

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

In the Matter of:

CLAIMANT

and

TRI-COUNTIES REGIONAL CENTER,

Service Agency

DDS No. CS0013661

OAH No. 2024030868

DECISION

Taylor Steinbacher, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter via videoconference on February 10, 21, and 25, 2025.

Donald Wood, Wood & Finick, appeared and represented Tri-Counties Regional Center (TCRC).

Megan Leisz, Deputy Public Defender, Office of the Public Defender, Santa Barbara County, appeared and represented Claimant, who was present throughout the proceedings. Claimant's mother (Mother) was also present on the first two days of the

hearing and was assisted by Spanish-language interpreters. Names are omitted to protect the privacy of Claimant and his family.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on February 25, 2025.

ISSUES

Was Claimant substantially disabled in three or more areas of major life activity due to diagnoses of autism or intellectual disability before the age of 18 such that he is eligible for regional center services? Is Claimant eligible for regional center services under the “fifth category” of eligibility?

EVIDENCE RELIED UPON

Documents: TCRC Exhibits 1–21; Claimant’s Exhibit A.

Witnesses for TCRC: (1) Christina Aguirre-Kolb, Ph.D.; (2) Blanca Zepeda.

Witnesses for Claimant: (1) Mother; (2) Elizabeth Anda; (3) Susana A. López, Ph.D.

SUMMARY

After engaging in alleged criminal conduct, Claimant applied for eligibility from TCRC. TCRC denied eligibility, finding Claimant had an eligible diagnosis but that he was not substantially disabled by that diagnosis before the age of 18. The main theme of the regional center’s argument throughout the hearing was that Mother’s evidence

about Claimant's developmental disabilities was inconsistent and unreliable because she has an interest in Claimant avoiding the consequences of his alleged criminal conduct. But these contentions were unsupported by the evidence. Instead, the evidence shows Claimant has a qualifying diagnosis of Intellectual Disability that was substantially disabling before the age of 18. Claimant is eligible for regional center services.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant is an unconserved, 22-year-old man who lives with Mother and his siblings in the catchment area served by TCRC.

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

3. On or about May 1, 2023, Claimant allegedly engaged in criminal conduct and was charged with a felony. (Ex. 9, p. A52.) In connection with these charges, the Superior Court of California, County of Santa Barbara, referred Claimant to TCRC for a competency evaluation. (Ex. 4, p. A18.) TCRC cannot perform a competency evaluation without first determining whether Claimant is eligible for services under the Lanterman Act. (*Ibid.*)

4. On February 7, 2024, TCRC sent Claimant's counsel a Notice of 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. 2.) The same day, TCRC also sent a letter to the Superior Court stating it found Claimant was not eligible for regional center services. (Ex. 1.)

5. On or about March 18, 2024, Mother filed a fair hearing request with TCRC. An additional psychological evaluation of Claimant was conducted in August 2024. (Ex. 13.) Following the receipt of the report of this evaluation, TCRC again determined Claimant was not eligible for regional center services. (Ex. 14.) This hearing ensued.

Claimant's Medical History

6. Medical records spanning from Claimant's birth through age nine were admitted into evidence. (Exs. 16, 18.) The record of a well-child exam of Claimant at age eight notes he shows appropriate behavior at home and school, although the "chief complaint" was a concern about Claimant's behavior. (Ex. 16, pp. A110, A113.) There are no other records stating what the behavioral concern was or how it was addressed, if at all, during that exam. The record of a well-child exam of Claimant at age nine again notes Claimant's behavior at home and school was appropriate—there was no indication of any other behavioral concerns. (*Id.*, pp. A106–A109.) No other medical records from before age eight suggest Claimant had any additional developmental issues. (See, e.g., *id.*, pp. A116 ["normal" box checked for "development" during age seven exam]; A122 [same for age four and a half exam]; A125 [same for age three and a half exam].)

7. On March 31, 2021, when Claimant was 18 years old, he was involuntarily admitted to Fremont Hospital under Welfare and Institutions Code section 5150. (Ex. 17, p. A180.) That statute provides that when any person, as a result of mental

disorder, is a danger to others, or to himself or herself, or gravely disabled, specified persons may cause that individual to be placed in a designated facility for 72-hour treatment and evaluation. (Welf. & Inst. Code, § 5150, subd. (a).) According to records from Fremont Hospital, Claimant was admitted after jumping out of a moving vehicle and running down the highway and he had previously threatened to kill himself and his mother. (Ex. 17, p. A192.) It was also reported Claimant "hears voices," had been "having bizarre behavior," and appeared to be "responding to internal stimuli[.]" (*Ibid.*) Upon his admission, the attending physician noted Claimant's "[e]stimated intelligence is hard to tell," because Claimant would not participate in testing. Upon discharge about six days later, Claimant was diagnosed with "psychosis, unspecified." (*Id.*, p. A182.) Aside from the comment that Claimant's intelligence was hard to tell, there are no other indications of developmental disabilities in the Fremont Hospital medical records.

Claimant's School Records

8. Claimant's performance while in ninth and tenth grade at a traditional high school was poor, as he received mostly "D" and "F" grades during those years. (Ex. 15, p. A102.) Claimant transferred to a continuation high school for eleventh and twelfth grade. While there, Claimant's grades improved and he received his high school diploma in June 2021. (*Ibid.*) No evidence was provided—and the parties do not dispute—that Claimant ever received special education services from his school district.

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Interviews, Assessments, and Evaluations

MOTHER'S INTERVIEW WITH HOLISTIC DEFENSE ADVOCATE

9. On October 11, 2023, Elizabeth Anda, a Holistic Defense Advocate with the Santa Barbara County Public Defender, interviewed Mother to "obtain additional insight into [Claimant's] physical and psychological development." Anda summarized the interview in a memorandum to Claimant's attorney. (Ex. 12.)

10. As for Claimant's medical history, Mother told Anda Claimant's pediatrician "did not alert [Mother] to any developmental problems, and he was able to achieve normal childhood milestones." (Ex. 12, p. A65.) Claimant's first language was Spanish, which he learned at home; he also learned English while in school (*Ibid.*) Claimant developed a stutter from the time he first developed speech. (*Ibid.*)

11. Mother reported Claimant began smoking marijuana around age 13 and that his behavior began to change around that time. (Ex. 12, p. A66.) Around the time of Claimant's arrest, he developed even more concerning behaviors such as collecting items like rocks and pillows, as well as wearing a wig and insisting the wig was his real hair. (*Ibid.*) Claimant also began to talk to himself throughout the night and make odd or nonsensical statements like "the devil" was in his mother's home décor. (*Ibid.*) The odd statements continued after his hospitalization at Fremont Hospital, but he became less aggressive. (*Ibid.*)

12. According to Mother, Claimant did not have any problems with behavior or discipline during grades one through six. (Ex. 12, p. A65.) Mother assisted Claimant regularly with his homework during that time, but once the material became more complex, she had trouble getting Claimant to concentrate on his schoolwork. (*Ibid.*) In high school, Claimant had issues with his grades and truancy and he was sent to the

continuation high school for additional attention and help. (*Id.*, p. A66.) Mother also reported she raised concerns to school counselors about Claimant's behavior after age 13, but she was told there was nothing they could do because Claimant was well-behaved at school. (*Ibid.*)

13. Regarding friendships, Mother stated Claimant had trouble making friends and was not involved in after-school activities while in high school. (Ex. 12, p. A66.) Claimant participated in club soccer from ages nine to fourteen but began to lose interest. (*Ibid.*) Claimant did start spending time with a new friend, a "disabled gentleman," around the time of the interview in October 2023. (*Ibid.*) Although Claimant does not make a lot of new friends, Mother stated he was very caring and affectionate towards known friends and family members. (*Ibid.*)

14. Mother reported she assisted Claimant obtain a job at the fast-food restaurant where she worked. (Ex. 12, p. A66.) Claimant worked there for about a year but was let go because he began missing shifts and exhibited strange behaviors like talking and laughing to himself while at work. (*Ibid.*) Mother also stated that, while at home, Claimant picks up his room, does laundry, takes out the trash when asked to do so, and waters the lawn, although Mother was concerned he watered the lawn excessively. (*Ibid.*) Mother also reported Claimant could prepare food, reheat leftovers, and make himself a simple meal. (*Ibid.*)

TCRC INTAKE ASSESSMENT OF CLAIMANT

15. On January 22, 2024, Blanca Zepeda, an Intake Coordinator at TCRC, conducted an intake interview with Claimant and Mother via Zoom videoconference. (Ex. 3.) Zepeda has conducted over 1,600 client intakes. Zepeda conducted the intake

interview with Mother in Spanish and, in her opinion, Mother was able to understand their conversation completely.

