BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

and

WESTSIDE REGIONAL CENTER,

Service Agency.

DDS No. CS0013596

OAH No. 2024031019

DECISION

Julie Cabos Owen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on November 5, 2024. Ron Lopez, IDEA specialist, represented Westside Regional Center (WRC or Service Agency). Claimant was represented by his mother (Mother). (The names of Claimant and his family are omitted to protect their privacy.)

Testimony and documents were received in evidence. Upon Claimant's request, the ALJ issued a protective ordering placing the entire record (witness lists, exhibits, audio recording, and any later-prepared transcripts) under seal to protect confidential

information. The record closed and the matter was submitted for decision on November 5, 2024.

ISSUE

Does Claimant have a substantially disabling developmental disability entitling him to regional center services?

EVIDENCE

The documentary evidence considered in this case was: Service Agency exhibits 2 – 17; and Claimant exhibits A through D. The testimonial evidence considered in this case was that of WRC Intake Manager and licensed psychologist, Thompson Kelly, Ph.D.; Mother; and Roya Mayer, BCBA.

FACTUAL FINDINGS

Claimant Background

1. Claimant is a 14-year-old male. He seeks eligibility for regional center services based on a diagnosis of Autism Spectrum Disorder (ASD).

2. Claimant lives at home with Mother. His parents are divorced.

3. Claimant was placed in gifted programs at school until third grade. However, in 2017, he regressed after a Department of Children and Family Services (DCFS) case was opened, and he was removed from Mother's home for eight months before returning to her full custody.

4. Prior to the 2020 COVID pandemic, Claimant attended school in person, but he was uncomfortable doing so. Mother recalled, during fourth grade, Claimant would "wander the yards," unable to interact with his peers. When remote learning was instituted during the COVID pandemic, Claimant disliked logging on and being seen in virtual classroom platforms. He preferred only one-on-one virtual settings.

5. In fifth grade, during the return to in-person attendance, Claimant reported discomfort with returning to the in-person setting.

6. In May 2021, while Claimant was in fifth grade, his school district assessed him for special education eligibility but determined he did not qualify. His test scores were above average, and he demonstrated no learning disability.

7. On December 18, 2021, licensed psychologist Taylor Sorenson, Psy.D., conducted a psychological assessment of Claimant (attending sixth grade). Dr. Sorenson noted Claimant reported suicidal ideation, particularly between ages five and eight, and he underwent several psychological evaluations during that time. Claimant was hospitalized on a suicide hold for one week during the DCFS case in 2017. Dr. Sorenson also noted Claimant had received warnings about his refusal to attend school.

8. Dr. Sorenson diagnosed Claimant with Anxiety Disorder, Major Depressive Disorder, and Post Traumatic Stress Disorder (PTSD), and Attention Deficit / Hyperactivity Disorder (ADHD). Dr. Sorenson noted, "[Claimant's] defiant behaviors are likely a manifestation of his PTSD, ADHD, and mood disorders and do not meet clinical criteria for Oppositional Defiant Disorder at this time." (Exhibit 9, p. A43.) However, Claimant had not yet been diagnosed with ASD, and Dr. Sorenson did not consider whether Claimant's school refusal could be related to his ASD.

9. Claimant receives therapy once per week, and he sees a psychiatrist once a month.

Prior Request for Eligibility

10. In January 2022, Claimant sought regional center eligibility. Mother contacted WRC to request an evaluation based on suspected ASD. WRC conducted an intake interview / psychosocial assessment, a psychological evaluation, and a multidisciplinary observation.

11. At the time of his 2022 eligibility application, Claimant attended sixth grade at a charter school. During the 2022 intake interview, Mother reported Claimant withdrew from peers at school, and he "exaggerate[d] something medical going on with him so that he [could] come home." (Exhibit 5, p. A21.) She noted Claimant enjoyed playing videogames, learning about world history, and watching videos. At that time, Claimant was able to eat with utensils but preferred using his hands. He was able to shower by himself, but he needed prompting to maintain good hygiene. During the interview, Claimant made fleeting eye contact but engaged in conversation with interviewer. Based on the interview, Intake Counselor Barbara Linares LCSW recommended Claimant undergo a psychological evaluation.

