimant was not eligible for regional center services because he does not have a qualifying developmental disability. (Ex. 1.) Before making that decision, the team reviewed not only Dr. Quevedo's report, but also documents presented from claimant's sources, including some of those discussed in more detail below. (Test. of Cabrera, Johnson.)

28. While Ms. Johnson testified that she agrees claimant has a substantial disability, she does not believe it is related to a developmental disability. Rather, Ms. Johnson saw in claimant's records indications that he has been diagnosed with mental health disorders (depression, obsessive-compulsive disorder [OCD]), osteoarthritis in a

knee, and possibly a learning disorder. Ms. Johnson believes those disorders are causing claimant's deficits in his functioning.

Evidence Presented by Claimant

RELATIVES

29. A letter was presented from Jean Graubart, claimant's aunt, who also is a social worker. (Ex. 13.) While she notes claimant was diagnosed with autism at a young age, she does not specify if she knew that at the time, as opposed to learning of Dr. Lough's letter more recently. This is worth noting because, as discussed below, claimant's parents did not tell others about Dr. Lough's diagnosis of claimant. However, Ms. Graubart notes claimant struggled during his school years with understanding social cues, engaging in reciprocal communication, and managing sensory sensitivities. She does not list specifics. She also notes claimant received special education services in school, as well as occupational therapy, speech and language therapy, and behavioral therapy. Ms. Graubart believes those services helped claimant progress.

30. A letter was presented from Marlene Dutton. (Ex. B.) She also testified. Mrs. Dutton is a first cousin of claimant's mother. She has known claimant since he was a baby. Mrs. Dutton is a retired school teacher, and was able to observe claimant when he went to the elementary school where she taught. When claimant was a young child, she noticed he was socially reserved, had problems making transitions, and had limited eye contact with others. Claimant struggled at school and with academics. As an adult, she knows claimant still lives at home, and has problems getting a job or living independently. While claimant's parents only recently told her that Dr. Lough diagnosed claimant with autism, Mrs. Dutton was not surprised to hear it. Mrs. Dutton

also knows claimant has mental health concerns, such as OCD and depression. However, she testified claimant has worked in various restaurants for short periods, and drives the family car. Claimant's parents dispute both.

31. A letter was presented from Mrs. Dutton's daughter, Cidney Dutton. (Ex. A.) Ms. Dutton also testified. She has known claimant her entire life. She testified claimant was socially withdrawn at family events, would usually talk to only person at a time and only about his own interests, and had limited eye contact. Ms. Dutton also tutored claimant at school and when he was in culinary training. She saw claimant struggle in those endeavors. He needed constant breaks and had trouble with executive functioning. Ms. Dutton now is an educational therapist. She has a Master's in Educational Therapy and is working on a Doctorate of Psychology. Based on her observations of claimant, and what she has heard about him from others, she agrees he has ASD. Ms. Dutton also believes claimant has a learning disorder. She testified claimant attended classes at a local junior college and completed culinary school. She also testified claimant had jobs off-and-on over the years. However, claimant's parents dispute these later two points.

PSYCHIATRIC EVALUATION

32. Claimant's advocate referred claimant to Nicole E. McCarthy for a psychiatric evaluation. Ms. McCarthy is a licensed clinical social worker who both works in Kaiser Permanente's (Kaiser) Behavioral Health Department and has her own private practice conducting psychiatric evaluations. (Test. of McCarthy; Ex. 16.)

33. Ms. McCarthy conducted by videoconference her psychiatric evaluation of claimant on January 13, 2024. At that time, she interviewed claimant and his

parents. She has never seen claimant in person. She conducted testing, reviewed records, and issued a two-page letter report. (Ex. 11.)

34. Ms. McCarthy notes in her report that claimant has been unable to live independently or hold a job. He is a safety risk because on a few occasions he started a fire in the kitchen while cooking, and a flood in the bathroom from not turning off water while taking a bath. She believes claimant shows ritualistic behaviors and obsessions, but she only specified his disgust for germs. Ms. McCarthy confirms claimant has OCD, and previously has been treated by psychiatrists for depression and anxiety. (Ex. 11.)

35. Ms. McCarthy did not describe in her report any particular behavior of claimant's consistent with ASD. However, she testified she observed such behavior during her evaluation, including claimant fidgeting with pens, wanting to leave the interview, and continuously asking about things off-topic and talking about his interest in cars and washing his clothes.

36. Ms. McCarthy administered to claimant the module 4 of the ADOS-2. She issued a report concerning the results of the ADOS-2 on a date not established. (Ex. 12.) Ms. McCarthy summarized the results as showing significant atypical qualities in claimant's language and communication and reciprocal social interaction. Claimant demonstrated less significant deficits in stereotypical behavior, imagination/creativity, and other abnormal behaviors. Overall, Ms. McCarthy scored claimant's results as showing he "falls in the Autism Range." (Ex. 12, p. B57.)