16. Mother's primary reported concern was that Claimant had a hard time focusing and teachers often had to repeat information to him. (Ex. 3, p. A12). Mother reported Claimant had little difficulty with self-care, as he could toilet independently, shower, shampoo his hair, brush his teeth, and dress independently. (*Ibid.*) Mother also reported Claimant could use a knife for spreading and cutting, and he could complete household chores such as taking out the trash, sweeping, vacuuming, making his bed, and washing dishes. (*Ibid.*) In addition, Mother stated Claimant could use public transportation and a telephone independently, and he could order meals, but noted Claimant needs to be reminded about details such as side dishes or sauces. (*Ibid.*)

17. Concerning social skills, Mother stated Claimant struggles with socializing and will not initiate a conversation, although it was also noted Claimant engages with his peers and can play interactively with them. (Ex. 3, p. A14.) In the area of learning, Mother reported Claimant can read simple sentences and count to 100. (*Id.*, pp. A14–A15.) According to Mother, Claimant had trouble in high school because it was difficult for him to understand and comprehend the material. (*Id.*, p. A15.) Consistent with her interview with Anda, Mother also noted she tried to obtain special education and counseling for Claimant from his school but was told that because he was quiet and "was doing okay," he could not get that support. (*Ibid.*)

18. Regarding communication, Mother said Claimant used non-verbal gestures to communicate and could speak in simple words and phrases, although he has a stutter. (Ex. 3, p. A15.) Although the intake report has a section about receptive language, that section of the report is blank. (*Ibid.*)

19. Consistent with her report to Anda, Mother reported that Claimant's behavior and affect changed around the time he started smoking marijuana, although Mother also clarified Claimant was smoking marijuana "wax" as well as "weed." (Ex. 3, p. A16.) Mother also mentioned Claimant appears to have the functioning of a 15-year-old boy instead of a 21-year-old man, and that he says unusual things like that he "is the owner of Disneyland" and most of the time "seems to be in a fantasy world." (*Ibid.*)

DR. YAKUSH'S MENTAL HEALTH DIVERSION EVALUATION

20. Claimant's attorney retained Brandon Yakush, Psy.D., a forensic and clinical psychologist, to conduct a mental health diversion evaluation in connection with Claimant's pending criminal charges. (Ex. 9.) After reviewing records from Claimant's criminal case, the Fremont Hospital records, Claimant's school records, and interviewing Claimant, Dr. Yakush recommended that Claimant be assessed for competency based on a possible developmental disability, specifically intellectual disability (ID). (*Id.*, pp. A52–A53.) Dr. Yakush's opinion was based on Claimant's poor grades in school which suggested he "truly struggled academically," as well as Claimant's presentation during the interview demonstrating "a simplistic and concrete (i.e., little to no ability to think abstractly) thought process [that] was suggestive of limited intellectual functioning." (*Id.*, p. A53.) Dr. Yakush also noted he was aware of Claimant's earlier psychiatric diagnosis, but Dr. Yakush did not observe any signs of acute psychosis and therefore believed "it is more likely that [Claimant's] thought process was due to his cognitive abilities and not a thought disorder." (*Ibid.*) Claimant also scored "very low" on the Test of General Reasoning Ability. (*Ibid.*) Dr. Yakush opined Claimant's poor scores were not due to low effort or intentionally attempting to portray himself as more impaired than he was. (*Ibid.*)

DR. JACOBS'S PSYCHOLOGICAL EVALUATION

21. TCRC retained David Jacobs, Ph.D., to conduct a psychological evaluation of Claimant in connection with his request for regional center services under the Lanterman Act. (Ex. 5.) Dr. Jacobs reviewed Dr. Yakush's report, Anda's report, and the Fremont Hospital records in performing this evaluation. (*Id.*, pp. A22–A24.)

22. Dr. Jacobs interviewed Mother via Zoom while Zepeda provided Spanish-English translation services. (Ex. 5, p. A24.) Mother reported Claimant's functioning was not commensurate with his age and she feared his lack of safety awareness and naivete would compromise his welfare. (*Id.*, p. A25.) Mother also relayed Claimant's history of delusional thinking, including delusions related to superhero posters and talking to himself. (*Ibid.*) Mother reported Claimant had friends at school and friends with whom he played soccer at the park. (*Ibid.*) According to Dr. Jacobs, Mother "denied any concerns about [Claimant] during the developmental period recalling age-appropriate behaviors [and] characterizing him as 'caring and lovable.'" (*Ibid.*) With respect to Claimant's activities of daily living, Mother said that, with sufficient rest, Claimant "can ready himself for the day without difficulty," was "very particular about his cleanliness and hygiene," and "can do laundry himself and make a simple meal." (*Ibid.*) Mother also said that although Claimant is aware of money, can make purchases, and is aware of how much something might cost, he does not count change. (*Ibid.*) Mother confirmed Claimant's behavior began to change after he began smoking marijuana and "wax." (*Ibid.*)

23. Dr. Jacobs assessed Claimant's intellectual functioning using the Wechler Adult Intelligence Scale for Adults – IV. (*Id.*, pp. A26–A28) Claimant's "Full Scale IQ" from this test was 67, which according to Dr. Jacobs is in the "extremely low range," and indicates that Claimant's abilities are in the 1st percentile compared to his peers.

(*Id.*, p. A27.) Dr. Jacobs cautioned that Claimant's "verbal reasoning abilities are much better developed than his non-verbal reasoning abilities," which made his intellectual functioning more difficult to summarize using a single IQ score. (*Ibid.*) To that end, Dr. Jacobs noted Claimant "was at times difficult to engage and needed reminders to stay on task as he appeared to be preoccupied with internal thoughts or stimulation; therefore, [the scores] may under estimate [*sic*] his actual cognitive ability." (*Id.*, p. A34.)

24. Dr. Jacobs also administered the Adaptive Behavior Assessment System-3 (ABAS-3) using reporting from Mother to assess Claimant's level of adaptive functioning. (Ex. 5, p. A28.) Claimant's score on this assessment was in the "extremely low" range. (*Ibid.*) Dr. Jacobs noted Claimant had "extremely low" scores relating to "speech, vocabulary, listening, conversation, and non-verbal abilities," as well as in his "ability to function within the community, including shopping and using community resources," and in the "leisure skills needed for engaging in play and planning recreational activities" (*Id.*, pp. A28–A29.) Claimant had "low" scores relating to: (1) "performing basic academic skills such as reading, writing, and mathematics, as well as functional skills like taking measurements and telling time"; (2) his "ability to make independent choices, exhibit self-control and take responsibility when appropriate"; and (3) his ability to "interact socially, initiate and maintain friendships, express and recognize emotions, and assist others when needed." (*Ibid.*) Claimant had "average" scores relating to his self-care and home-living abilities. (*Ibid.*)

25. Dr. Jacobs administered the Autism Diagnostic Observation Schedule (ADOS), Module 4 to Claimant. (Ex. 5, p. A29.) The ADOS-4 is "used to assess an individual's style of communication and social intervention" in diagnosing Autism Spectrum Disorder (ASD). (*Ibid.*) During the Communication section of the assessment,

Dr. Jacobs observed that although Claimant “answered questions, he struggled to remain on topic which necessitated multiple redirects to return to the original discussion.” (*Ibid.*) Claimant’s “primary difficulty . . . was his circumstantial thinking style, which made it difficult to sustain [a] conversation. [Claimant] used a variety of gesture[s] and used gesture[s] to enhance affective communication.” (*Ibid.*) During the Reciprocal Social Interaction section of the assessment, Claimant “established adequate eye contact to regulate social interactions and displayed a typical range of facial expressions [but he] struggled to identify emotions in others, had difficulty following narrative, and did not understand metaphor.” (*Ibid.*) Claimant said he had friends in middle school, was friends with an “older guy,” and identified three friends he spent time with “getting high.” (*Ibid.*) Claimant could not identify the difference between a friend and a co-worker. (*Ibid.*) Dr. Jacobs noted Claimant did not have stereotyped behaviors but that his superhero poster appeared to be a fixated interest. (*Ibid.*) Claimant’s overall score on the ADOS-4 of 12 met the cut-off for autism-related symptoms. (*Id.*, p. A30.)