12. In March 2022, Licensed Clinical Psychologist Susan Park, Ph.D., conducted a remote psychological evaluation of Claimant on behalf of WRC.

13. Dr. Park noted Claimant's relevant history to include the following:

> [Clamant] has history of problems with bladder control and toileting hygiene. He had nighttime bed wetting until about 7 years old. Currently, he does not wipe completely and he

> "splatters everywhere" when he urinates. He refuses to flush the toilet. He also does not tend to his personal care needs independently. He is sensitive to water getting in his eyes. [¶] . . . [¶]
>
> Currently, he often refuses to do most things including going to school. He had found it difficult to be in school. He used to walk around the perimeter of the school to decompress and when he attended the charter school, he was not allowed to do this. [Mother] reported that school aversion started years ago, as he was already refusing to leave the house.

(Exhibit 6, pp. A25-A26.)

14. Regarding Claimant's observed speech, language, and conversational skills, Dr. Park noted:

> [Claimant] spoke in complete sentences with clarity. [Claimant] also spoke with rapid, pressured, and stilted speech. He spoke more formally than would be expected for his age and used precise language. He tended to focus on wording. Conversations were mostly one-sided and about his interests despite attempts made for [him] to respond to things that interested the examiner. . . . He had a pedantic way of speaking. . . . [Claimant] often described emotional experiences and the details related to his experiences in a matter-of-fact way. For instance, after

> sharing he was diagnosed with an anxiety disorder, he mentioned that he has a lot of things to be anxious about, but his affect was not congruent with his words.
>
> For most of the interview, [Claimant] was also playing a video game. . . . He also mentioned his preference to not make eye contact because it did not tell him anything about the social interaction. [Claimant] had some challenges with regulating his impulses and navigating back and forth exchanges. Conversations were mostly one-sided. [Claimant] tended to interrupt the examiner in mid-sentence, interject his thoughts, and talk in detail about his special interests. He looked on the screen occasionally and often looked around the room.

(Exhibit 6, pp. A28-A29.)

15. In finding Claimant met all criteria in the area of Social Communication for an ASD diagnosis, Dr. Park specifically noted:

> [Claimant] does not show being able to readily interpret other people's emotions by nonverbal cues. Conversations tend to be one-sided, and he is quick to say that he is bored. [Claimant] has trouble perspective-taking and sometimes does not consider the social or emotional impact of what he says to others.
>
> [Claimant] use of nonverbal communication in social interactions are mildly limited. He makes eye contact but

> does not understand why it is necessary to make eye contact. His eye gaze is not well coordinated with other forms of communication. . . . He speaks rapidly with pressure and stilted tone. He does not always show affect that is congruent with the situation. . . .
>
> [Claimant] has difficulty adjusting behaviors to suit social contexts in that he does not consider the person before making comments. He has trouble describing the emotional experiences of others[.]

(Exhibit 6, p. A34.)

16. In finding Claimant met all criteria in the area of Restrictive and Repetitive Patterns of Behavior for an ASD diagnosis, Dr. Park specifically noted:

> Claimant has a history of displaying echolalic speech and displays persistent repetitive behaviors that involve walking around the perimeter of buildings. The latter is likely a self-soothing activity. When he was not permitted to walk around the school, [Claimant] became highly dysregulated.
>
> [Claimant] evidences highly rigid and inflexible thinking that has contributed to significant stress in the home, school refusal, and poor interpersonal relationships. [Claimant] has difficulty with changes in routine - beyond what would be expected for a neurotypical child his age. He is very particular about foods he eats and how it is prepared. He also has daily routines related to food.

> [Claimant] has strong narrow range of interests including history, particularly World Wars, and has been recently fascinated by the war between Russia and Ukraine. He is also highly interested in languages and becomes preoccupied with them. . . .
>
> [Claimant] exhibits hyper-reactivity to sensory input including multiple competing sounds during events or gatherings. It is suspected that he becomes overwhelmed at school due to issues with having to managing multiple sensory input. He seems to have tactile aversions related to his head and hair in which he does not want his hair cut and has difficulty washing his hair thoroughly[.]

(Exhibit 6, pp. A34-A35.)