37. In her ADOS-2 report, Ms. McCarthy described various of claimant's behaviors suggestive of ASD. For example, in the area of language and communication, Ms. McCarthy noted claimant rambled and made irrelevant

statements; he had difficulty with reciprocal conversation; and he had a flat intonation of speech. In the area of reciprocal social interaction, Ms. McCarthy noted claimant kept talking about tangents and needed redirection; and he did not use appropriate facial expressions. In the area of imagination/creativity, Ms. McCarthy noted claimant had a limited range of creativity in storytelling. In the area of stereotypical behaviors and restricted interests, Ms. McCarthy noted that while claimant did not display any unusual sensory interests, he kept tapping his fingers; he also engaged in repetitive hand and finger mannerisms; he only occasionally referenced highly specific or unusual patterns of interest. Finally, in the area of abnormal behaviors, Ms. McCarthy noted claimant had trouble sitting, and continuously asked when the interview would be over. (Ex. 12.)

38. Ms. McCarthy states in her report that claimant meets the diagnosis of ASD pursuant to the DSM-5. She did not review the criteria of that diagnosis or explain how claimant met them. She also diagnosed claimant with OCD. However, she concludes claimant's primary diagnosis is autism. (Ex. 11.)

39. Ms. McCarthy also testified. She reiterated the major points of her report and ADOS-2 report. She believes that while claimant has OCD, his primary deficits are caused by ASD. She does not believe claimant has a depressive disorder. As he has aged, claimant's needs have changed. He is unable to live independently or hold a job. He cannot manage money and needs constant supervision. He also is a safety risk. Without regional center services, his prognosis is poor. As his parents are getting older and less able to care for claimant, claimant is becoming more at risk. She fears he will become homeless without his parent's assistance and care. This is why regional center services are critical for claimant.

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CLAIMANT AND HIS PARENTS

40. Claimant's mother testified. Her son received special education services because school testing showed he "was on the spectrum." That is why claimant's school district paid for claimant to attend special schools in junior and senior high school. Claimant's mother denies her son attended junior college. She was able to get a friend who owns a restaurant chain to allow claimant to study working in a kitchen at one of his restaurants; however, claimant could not focus, and the situation was too high paced for him. Once she and her husband moved claimant into an apartment; her son was forced out after one month when he flooded the apartment after forgetting the bathtub water was running. When claimant was growing up, she did not tell people he was autistic because her son was embarrassed about his diagnosis and did not want other people to know about it.

41. Claimant's father testified at hearing. His son was diagnosed with autism when he was young. The IEPs from claimant's school district would reflect that. However, the family has lost those documents after moving residences. Claimant needs guidance and mentoring. He cannot live alone. He needs help with life skills, such as cooking and cleaning.

42. Claimant testified at hearing. He testified he "is having serious life problems," he is "at the end of his rope" with his parents, and they are all getting on each other's nerves. It has been hard for him to hear people say he is autistic. But he knows he needs help. He cannot be independent, and he cannot manage money. His arthritic knee makes it hard for him to stand longer than 45 minutes, which has prevented him from working. He has not been able to find a job he can do from home. He does not have a plan for when his parents are unable to care for him. He has friends who have plans for their lives, but he does not. He is unable to drive a car,

though he has tried. While he has friends, some of whom are more like acquaintances, he is not able to see them as often as he would like because they are busy. He met those friends while walking the streets on his own and befriending them in stores that he frequents. However, he does not believe they are close friends.

43. In addition to testifying, claimant occasionally spent limited periods of time in the hearing room. The ALJ was able to observe claimant while he was present in the hearing room and testifying. The ALJ also asked claimant a few questions at the end of claimant's testimony. The ALJ finds claimant to be engaging and easy to develop a rapport with. The ALJ did not notice claimant diverting or limiting his eye contact. Claimant understood all the questions asked of him. At the beginning of the hearing, while the ALJ was experiencing difficulty connecting his computer with the internet, claimant spontaneously offered a helpful suggestion.

IN-HOME SUPPORTIVE SERVICES

44. As of January 1, 2023, claimant's family received funding for 53.31 hours per month of In-Home Supportive Services (IHSS) care for claimant from the County of Los Angeles. Claimant received only 31 minutes per month of protective supervision. (Ex. 14.) Claimant's family appealed that decision. A hearing was held on the appeal in April 2023, and a decision was issued on May 16, 2023. (Ex. C.) In the Decision, the administrative law judge concluded claimant needed 253 hours and 34 minutes per month of IHSS services, including 195 hours per month of protective supervision. The administrative law judge found claimant needed significant assistance with bowel and bladder care. The administrative law judge also found claimant needed 24/7 protective supervision, because he has a mental impairment, was not self-directing, and was at risk for injury or accident due to his dangerous activities, like starting fires in the kitchen or making floods while taking baths.

Weighing Expert Opinion Evidence

45. The two expert witnesses who opined on whether claimant has ASD are qualified and offered valid opinions, through their reports and testimony. On balance, however, the expert opinion of Dr. Quevedo that claimant does not have ASD is more persuasive than Ms. McCarthy's opinion that claimant does have ASD, as explained below.