26. Dr. Jacobs administered the Gilliam Autism Rating Scale-3, using reporting from Mother to help identify autism and estimate its severity. (Ex. 5, p. A30.) As for social interaction, Mother reported Claimant fails to imitate others in games and does not engage in creative activities, he does not try to make friends, often cannot follow the social cues of others, and shows little interest in interacting with others. (*Ibid.*) Regarding social communication, Mother stated Claimant often does not read social cues, and he sometimes has difficulty understanding why some people may not like him. (*Ibid.*) In the section measuring cognitive functioning, Mother said Claimant often focused on a single topic too much and often could not display a concrete thinking style. (*Ibid.*) Claimant’s score demonstrated a “probable” diagnosis of autism requiring a mild, “level 1” amount of support. (*Ibid.*)

27. Dr. Jacobs administered the Social Communication Questionnaire using reporting from Mother to measure Claimant's potential ASD symptomology. (Ex. 5, p. A31.) When assessing current functioning, Mother reported Claimant could talk using short phrases and engage in brief "to-and-fro" conversations, but that he uses odd phrases and invents speech. (*Ibid.*) She also reported Claimant had preoccupying interests that were unusual in their intensity, as well as odd mannerisms or ways of moving his hands or fingers. (*Ibid.*) When asked questions about Claimant's functioning at the ages of four to five years old, Mother denied Claimant engaged in abnormal activities; instead, Mother reported Claimant could look others in the face while talking, could pretend play, and could cooperatively play with other children. (*Ibid.*) Claimant's score on this assessment was 10, which is below the threshold suggestive of a diagnosis of autism. (*Ibid.*)

28. Dr. Jacobs administered the Behavior Assessment for Children-3 using reporting from Mother to assess Claimant's social-emotional and behavior functioning in the community and at home. (Ex. 5, p. A32.) Claimant's scores in the Adaptive Skills section of the assessment were rated "At-Risk," which suggests "a significant problem that may not be severe enough to require formal treatment or may identify a developing problem that needs careful monitoring." (*Ibid.*) With respect to this section of the assessment, Claimant's scores suggested he has difficulty "complimenting others and making suggestions for improvement in a tactful and socially acceptable manner" and "making decisions," and he also "demonstrates poor expressive and receptive communication skills and that he has difficulty seeking out and finding information on his own." (*Id.*, p. A33.)

29. Dr. Jacobs declined to diagnose Claimant with ASD. (Ex. 5, p. A35.) According to Dr. Jacobs, Claimant displayed behaviors inconsistent with an ASD

diagnosis, including his “multiple prosocial skills including interest in social interaction, adequate eye contact, use of non-verbal communication to enhance affective communication, a range of facial expressions, and [because] he reportedly maintains relationships,” as well as Mother’s reporting of “age-appropriate empathy and perspective taking abilities which are prosocial skills not typically found in persons on the autism spectrum.” (*Id.*, p. A35.) Dr. Jacobs provided several reasons other than ASD for Claimant’s scores on the various assessments, including a potential diagnosis of Attention Deficit Hyperactivity Disorder, previously diagnosed mental health disturbances, or poor socialization. (*Ibid.*) Dr. Jacobs also noted the lack of support in Claimant’s history for a diagnosis of autism. (*Ibid.*)

30. Dr. Jacobs also declined to diagnose Claimant with ID. (Ex. 5, p. A36.) Instead, Dr. Jacobs concluded Claimant’s psychotic disorder better explained Claimant’s cognitive defects as “the literature describes neurocognitive impairment as a core component of a psychotic disorder such as schizophrenia.” (*Ibid.*) In sum, Dr. Jacobs found Claimant “demonstrates cognitive deficits, rather than a developmental disability [and] his condition, including cognitive and adaptive deficits[,] are best understood as related to his psychosis and the possible consequences of his substance use history.” (*Ibid.*)

31. Dr. Jacobs also found that Claimant’s adaptive living skills indicate “significant deficits in such areas as Communication, Learning, and Self-Direction,” but those challenges “are related to his mental health disturbance and complicated by his substance abuse, which negatively impact his cognitive functioning.” (Ex. 5, p. A36.)

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DR. BISETTY'S COMPETENCY EVALUATION

32. Merushka Bisetty, Psy.D., conducted a competency evaluation of Claimant under Penal Code sections 1368 and 1369. (Ex. 10.) Dr. Bisetty reviewed reports from Drs. Yakush and Jacobs and she interviewed Claimant. (*Id.*, p. A55.) Claimant was "engaged and cooperative" during the interview, but Dr. Bisetty noted Claimant "presented with a child-like demeanor and required frequent redirections, reminders, and prompting to remain on topic and answer questions directly." (*Id.*, p. A56.) Dr. Bisetty also did not observe Claimant demonstrate "auditory or visual hallucinations," nor did he "present with delusional ideation[.]" (*Ibid.*)

33. Based on her interview, Dr. Bisetty concluded Claimant "exhibits deficits in intellectual functioning and cognitive abilities" and likely is simultaneously struggling with Cannabis Use Disorder. (Ex. 10, p. A58.) She also disputed Dr. Jacob's conclusion that Claimant's impaired intellectual functioning was attributable to unspecified schizophrenia spectrum and other psychotic disorders. (*Ibid.*) Dr. Bisetty instead opined Claimant was "struggling with intellectual functioning deficits" exacerbated by cannabis use because it "is not uncommon for symptoms of hallucinations and delusions to become apparent during consistent cannabis use," and because he did not demonstrate behavior and communication during her interview consistent with a psychotic disorder. (*Ibid.*) Dr. Bisetty opined Claimant was not competent to stand trial and further recommended Claimant obtain a second opinion regarding his cognitive functioning and intellectual deficits. (*Id.*, p. A60.)

DR. ROBBINS'S PLACEMENT EVALUATION

34. Following Dr. Bisetty's determination that Claimant was not competent to stand trial, Danielle Robbins, Psy.D., evaluated Claimant to determine "the most

appropriate setting for competency restoration treatment.” (Ex. 11.) Dr. Robbins reviewed court records from Claimant’s criminal case as well as Dr. Bisetty’s report, and she interviewed Claimant on April 24, 2024. (*Id.*, p. A62.)