17. Dr. Park diagnosed Claimant with ASD; ADHD, per history; Unspecified Anxiety Disorder, per history; PTSD, per history; and Major Depressive Disorder, moderate, recurrent episode, per history. Dr. Park noted:

> [Claimant meets criteria for a diagnosis of ASD] without accompanying intellectual or language impairment. Issues with pragmatics (i.e., the social use of language) are reflected in the Social Communication domain of ASD. Furthermore, behaviors associated with ASD cannot be explained by other conditions such as PTSD, ADHD, or an anxiety disorder.

(Exhibit 6 pp. A33-A34.)

18. The behaviors meeting ASD criteria that Dr. Park identified in Factual Findings 15 and 16, are therefore associated with his ASD, and as Dr. Park noted, "cannot be explained by other conditions such as PTSD, ADHD, or an anxiety disorder." This includes Claimant's school refusal, which Dr. Park noted could arise in part from his becoming overwhelmed at school due to managing multiple sensory input.

19. Dr. Park further noted, "It is not known to what extent [Claimant's] anxiety and depression could be secondary to the challenges associated with being autistic including his rigidity, not being fully aware of his sensory needs and emotional experience, and the challenges that comes with not being able to manage them." (Exhibit 6, p. A35.)

20. On May 5, 2022, WRC conducted a multidisciplinary observation via Zoom. During the observation Claimant and his mother were interviewed by Kaely Shilakes, Psy.D.; Mayra Mendez, Ph.D., L.M.F.T.; and Jessica Haro, B.C.B.A. Claimant spoke to the observers about his interests and school. After Claimant left the Zoom meeting, Mother informed the observers that Claimant "hates being in the school environment," and had not attended school for almost five months. (Exhibit 8, p. A40.) Claimant had not made any friends at school, and he refused both in-person school attendance before the pandemic and online school during the pandemic. Claimant told Mother he cannot learn or concentrate.

21. Despite the ASD diagnosis, the WRC multidisciplinary team determined Claimant was ineligible for regional center services. This determination was based on WRC's analysis that Claimant's ASD was not substantially disabling, as required by law.

22. Claimant appealed WRC's determination, and his appeal was denied after a fair hearing on July 7, 2022 (prior fair hearing).

23. On May 11, 2022, an evaluator from A and J Behavioral Health conducted an in-person evaluation for Applied Behavioral Analysis (ABA) services and issued a report of their findings. The evaluator observed Claimant refused to leave his room to participate in an unrelated Zoom interview. Additionally, during their conversation, Claimant spoke with a louder than average vocal volume and interrupted throughout the conversation. Claimant reportedly refused to attend school and had stopped leaving the house except on rare occasions to walk to the corner store to buy a specific type of soda. Claimant also could "become aversive to peers and excessively talking about only his preferred subjects and topics. [Claimant] will only eat alone, refusing to eat around other people[.]" (Exhibit 11, p. A97.) Additionally, if Claimant "does not like something non-preferred such as a math assignment or has a difficult time with it, he will rip the paper." (*Ibid.*) It was unclear whether this information was presented at the prior fair hearing.

Current Appeal

24. In early 2024, Claimant again applied for eligibility to receive regional center services. Claimant provided documents in addition to those submitted in 2022. However, WRC determined that the additional documents did not evidence a significant change in functioning and that Claimant's limitations are better explained by Claimant's mental health diagnoses.

25. On February 20, 2024, WRC sent Claimant a Notice of Action (NOA), finding him ineligible to receive regional center services because he did not meet eligibility criteria. WRC denied Claimant's eligibility based on their finding that he is not substantially disabled by" his ASD. (Exhibit 4, p. A14.)

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26. Mother filed a Fair Hearing Request on Claimant's behalf to appeal the denial of eligibility. This fair hearing was set.

Evidence at Fair Hearing

27. Claimant refuses to attend in-person schooling. After failed school reintegration attempts in sixth grade, Claimant discontinued in-person school attendance. Claimant is currently attending a home-study independent learning program. Mother testified Claimant is unable to complete his schoolwork on his own, so she has hired a tutor "to redirect him to non-preferred subjects."

28. Claimant prefers topics such as history and linguistics, and he has learned languages using the Duolingo language-learning application. Claimant also prefers playing video games and watching online videos.