46. On balance, Dr. Quevedo has more significant training and experience working with autistic individuals and diagnosing ASD. She is a licensed psychologist, bearing a higher level of training and credentials than Ms. McCarthy. Dr. Quevedo's current work focuses mainly on assessing (for three different regional centers) whether individuals have developmental disabilities, including ASD. Prior to becoming a licensed clinical psychologist, Dr. Quevedo had significant experience working with autistic individuals as a therapist in Hawai'i, and as a behavioral consultant in Los Angeles. (Test. of Dr. Quevedo; Ex. 15.) On the other hand, Ms. McCarthy's work at Kaiser is not as focused on ASD, and her private practice (as described in her resume) appears equally focused on forensic psycho-legal work, as opposed to assessing and/or working with autistic individuals. Her prior work at Kaiser involved some work with developmentally disabled individuals, but not as extensive as Dr. Quevedo's.

47. Dr. Quevedo met claimant in person, as opposed to videoconference, and she spent more time than Ms. McCarthy interviewing and evaluating claimant.

48. Dr. Quevedo's report is more thorough and detailed. She explains in greater detail her observations, interviews, and testing, and she provides a clear explanation of how claimant fails to meet the criteria for an ASD diagnosis under the DSM-5. Ms. McCarthy did not do so in her report.

49. Ms. McCarthy's ADOS-2 report is not persuasive in showing how claimant's behaviors are suggestive of ASD. Ms. McCarthy lists in her ADOS-2 report many observations of claimant's behavior that could be explained by his OCD, such as his being fidgety, tapping pens, and germaphobia. While that does not rule out ASD for claimant, Ms. McCarthy did not satisfactorily explain how those observations relate to or rule in ASD.

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 parents 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 1-6.)

2. One is eligible for services under the Lanterman Act if it is established he 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. A qualifying condition also must cause a substantial disability. (§ 4512, subd. (a).) A "substantial disability" is defined by California Code of Regulations, title 17, section (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.

4. Pursuant to regulation 54000, subdivision (c), a developmental disability shall not include handicapping conditions that are solely "psychiatric disorders" (subd. (c)(1)), "learning disorders" (subd. (c)(2)), or "physical in nature" (subd. (c)(3)).

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Burden and Standard of Proof

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

6. Regarding eligibility for regional center services, "the Lanterman Act and implementing regulations clearly defer to the expertise of the DDS and [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 [*Mason*].) 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.)

7. In this case, claimant bears the burden of establishing he is eligible for regional center services because he 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.

8. 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.)

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Claimant Does Not Have the Qualifying Condition of Autism

9. 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.

10. In this case, claimant failed to meet his burden of establishing by a preponderance of the evidence that he has the qualifying condition of ASD, or for purposes of the Lanterman Act, autism. In the parlance of the *Mason* decision, claimant did not sufficiently refute service agency’s conclusion that claimant does not have ASD. (Factual Findings 7-49.)

11. According to *Mason*, service agency’s decisions regarding eligibility for services are generally entitled to deference. Whether someone has ASD is an issue that only can be established by persuasive expert diagnosis. In this case, service agency has concluded claimant is not eligible, based in part on the expert opinion of Dr. Quevedo. In turn, Dr. Quevedo’s expert opinion that claimant does not have ASD is more persuasive than Ms. McCarthy’s opinion that he does have ASD. (Factual Findings 45-49.)

12. In addition to Ms. McCarthy’s opinion, claimant presented other evidence he argues shows he has autism. For example, claimant received special education services and funding while in school. One treating psychologist diagnosed him with autism in the 1990s. Many of claimant’s relatives have offered recollections of

claimant's social and communicative behaviors they attribute to autism. In some cases, such corroborating evidence could bolster an expert opinion that is not dispositive standing on its own. This case is not one. On balance, claimant's non-expert evidence is inconsistently scattered across time, vague, anecdotal, and therefore not convincing.

13. In addition, there are many facts present in this case that are inconsistent with a diagnosis of ASD for claimant. Claimant's family has no reported history of developmental disabilities, and claimant's chronology of developmental milestones was unremarkable. No healthcare or school records were submitted demonstrating claimant actually was diagnosed with autism during his school years. Most of claimant's relatives were not aware such a diagnosis was rendered. While claimant's parents offered reasons for this lack of evidence, still the absence of it is unusual. Claimant attended and graduated from college preparatory schools. There is sparse evidence of claimant engaging in stereotypical behaviors, or the type of perseverative communication habits typical of autism. By his own testimony, claimant has the ability and interest in making and maintaining friendships. To the extent one could characterize claimant's behaviors as odd or awkward, his psychiatric and learning disorders could equally explain them.

14. Claimant's advocate argues he should not lose his appeal simply because his family could not afford a more thorough psychological assessment and report, like that done by Dr. Quevedo. It is a fair point. Nonetheless, due to the sparse evidence of an autism diagnosis before claimant turned 18, and the existence of other facts inconsistent with such a diagnosis, this is exactly the kind of case where such a thorough psychological assessment is crucial.

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15. Since claimant failed to meet his burden of proving by a preponderance of the evidence that he has the qualifying developmental disability of autism, it was not established he is eligible for regional center services under the Lanterman Act. (Factual Findings 1-49; Legal Conclusions 1-14.)

ORDER

Claimant's appeal is denied.

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.