35. During Dr. Robbins’s interview, Claimant “denied all symptomology including auditory and visual hallucinations, delusions, paranoia, and mania,” but “presented with grandiose delusions,” stating “I have a lot of money. I’m rich. I’ve been rich. They just locked me up because I didn’t want to give the judge money.” (Ex. 11, p. A62.) Claimant also said “I don’t need services. I’m trying to buy my own house and flee. I might have to ditch my problems and leave. I have a lot of money to get out,” but he could not explain how he earns his income. (*Ibid.*) Dr. Robbins also observed Claimant exhibited “mild paranoia,” and he “perseverated, was tangential, and mildly disorganized.” (*Ibid.*) Claimant admitted to past cannabis use but claimed he did not use at the time and denied any addiction treatment in the past or present. (*Ibid.*) Yet court records showed Claimant tested positive for cannabis before his last court hearing, just a week before the interview, and other records indicated Claimant was receiving treatment for cannabis use. (*Ibid.*)

36. Dr. Robbins concluded it would not be appropriate for Claimant to receive outpatient competency restoration treatment given “his display of psychiatric symptoms (mainly delusional ideation with some paranoia), thought disorganization, tangentiality, and perseveration,” as his “release into the community would likely elevate his risk for psychiatric decompensation.” (Ex. 11, p. A63.) Rather, Dr. Robbins opined that “inpatient treatment is currently the most appropriate option for his required level of care needs,” and recommended Claimant be referred to the California Department of State Hospitals for “competency training in a locked forensic setting.” (*Ibid.*)

DR. LÓPEZ'S PSYCHOLOGICAL EVALUATION

37. TCRC retained Susana A. López, Ph.D., to conduct a second psychological evaluation of Claimant in August 2024. (Ex. 13.) Dr. López noted the purpose of her evaluation was to determine Claimant's current functioning and "provide diagnostic clarification regarding" possible diagnoses of ID and ASD. (*Id.*, p. A80.) Dr. López reviewed several documents in connection with her evaluation of Claimant, including reports from Drs. Bisetty, Jacobs, and Robbins, as well as TCRC intake and eligibility denial records, and school and medical records. (*Id.*, p. A69.) Dr. López has conducted over 100 assessments on behalf of TCRC since about 2017. Aside from her extensive educational background, she also conducted post-doctoral work at the University of California-Los Angeles working with families of color.

Interviews and Observations

38. Mother reported to Dr. López that she was concerned about Claimant's daily living activities as she is Claimant's primary caretaker, and she supports him in all his daily tasks. Claimant has never engaged in independent living and needs constant reminders to perform household tasks. (Ex. 13, pp. A70, A73.) Claimant is responsible for small tasks around the house such as taking out the trash, but he will not initiate tasks himself or initiate communication with others. (*Id.*, p. A73.) Claimant cannot make large purchases, he struggles to manage money, he cannot read his own bills or important documents, and he does not understand what appointments he needs to attend. (*Ibid.*)

39. Mother and Claimant reported they worked at the same fast-food restaurant. (Ex. 13, p. A75.) Mother said she had to wake Claimant up, take him to work with her, and help with his tasks at work so that he could keep the job. (*Ibid.*) Despite

their employer's understanding and Mother's support, the restaurant terminated Claimant's employment because he missed too much work. (*Ibid.*) According to Claimant, he has no intention to seek other work because "he is rich" and does not need the income. (*Ibid.*)

40. Regarding self-care, Mother reported Claimant can dress, shower, and wash his hair, but takes three to four hours to perform grooming tasks every day. (Ex. 13, p. A73.) Claimant can also select clothing himself but has difficulty dressing appropriately for the weather, according to Mother. (*Ibid.*)

41. With respect to learning and education, Mother reported she began to be concerned about Claimant during elementary school because he "never really understood and [she] always had to repeat what she was telling him[.]" (Ex. 13, p. A70.) Mother reported attempting to get Claimant assistance at school, but was told Claimant was "fine" because he did not have behavioral difficulties, and thus Claimant was never assessed at school for developmental or cognitive difficulties. (*Ibid.*)

42. According to Mother, Claimant has exhibited extreme and odd behaviors such as: (1) running through the house without a purpose for hours while pretending to be Spiderman; (2) excessively watering the grass at their home; and (3) sitting in his closet for hours at a time after he began high school. (Ex. 13, p. A70.) Mother expressed her concern that Claimant does not seem to understand the danger of strangers and that others may exploit him. (*Ibid.*) Although Claimant reported to Dr. López he was in a five-year-long relationship with a girlfriend, Mother reported that the girlfriend does not exist. (*Id.*, p. A74.)

43. Both Claimant and Mother acknowledged Claimant's past substance abuse. Claimant shared he started using marijuana and "wax" at age 13 and used them

until about three months before Dr. López's evaluation. (Ex. 13, p. A75.) Mother stated she was unsure if Claimant's delusional behavior was provoked by his marijuana use as he displayed odd behavior even before age 13. (*Ibid.*)

44. Dr. López also interviewed Anda about her interactions with Claimant in connection with his criminal case. Anda reported Claimant is reserved and not very social, his communication and language are limited, and he says bizarre things such as he wants to "[p]ay the judge off" so he can move to New York, and that he has over one million dollars. (Ex. 13, p. A70.) Claimant made a similar comment to Dr. López, stating he intended to "move with all of [his] money," after the criminal proceedings against him were completed and that he "could pay the judge off" but he does not. (*Id.*, pp. A70, A79.) He also reported bizarre stories such as "having a trampoline in his bedroom[,] winning the lottery[,] and being so rich." (*Id.*, p. A79.)

Testing Results

45. Dr. López administered the Comprehensive Test of Nonverbal Intelligence to Claimant, due to Claimant's verbal difficulties from his demonstrated stutter. (Ex. 13, pp. A80, A91.) Claimant's "Full Scale IQ" of 67 on this test fell in the Very Poor Range, was in the first percentile, and thus was consistent with Dr. Jacobs's testing. (*Id.*, pp. A80–A81.) Dr. López noted Claimant could "categorize frequent items but [his] ability to learn, reason with spoken language such as understand implied meanings, make inferences, or come to logical consequences is very limited." (*Id.*, p. A81.) This was also consistent with Dr. López's observations of Claimant, in which she noted he could use simple sentences to communicate, but he often "engaged in word salad" and had a "low vocabulary range," and that his receptive language "seemed somewhat impaired" because he had difficulty understanding what she was asking during assessments. (*Id.*, p. A78.)

46. Dr. López administered the Social Responsiveness Scale-2 (SRS-2) to Claimant (with assistance from her), Mother, and Anda to assess for ASD symptomology. (Ex. 13, pp. A81, A92–A93.) Claimant and Mother’s overall scores placed Claimant in the moderate range, and Anda’s scores placed Claimant in the severe range. (*Id.*, p. A81.) But given the consistency in all their scores regarding social communication and interactions, and restricted and repetitive behaviors, as well as Dr. Jacob’s previous testing, Dr. López believed further testing was warranted to determine whether Claimant had autism. (*Ibid.*)

47. Dr. López administered the Autism Diagnostic Interview-Revised to Mother to explore the presence of specific symptoms of autism, either currently or by history. (Ex. 13, pp. A81–A82.) The results of this assessment were consistent with a diagnosis of ASD. (*Id.*, p. A82.) Of particular note to Dr. López was Mother’s reporting that Claimant “is not able to talk with others” and does “not make efforts to connect with others and is limited in his [responses] to the social initiations of others.” (*Id.*, p. A81.) Moreover, Claimant needs to be prompted to say “hello” and “goodbye” to others, and he often engages in repetitive and predictable conversations. (*Id.*, p. A82.)

48. Dr. López also used the Monteiro Interview Guidelines for Diagnosing Autism Spectrum, Second Edition, to “conceptualize” her observations of Claimant and to determine whether he displays a behavioral profile consistent with a diagnosis of ASD. (Ex. 13, p. A82.) Dr. López used her observations of Claimant as well as Mother’s reporting in completing this assessment. (*Ibid.*) Claimant’s behavior was consistent with a diagnosis of ASD in nearly every category except two which Dr. López stated were “unclear.” (*Id.*, p. A83.) Dr. López noted Claimant’s “speech was limited and repetitive,” and he only engaged in spontaneous conversation regarding his preferred topic of the Mario Brothers. (*Id.*, p. A82.) Claimant did not use consistent eye contact

to support communication, and he could not identify or communicate understanding of emotion in others" (*Ibid.*) Claimant's understanding of social situations and relationships were "far below age expectations," and he demonstrated a "naïve understanding of how to develop personal connections" (*Id.*, pp. A82–A83.)