29. Claimant showers every day and can independently attend to his personal hygiene. Claimant has a history of difficulty with toileting hygiene and previously did not wipe completely. His toileting habits have improved. However, he is now reportedly "over careful," and Mother complains about the amount of toilet paper he uses to wipe himself. (Exhibit B, p. B12.) Claimant now has a "perseveration on cleaning himself." (*Id.* at p. B11.)

30. In February 2024, Roya Mayer, MA, BCBA, with First Stop ABA Therapy conducted an ABA assessment of Claimant. Of note, Claimant reported he is unable to attend school due to severe anxiety in the classroom setting. Mother and Claimant fear he spends inadequate time on his schoolwork and will be unable to graduate or go to college. Claimant doesn't think he will be able to hold a job (even as a cashier at a store) because he has anxiety in public places.

31. In May 2024, Claimant underwent an Occupational Therapy (OT) evaluation. The evaluator noted Claimant was minimally impacted by lighting and visual stimuli, and he was severely impacted by nearby noise (e.g., dog barking) and number of individuals present (e.g., in crowded situations, he experiences sweaty palms, difficulty swallowing/focusing/walking, and blurred vision).

32. WRC asserts Claimant does not qualify for regional center services because he does not have a "substantial disability." "Substantial disability" is defined as a condition resulting in significant functional limitations, as appropriate to the age of the person, in three or more of the following areas of major life activity: receptive and expressive language; self-care; learning; mobility; self-direction; capacity for independent living; and economic self-sufficiency. (See Legal Conclusions 10 and 11.)

33. WRC maintains Claimant's ASD is a mild presentation, and the attendant symptoms do not render his ASD a substantial disability. While Claimant experiences some significant symptoms, particularly his school refusal and lack of peer interaction, WRC attributes these symptoms to Claimant's mental health diagnoses instead of his ASD.

34. Mother is a licensed psychologist. She pointed out that Claimant initiated psychiatric treatment by six years old, and he is currently compliant with his treatment and medication regimen. Despite psychiatric treatment over the years, Claimant's deficits remain. Mother does not believe Claimant's deficits are solely psychiatric. She opined credibly that Claimant's deficits are attributable to his ASD, and his anxiety and depression could be secondary to the deficits that come with ASD. Mother noted Claimant's school refusal and inability to interact with his peers is significantly impacting his life.

35. Licensed psychologist, Thompson Kelly, Ph.D., testified at the fair hearing. He opined that Claimant exhibited no significant symptoms related to ASD and that Claimant's significant behaviors were not reflective of ASD and thus not attributable to a qualifying developmental disability. Dr. Kelly acknowledged an individual may have co-occurring mental health issues with ASD, but he noted Claimant is higher functioning on the ASD spectrum, with severe mental health issues. Dr. Kelly conceded he cannot identify to which psychiatric disorder Claimant's significant deficits are attributable, but insisted they are not attributable to a developmental disability. Dr. Kelly observed that children with ASD may seek school routines (e.g., specific routes or days), but do not typically demonstrate complete school refusal.

36. Dr. Kelly's generalized observations do not refute that Claimant's peer avoidance and school refusal are attributable, at least in part, to his ASD. Dr. Park included Claimant's school refusal in the behaviors associated with Claimant's ASD, and she noted Claimant's school avoidance could arise from Claimant's becoming overwhelmed at school by multiple sensory input. Given the foregoing, Claimant's significant symptoms of school refusal and peer avoidance are related, at least in part, to his ASD.

37. The Association of Regional Center Agencies (ARCA) has published Clinical Recommendations for Defining "Substantial Disability" to serve as guidelines for analyzing whether an individual has a "substantial disability." These guidelines were used to inform the analysis below regarding the areas of major life activity (receptive and expressive language; self-care; learning; mobility; self-direction; capacity for independent living; and economic self-sufficiency) in which Claimant may have significant functional limitations.