49. Dr. López administered the ABAS-3 to Claimant (with assistance from her), Mother, and Anda. (Ex. 13, p. A84.) The results obtained from all three were roughly the same, finding Claimant to be in the Extremely Low range in adaptive functioning. (*Id.*, pp. A84–A85, A95–97.) Dr. López noted these results suggest Claimant "has severe difficulties with the development of all skills necessary for age-appropriate behaviors and to be an independent self-sufficient adult" and that such a result was "consistent with the clinical interviews and records available." (*Id.*, p. A85.) Dr. López conceded in her hearing testimony that she did not consider if Anda had a bias in responding to the ABAS-3, given Anda's role as Claimant's advocate.

Dr. López's Conclusions

50. Although Dr. López concluded Claimant "presented with a very complex profile with a lot of overlapping symptoms," she ultimately diagnosed Claimant with both mild ID and ASD. (Ex. 13, pp. A85–A87.) As to the ID diagnosis, Dr. López noted that while

there are very limited records before the age of 18 and schizophrenia/delusional disorder has overlapping symptoms with [ID], [Claimant's] mother states [Claimant] has longstanding history of learning and cognitive impairments that impact his ability to conceptualize and be an independent citizen in our society. [¶] [Claimant's]

historical and current level of adaptive functioning profile is consistent with his low cognitive score. . . . Overall, [Claimant's] difficulties with home, school and community functioning mimic those at the mild range of [ID] and have occurred since a young child with them being more severe over time and as expectations increased. His academic and adaptive functioning difficulties appear to be directly related to his diagnoses of [ID] and not solely due to his delusional disorder or history of substance use (marijuana). [Claimant] has been drug tested over the last couple months, therefore there was no drug[] use during this testing.

(Ex. 13, p. A85.). Dr. López added that Claimant's "low cognitive ability impedes the ability for him to learn or use specific skills (e.g., planning, shopping, employment), which impact his daily learning and functioning," and this became more pronounced as he got older and expectations of his skills increased, but Mother could no longer provide him with total support. (*Id.*, p. A86.) A diagnosis of ID was also consistent with the clinical findings of Drs. Bisetty and Yakush, according to Dr. López. (*Id.*, p. A86.)

51. With respect to her diagnosis of ASD, Dr. López noted
- when you first meet [Claimant], it seems like he might not be Autistic and simply a "shy young adult", however after interacting with him more than 10 minutes and when he starts "interacting" with you, you quickly realize he is unable to use nonverbal communication and verbal language to interact in a typical way. [Claimant's] presentation during

assessment was consistent with impairments in social communication (i.e., conversation, eye contact, gesture), sensory sensitivity, emotional dysregulation, repetitive behaviors, and limited/repetitive interests (i.e., watering plants). These observations were consistent with Dr. Jacob's evaluation. Clinical interviews also indicate that [Claimant] has presented with differences in social communication including difficulty with eye contact, severe social anxiety, and isolation, since early childhood. . . . He is completely isolated with no friends and no interest in close relationships. His ability to connect with loved ones such as his mother is also limited. He seems to love and appreciate his mother, however his ability to express his love is very limited. While these symptoms are also seen in a diagnosis of unspecified schizophrenia . . . there are some notable differences. [Claimant's] speech is repetitive and tangential but not always disorganized. He has delusions of grandiosity (e.g. winning the lottery) but he does not report visual or auditory hallucinations at this time. **Therefore, these symptoms are best described by Autism Spectrum Disorder AND Unspecified Schizophrenia Disorder.** [Claimant's] history indicates family report of autistic symptoms prior to his initiation of drug use (age 13) and prior to his delusions and other positive symptoms (age 15-16). Also, the presence of a diagnosis of schizophrenia or delusional disorder does not rule-out a diagnosis of Autism.

(Ex. 13, p. A86 [emphasis in original].) Dr. López also diagnosed Claimant with Cannabis Use Disorder, Moderate, in remission, and Language Disorder, by history (Stuttering). (*Id.*, p. A87.)

52. Dr. López testified that children of color, including those in the Latino community, are less likely to be diagnosed with autism, or that diagnosis is more likely to occur later in life. Dr. López opined that this may account for why Claimant did not receive a diagnosis of ASD and ID until age 21.

The Regional Center's Decision to Deny Eligibility

53. Christina Aguirre-Kolb, Ph.D., is a Psychologist for TCRC. She has conducted approximately 1,000 evaluations of clients for autism and a similar number for ID. Dr. Aguirre-Kolb conducted two psychological record reviews in connection with Claimant's request for services from TCRC. Dr. Aguirre-Kolb acknowledged during her testimony she never met Claimant or evaluated him and that she provided recommendations regarding Claimant's eligibility for regional center services based solely on her review of the underlying records. Although Claimant's counsel attempted to portray Dr. Aguirre-Kolb's lack of personal evaluation of Claimant as somehow violating the Ethical Principles of Psychologists and Code of Conduct of the American Psychological Association (which were not introduced into evidence), those ethical rules specifically provide that an individual examination is not required to "conduct a record review or provide consultation" so long as the psychologist explains "the sources of information on which they based their conclusions and recommendations." Dr. Aguirre-Kolb's record reviews did this.

54. Dr. Aguirre-Kolb conducted her first review after receiving Dr. Jacobs's report (Ex. 7), and she conducted the second review after receiving Dr. López's report

(Ex. 14).¹ Both times, Dr. Aguirre-Kolb found Claimant did not meet the eligibility requirements to receive regional center services. However, the reasoning behind her denial recommendations varied. After the first review, when no provider had diagnosed Claimant with ID or ASD, Dr. Aguirre-Kolb recommended denying eligibility due to a lack of eligible diagnosis. (Ex. 7, p. A42.) After Dr. López diagnosed Claimant with both these conditions, however, Dr. Aguirre-Kolb acknowledged Claimant had “an eligible disability” but found instead Claimant had not demonstrated he was substantially handicapped in three or more life areas before the age of 18 to be eligible. (Ex. 14, p. A99.)

55. Dr. Aguirre-Kolb testified that she relied in part on a publication from the Association of Regional Center Agencies entitled *Recommendations for Assessing “Substantial Disability” for the California Regional Centers* (ARCA Recommendations), in making her determination Claimant was not substantially disabled such that he was eligible to receive regional center services. (Ex. 21.) The ARCA Recommendations note that substantial disabling impairments “are expected to exist across multiple settings, are reasonably expected to be caused by the eligible condition (not solely physical, psychiatric, or learning disability), and are/were present prior to age 18.” (*Id.*, p. A215.) The ARCA Recommendations add that scores on adaptive functioning measures alone cannot determine whether a person has a substantial disability, and it also cautions against artificial under or overreporting of behaviors on these measures. (*Ibid.*)

56. Dr. Aguirre-Kolb provided the following testimony about what a substantial disability would look like for persons diagnosed with autism and ID:

¹ Dr. Aguirre-Kolb does not appear to have reviewed the reports from Drs. Bisetty or Robbins, and the record is unclear as to whether she was provided with those reports.

- Self-Care – Under the ARCA Guidelines, a person has a substantial disability in this area if they have “noticeable limitations in the ability to acquire and perform basic self-care skills.” (Ex. 21, p. A216.) According to Dr. Aguirre-Kolb, persons with autism would have difficulty participating in personal hygiene activities, especially toileting. They would rely on diapers for many years past childhood and would be too preoccupied with their own self-directed thoughts and interests to learn. Those self-directed thoughts and interests would be easy for a parent or teacher to understand but might be more difficult for an outsider to understand initially. Persons with ID might display similar issues with a lack of hygiene and toileting, but it would be because of a lack of understanding of what is being asked of them, not because of a self-directed interest.
- Receptive and Expressive Language – Under the ARCA Guidelines, a person has a substantial disability in this area if they have “noticeable limitations in both the comprehension and expression of verbal and/or nonverbal communication resulting in functional impairments.” (Ex. 21, p. A217.) According to Dr. Aguirre-Kolb, persons with autism would struggle to use verbal and non-verbal (such as facial expressions and gestures) communication skills to express themselves and would similarly struggle with understanding verbal and non-verbal communication of others. Lack of verbal expressions by age two would be another indicia of a substantial disability. Persons with ID would struggle with using age-appropriate vocabulary; they would try to understand and use verbal and non-verbal communication, but it would be “naïve” or “lower level.” The presence of a stutter, standing alone, would not suggest a substantial disability in this area.

- Learning – Under the ARCA Guidelines, a person has a substantial disability in this area if they have a “noticeable impairment in the ability to acquire and apply knowledge or skills to new or recurring situations.” (Ex. 21, p. A219.) According to Dr. Aguirre-Kolb, persons with autism may show strength or skill in academic areas of reading, writing, and math, but a substantial disability would manifest with difficulty participating in the classroom, responding to a teacher’s directives, interacting in small groups, navigating the school environment, or transitioning between activities. On the other hand, persons with a substantial disability in the area of ID would be unable to grasp the information they were being taught in reading, writing, and math, and school intervention would be required to keep the student at their expected grade level.
- Self-Direction – Under the ARCA guidelines, a person has a substantial disability in this area if they have a “noticeable impairment in the ability to self-initiate personal and social judgments and decisions.” (Ex. 21, p. A222.) According to Dr. Aguirre-Kolb, persons with a substantial disability in the area of self-direction caused by autism would be unable to participate in school, community, or social interactions, and would not be able to transition between these activities and could not be soothed if dysregulated. The person’s self-directed interests would supersede everything including directions from authority figures like parents, teachers, or doctors. The restrictive need for sameness would make it hard to progress and develop in all areas of living. Conversely, it is not typical for persons with ID to have a substantial disability in this area, because, unlike persons with autism, persons with ID do not see their self-directed interests as more important than social or classroom engagement.

- Capacity for Independent Living – Under the ARCA Guidelines, a person has a substantial disability in this area if they have a “noticeable impairment in the ability to perform age-appropriate daily living skills without the assistance of others.” (Ex. 21, p. A224.) Dr. Aguirre-Kolb explained this area of substantial disability is usually looked at from age 12 and onward. For persons with autism, a substantial disability in this area would mean that they could not be left alone in the house, could not take care of small responsibilities at home, could not transition to and navigate a multi-classroom configuration in middle school and high school, and could not be independent with their self-care or develop a personal sense of style. Persons with ID would show a substantial disability in this area if a parent provided support for all areas of living and provided a constant vigil.
- Economic Self-Sufficiency – Under the ARCA Guidelines, a person has a substantial disability in this area if they have a “noticeable impairment in the ability to participate in vocational training or obtain and maintain employment without significant support.” (Ex. 21, p. A226.) A person with autism or ID would be substantially disabled in the area of economic self-sufficiency if they lacked an understanding of the value of money and must be supervised to ensure no one exploits them. Persons with autism may understand different denominations of money but do not value them, whereas persons with ID may not understand the difference in the denominations at all.

57. Dr. Aguirre-Kolb opined that, while Claimant has some deficits and difficulties, he did not have a substantial disability caused by autism or ID in any of the major life areas. Regarding self-care, Dr. Aguirre-Kolb’s review of the record only

showed that Mother needed to remind Claimant to perform grooming activities but that he could perform them himself. Claimant also did not need any help toileting, which is one of the most challenging skills to learn for persons with developmental disabilities. (Ex. 14, p. A100.)

58. With respect to language, aside from stuttering, Dr. Aguirre-Kolb found it dispositive that there were no school or medical records suggesting a Claimant had substantial disability in the area of language, and that Dr. López acknowledged Claimant met milestones for speaking within normal limits. (Ex. 14, p. A100.)

59. Dr. Aguirre-Kolb acknowledged that Mother's reporting to Dr. López shed light on Claimant's learning deficits but opined that the lack of professional help needed to support Claimant's learning suggested a lack of substantial disability in that area. (Ex. 14, p. A100.)

60. Regarding self-direction, Dr. Aguirre-Kolb suggested Claimant's ability to complete assessments given by Drs. Jacobs and López without undue difficulty, his ability to graduate from high school and participate in extracurricular activities, and a lack of documentation suggesting a disability, all indicated a lack of substantial disability in the area of self-direction. (Ex. 14, pp. A100–A101.)

61. With respect to capacity for independent living, Dr. Aguirre-Kolb opined Claimant did not have a substantial disability in this area because he successfully graduated from high school (after attending two different high schools) which suggested an "ability to independently navigate." (Ex. 14, p. A101.) Dr. Aguirre-Kolb also noted that Claimant's history of drug use potentially complicated the analysis of this life area. (*Ibid.*)

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62. Finally, Dr. Aguirre-Kolb noted Claimant could be economically self-sufficient due to his graduation from high school and grade improvement over time; Dr. Aguirre-Kolb was unmoved by Claimant's past work history and concluded he had not taken steps to "initiate training or employment meaningfully." (Ex. 14, p. A101.)

Claimant's Evidence

MOTHER'S TESTIMONY

63. Mother was born in Mexico. She gave birth to Claimant when she was sixteen years old. Claimant was her first child. Mother was inexperienced in raising children and did not recognize Claimant's development was unusual until she had a second child. Mother speaks Spanish and does not feel comfortable speaking English.

64. Mother testified most of Claimant's pediatrician appointments were brief, and an interpreter was not always provided during the examinations; when an interpreter was provided, Mother sometimes had difficulty understanding what she was being told. Because of this, she did not feel comfortable asking for more time or clarification during those appointments. Mother does not recall discussing developmental milestones with Claimant's pediatricians and denied even being familiar with the term "milestone." Mother became concerned about Claimant's development around the ages of three to five once she realized Claimant would not understand things she would say to him. She also noticed a difference in her second child's development through the years compared to Claimant's development, which appeared slower. Mother testified that when she would try to tell doctors Claimant's speech was not developing correctly, doctors would say he would develop better language over time, but Claimant never did. Mother generally characterized the doctors as examining Claimant quickly and dismissing her complaints. Mother

conceded on cross-examination that at least one of Claimant's pediatricians spoke Spanish and she thought he was a good doctor, however.

65. Mother also testified she asked for help for Claimant when he was in the second or third grade. The first time she asked Claimant's teacher for help because Claimant was not talking or focusing correctly, but the teacher responded that Mother was "not God to know what is normal." When she tried to speak with someone in school administration, they too did not believe Claimant had any issues. Mother denied being aware of her right to have Claimant assessed for a disability or being told by anyone at his school about this right. Mother testified that, after this, she would ask for help every year during parent-teacher conferences. During this time, even Claimant's teachers would say Claimant was not focused and would not understand what teachers were saying, according to Mother. Mother could not remember the names of anyone she asked to help Claimant at his school, and she conceded on cross-examination that she never made any request for assistance in writing. Given Claimant's struggles at school, Mother helped Claimant with his homework every night from about second or third grade until about tenth or eleventh grade when the material became too difficult for Mother to help. After Claimant transferred to the continuation school for eleventh grade, his grades improved because although his teachers assigned him homework, Claimant could stay at school and complete the homework with the help of his teachers. Claimant never completed homework at home without Mother's prompting. Claimant can read but gets stuck reading long sentences and does not often read anything aloud.

66. Mother works at a fast-food restaurant and helped Claimant get a job there when he was about 15 to 16 years old. He worked there for about a year to a year and a half until he was let go. According to Mother, he was not able to focus on

filling the orders when he worked in food preparation and he could not keep up with cleaning tasks including washing dishes, mopping, and sweeping. Claimant never kept track of his work schedule because he could not understand it; Mother would keep track of it for him. When they did not work on the same shift, Claimant walked to work and at night Mother would pick him up herself. Claimant has had no other jobs. He has no other sources of income aside from what Mother provides.

67. Regarding self-care, Mother testified that, to this day, Claimant still needs reminders to brush his teeth and bathe himself. Claimant now showers three times a day, but Mother is not sure why. Because Mother is concerned about Claimant's safety when he bathes, she keeps the door to the bathroom open so she can hear what he is doing. Occasionally Claimant will turn on the water in the bathroom and will forget to turn it off.

68. Mother testified that since the age of eight, Claimant had chores to do around the house such as picking up his toys, picking up trash, and performing grooming tasks. Mother would constantly need to remind Claimant to pick up his toys; when she would make these requests, Claimant would act as though he was thinking about what she was saying for a long time and then he still would not pick up his toys. Before Claimant turned 18, he could make himself basic meals like cereal or a sandwich and could use the microwave (usually with supervision), but he did not and does not use the stove. Claimant can use a knife for cutting. Mother testified that if she gave money to Claimant to make a small purchase at a store, Claimant would not know how much change to bring home. Claimant does none of his own grocery shopping, and Mother even stated Claimant does not even purchase small items like a soda at a corner store.

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69. Claimant developed a stutter before he was two years old. According to Mother, Claimant often has odd or unusual ways of speaking that make it difficult to communicate; sometimes when she asks him questions, he provides non-responsive answers. Claimant often has trouble following more than one direction at a time. Mother denied that Claimant could follow a simple conversation before the age of 18. Instead, he would have difficulty forming both responses and questions in conversation. Mother claimed Claimant has difficulty figuring out someone's emotions based on their facial expression and does not understand hand gestures. Claimant does not engage people about their interests or talk much about his own interests; he seldom speaks to anyone, according to Mother.

70. Mother testified Claimant does not have friends and that he did not have any before the age of 18. On cross-examination, Mother clarified that although she was aware Claimant would use marijuana with others, she would not characterize them as "friends." When asked on cross-examination about Claimant's participation in soccer before the age of 14, Mother explained she "would pay so he can play."

71. Although Claimant has never had a romantic relationship Mother is aware of, Claimant sometimes tells people he has had a girlfriend for five years. This is one of several delusional statements Claimant often makes, which also include claiming to have won the lottery and that he owns Disneyland. When Claimant was about two or three years old, he would claim to be Spiderman and pretend to shoot webs around the house. Claimant still engages in this behavior, and according to Mother, appears to genuinely believe he is Spiderman.

72. As for the intake questions she answered for Zepeda, Mother testified that although the interview was conducted in Spanish and she could generally understand what Zepeda was saying, she did not understand all the terms Zepeda

used and claimed Zepeda did not explain the questions in detail. With respect to Claimant's in-person assessment by Dr. Jacobs, Mother said he only asked her (through Anda as an interpreter) what her relationship was with Claimant. Mother felt more comfortable speaking with Dr López because Mother could speak with her in Spanish and because Dr. López expressed herself to Mother clearly.

73. Mother testified she is unaware of Claimant's earlier mental health diagnosis while at Fremont Hospital. She also does not understand what it means to be autistic. Mother also testified she is unclear as to what the criminal charges against Claimant are or the potential consequences of a conviction.

ELIZABETH ANDA

74. As a Holistic Defense Advocate, Elizabeth Anda is assigned to special cases in which a client has a mental health disorder, substance abuse disorder, or some other disability. She then acts as an advocate for the client to connect them with services they need to be a better advocate for themselves. Anda has experience working with persons who have physical, mental, and intellectual disabilities. Claimant is one of Anda's clients.

75. Anda speaks fluent Spanish and conducted an interview of Mother in Spanish—this interview was the basis for her October 2023 report. (Ex. 12.) Claimant did not participate in this interview, and Anda got the impression Mother did not understand what the purpose of the interview was.

76. In the time since Anda conducted Mother's interview, she has spent over 20 hours with Claimant and Mother, providing transportation and accompanying them to various assessments and appointments with TCRC. Anda believes she now has a fuller understanding of Claimant's skills and deficits. Anda testified Claimant is mild-

mannered and acts younger than his age. She has seen Claimant pretending to be Spiderman and has heard him claim he won the lottery. Anda has never seen Claimant cook at home, but he can make himself cereal. Although Claimant understands how to do his own laundry using the washing machine, he will either put too much laundry detergent in the machine or none at all, or he will need to be reminded to switch the clothes to the dryer. After observing Claimant's family dynamic, Anda does not think Claimant would have been able to graduate from high school without significant support from Mother.

77. On cross-examination, Anda conceded that, in her role as Claimant's advocate, she is not an unbiased observer and participant in these proceedings. But the scores Anda provided on the SRS-2 and ABAS-3 were not so different from Claimant's and Mother's answers to suggest Anda provided untruthful or exaggerated responses to help Claimant receive a diagnosis making him eligible for regional center services.

Evaluation of Evidence

78. The regional center framed Claimant's request for services as an attempt to evade responsibility for his alleged criminal conduct by belatedly claiming a developmental disability. The regional center points to Mother's somewhat inconsistent statements over time about Claimant's development and functioning as evidence that Claimant's claim of developmental disability is pretextual. Conversely, Claimant argued the his failure to obtain services such as special education assistance as a child is attributable to Mother's young age and general inexperience navigating the system as a primarily Spanish-speaking person which was exacerbated by institutional barriers the Latino (sometimes referred to during the hearing as the

“Latinx”) community experiences in this country. Dr. López even endorsed such a theory in her testimony given her experience working with communities of color.

79. The regional center’s contention that Mother’s reporting over time was inconsistent due to bias, and therefore is unreliable, is not supported by the evidence. Mother was not evasive or circumspect during her testimony; she presented as guileless. Her lack of understanding of childhood development milestones, Claimant’s past mental health diagnoses, the implications of him possibly being autistic, and the potential consequences of his alleged criminal conduct, appeared genuine. (Factual Findings 64, 73.) Mother’s testimony about her inability to obtain special education or other services for Claimant was consistent, credible, and was supported by Dr. López’s conclusion that Claimant’s presentation of ID may have been more muted as a child but became “more severe over time as expectations increased.” (Factual Finding 50.) And inconsistencies between Mother’s testimony and the answers she gave to Zepeda during the intake interview appear not to be intentional misstatements, but the inability of a simple intake form to account for the more subtle details of Claimant’s adaptive functioning deficits. (Factual Finding 72.)

80. Although Dr. Jacobs concluded Claimant’s adaptive deficits were better attributed to a mental health diagnosis and exacerbated by his marijuana use (Factual Finding 30), Dr. López’s report argued persuasively to the contrary, as Claimant had not been using controlled substances in the months leading up to her assessment (Factual Finding 50). After reviewing the assessments performed by Drs. Jacobs and López in this light, and when the totality of the evidence is considered, the preponderance of the evidence shows Claimant has substantial disabilities in three major life areas which are attributable to ID.

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LEGAL CONCLUSIONS

Jurisdiction

1. The Lanterman Act governs this case. (Welf. & Inst. Code § 4500 et seq.; all further undesignated statutory references are to the Welfare and Institutions Code.) The Legislature enacted the Lanterman Act to provide an “array of services and supports . . . sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community.” (§ 4501.) 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 allow 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.)

2. DDS is the state agency charged with implementing the Lanterman Act. (§ 4416.) 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. (§ 4620.)

3. 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

4. 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.)

Conduct of Fair Hearings

5. The procedure for conducting a fair hearing is set forth in section 4712. Fair hearings differ greatly from other types of court proceedings. They must be conducted in an “informal manner in order to encourage the presentation of information and the free and open discussion by participants.” (§ 4712, subd. (i)(1).) The hearing officer must also make “their best effort to fully and fairly develop the record and create an environment in which all relevant facts, both favorable and unfavorable, are brought out and to engage the parties to bring out the facts.” (*Ibid.*) For this reason, a fair hearing “need not be conducted according to the technical rules of evidence and those related to witnesses,” and “[a]ny relevant evidence shall be admitted.” (*Id.*, subd. (i)(2).) Evidence submitted by the parties at the hearing need not be formally authenticated unless the hearing officer determines authentication is necessary in the interests of justice. (*Ibid.*) Witness testimony also is not necessary to lay foundation for documents before admission, because “[b]oth parties shall be

allowed to submit documents into evidence at the beginning of the hearing” before testimony begins. (*Ibid.*)

6. In this way, fair hearings under the Lanterman Act are more permissive in their approach to evidence admissibility than even the “more relaxed rules” of other administrative proceedings. (See *Morgenstern v. Department of Motor Vehicles* (2003) 111 Cal.App.4th 366, 377.) For example, rules governing other types of administrative proceedings state “any relevant evidence” shall be admissible, but qualify this, stating such evidence must also be “the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs[.]” (See, e.g., Gov. Code, § 11513, subd. (c).) Similarly, some statutes governing other administrative proceedings allow the use of hearsay evidence to supplement or explain other evidence but note that hearsay “shall not be sufficient in itself to support a finding” unless otherwise admissible in civil actions. (*Id.*, subd. (d).) Section 4712 contains no such rules limiting when and how hearsay evidence may be used in a fair hearing, nor does it restrict admission of relevant evidence to what “reasonable persons are accustomed to rely on in the conduct of serious affairs.”

7. Throughout the fair hearing, Claimant’s counsel lodged several hearsay objections to the testimony of TCRC witnesses. But because the Lanterman Act’s relaxed evidentiary rules require admission of “any relevant evidence” to “fully and fairly develop the record” at the hearing, the ALJ overruled these hearsay objections.

Lanterman Act Eligibility Requirements

8. 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. (*Ronald F. v. State Dept. of Developmental Services* (2017) 8 Cal.App.5th 84, 94–95.)

9. 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 autism, cerebral palsy, epilepsy, 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, often referred to as “fifth category” eligibility. (§ 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.)

10. 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).)

11. 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.

12. It is undisputed that Claimant does not suffer from the developmental disabilities of cerebral palsy or epilepsy. During the hearing, the parties stipulated Claimant has a qualifying diagnosis making him eligible for regional center services, although the parties did not stipulate whether this diagnosis was autism or ID. Accordingly, the legal analysis regarding eligibility under a qualifying diagnosis of autism or ID is limited to whether Claimant meets the remaining eligibility criteria under the Lanterman Act that (1) the disability originated before he turned 18 years old and is expected to continue indefinitely, and (2) the condition constitutes a substantial disability. With respect to the analysis of substantial disability, the parties further stipulated Claimant does not have a substantial disability in the area of mobility.

SUBSTANTIAL DISABILITY - INTELLECTUAL DISABILITY

13. Considering the evidence, Claimant has ID that is substantially disabling in at least three areas of major life activity: receptive and expressive language, capacity for independent living, and economic self-sufficiency. It is also possible Claimant is substantially disabled in the area of learning, but there is insufficient evidence on this record to make such a finding.

14. Receptive and Expressive Language – Claimant has a substantial disability in the area of receptive and expressive language due to ID. Respondent presented as childlike and with language skills below his age to Mother, Anda, and multiple medical professionals. (Factual Findings 19–21, 32, 48, 76.) Dr. Jacobs found Claimant had extremely low assessment scores in the areas of speech, vocabulary, listening, conversation, and non-verbal abilities and found it difficult to sustain a conversation with Claimant. (Factual Findings 24–25.) He also found Claimant demonstrated “poor expressive and receptive communication skills,” and noted there were significant deficits in his communication. (Factual Findings 28, 31.) Dr. Bisetty noted Claimant needed prompting to remain on topic and answer questions directly. (Factual Finding 32.) Dr. López observed Claimant’s reasoning and spoken language ability were “limited and repetitive,” and that he only proactively engaged in conversation on a preferred topic. (Factual Findings 47–48.)

Mother’s reporting on this issue has been consistent over time. She reported Claimant’s limited speech abilities and difficulties with conversation and socializing during the intake interview. (Factual Findings 17–18.) Mother also provided credible testimony about her concern about Claimant’s speech as a child and through the age of 18. (Factual Findings 64–65, 69.)

This is consistent with Dr. Aguirre-Kolb's testimony that persons with a substantial disability in this area due to ID would try to use or understand verbal and non-verbal communication, but the use of these skills would not be appropriate for their age. It is also consistent with Dr. López's theory that Claimant's ID presented as mild as a child but became "more severe over time and as expectations increased." (Factual Finding 50.)

15. Capacity for Independent Living - Claimant has a substantial disability in the area of capacity for independent living due to ID. Dr. Jacobs found that while Claimant had extremely low scores for functioning in the community, he had "average" assessment scores for adaptive skills necessary for home living. (Factual Finding 24.) On the other hand, Dr. López found Claimant's low cognitive ability impedes him from learning or using specific skills such as planning and shopping, and other testing indicated he had "severe difficulties" in the development of all skills to be an independent and self-sufficient adult. (Factual Findings 49–50.)

Mother reported Claimant could perform some household tasks like tidying his room, doing his own laundry, taking out the trash, and preparing simple meals, and that he could use a knife, a telephone, and public transportation and was aware of money and how much things might cost. (Factual Findings 14, 16, 22.) But beyond these more simple tasks, additional reporting and testimony undermined the suggestion that Claimant can live independently without significant assistance. Claimant makes none of his own health or medical appointments, does not cook on a stove, needs to be monitored when using the microwave, and he cannot read his bills and has never paid a bill. He struggles to manage money, does not have a driver's license, does not do his own grocery shopping, and Mother doubts Claimant would bring back the correct amount of change if she gave him money to make a small

purchase at a store. (Factual Findings 38, 68.) As Anda explained, while Claimant understands how the washing machine works, he frequently does not use it correctly, requiring Mother to do his laundry again. (Factual Finding 76.)

This is again consistent with Dr. López's theory that Claimant's limited cognitive ability did not manifest completely until his teen years when it became clear he could not complete more advanced tasks required of adulthood without significant assistance from Mother. (Factual Finding 50.) Mother appears to have managed every aspect of Claimant's life through the present, and she worries for Claimant's safety if she cannot provide that care for him indefinitely. (Factual Findings 22, 42.)

16. Economic Self-Sufficiency – Claimant has a substantial disability in the area of economic self-sufficiency due to ID. The evidence shows it is doubtful Claimant could obtain and hold a job before the age of 18 and beyond. Dr. López opined Claimant's low cognitive ability interfered with his ability to learn or use specific skills related to employment, among other things. (Factual Finding 50.)

One of the considerations in the ARCA Guidelines for determining whether a person has a substantial disability in this area is what kind of support the person receives and if the person would be expected to be successful if support was no longer available. Mother consistently and candidly described the lengths she went to get Claimant a job, and the support she provided to help him keep it. (Factual Findings 14, 39, 66.) Claimant could not keep track of his work schedule because he could not understand it, so Mother would keep track of it for him and Mother would often transport Claimant to and from work. (Factual Finding 66.) But even with Mother being Claimant's co-worker and helping him on the job, Claimant still could not maintain his employment at the fast-food restaurant for longer than a year and a half before his employment was terminated. (Factual Findings 14, 39, 66.)

Claimant has had no other jobs and no other source of income. (Factual Finding 66.) Of additional concern for the prospect of Claimant's economic self-sufficiency is that Claimant appears to believe he does not need to work because he won the lottery and is very rich. (Factual Findings 35, 39, 44.)

17. In light of the above conclusions, it is unnecessary to determine if Claimant is substantially disabled due to autism or is eligible for regional center services under the "fifth category" of eligibility.

Conclusion

18. Claimant has a qualifying diagnosis of ID that is substantially disabling in the major life areas of receptive and expressive language, capacity for independent living, and economic self-sufficiency. This disability arose before the age of 18 and is expected to continue indefinitely. Therefore, Claimant is eligible for services and supports from TCRC under the Lanterman Act.

ORDER

Claimant's appeal is granted.

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 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.