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38. In the area of Receptive and Expressive Language, the individual must have "significant limitations in both the comprehension and expression of verbal and/or nonverbal communication resulting in functional impairments. Note: There must be impairment in receptive and expressive language to consider Receptive and Expressive Language to be an area of substantial disability." (Exhibit 17, p. A129; emphasis in original.) Factors to consider for limitation in receptive language include: "Significant difficulty understanding a simple conversation[;] Needing information to be rephrased to a simpler level in order to enhance understanding[;] Significant difficulty following directions (not due to general noncompliance)[;] [and] Significant difficulty understanding and interpreting nonverbal communication (e.g., gestures, facial expressions)." (*Id.* at p. A129.) Factors to consider for limitation in expressive language include: "Significant difficulty communicating information[;] Significant difficulty participating in basic conversations (e.g., following rules for conversation and storytelling, tangential speech, fixation on specific topics)[;][and] Atypical speech patterns (e.g., jargon, idiosyncratic language, echolalia)." (*Id.* at p. A130.)

39. Claimant demonstrates some deficits with receptive language in that he cannot readily interpret other people's emotions by nonverbal cues. However, Claimant's mother acknowledged that Claimant's expressive language is intact, and he can express himself (albeit with an inconsistent affect and some stilted speech). Dr. Kelly noted Claimant participates in conversations and follows directions.

40. Given the foregoing, Claimant does not have established significant functional limitations in receptive and expressive language.

41. In the area of Self-Care, an individual must have "significant limitations in the ability to acquire and perform basic self-care skills." (Exhibit 17, p. A129.) Factors to consider include: "Personal hygiene (e.g., toileting, washing and bathing, brushing

teeth)[;] Grooming (e.g., dressing, undressing, hair and nail care)[;] and Feeding (e.g., chewing and swallowing, eating, drinking, use of utensils)." (*Ibid.*)

42. While Claimant has had some hygiene issues in the past, the evidence did not establish Claimant currently has significant functional limitations in self-care.

43. In the area of Learning, the individual must be "substantially impaired in the ability to acquire and apply knowledge or skills to new situations even with special intervention." (Exhibit 17, p. A130.)

44. Although Claimant currently refuses to attend in-person school, throughout his schooling, Claimant has demonstrated above average intellect and the ability to acquire knowledge and skills.

45. The evidence did not establish Claimant has significant functional limitations in learning.

46. In the area of Mobility, the individual must have "significant limitations with independent ambulation. Note: Mobility does not refer to the ability to operate motor vehicles or use public transportation." (Exhibit 17, p. A130.)

47. The evidence did not establish Claimant has significant functional limitations in mobility.

48. In the area of Self-direction, the individual must have "significant impairment in the ability to make and apply personal and social judgments and decisions." (Exhibit 17, p. A130.) Factors to consider include: "Emotional development (e.g., routinely has significant difficulty coping with fears, anxieties or frustrations; severe maladaptive behaviors, such as self-injurious behavior)[;] Interpersonal relations (e.g., has significant difficulties establishing and maintaining relationships with family

or peers; social immaturity; marked difficulty protecting self from exploitation)[;] and Personal judgement (e.g., significant difficulty in making appropriate choices, maintaining daily schedules, following medically prescribed treatments and diet)." (*Id.* at p. A131.)

49. The evidence established, and WRC conceded, that Claimant has substantial functional limitations in self-direction, given his school refusal and inability to establish peer relationships. WRC maintains Claimant's self-direction limitations are caused solely by his mental health diagnoses. However, as noted above, WRC failed to establish Claimant's mental health issues were the sole cause of his limitations in self-direction.

50. In the area of Capacity for Independent Living, the individual must be "unable to perform age-appropriate independent living skills without the assistance of another person." (Exhibit 17, p. A131.) Factors to consider include: "Significant difficulty performing age-appropriate, simple household tasks[;] Significant difficulty managing multiple-step domestic activities (e.g., grocery shopping, meal planning and preparation, laundry, care and selection of clothing, home repair and maintenance)[;] Does not have age-appropriate capacity to be left unsupervised (e.g., lack of safety awareness)[;] Significant difficulty with money management (e.g., using bank accounts, making small purchases independently) and budgeting[;] [and] Significant difficulty taking the basic steps necessary to obtain appropriate health care (e.g., obtaining medication refills, obtaining medical attention when needed)." (*Ibid.*)

51. There is insufficient evidence to establish Claimant currently has a significant functional limitation for a person his age in the area of capacity for independent living.

52. In the area of Economic Self-sufficiency, the individual must lack "the capacity to participate in vocational training or to obtain and maintain employment without significant support." (Exhibit 17, p. A131.)

53. Dr. Kelly noted that economic self-sufficiency is not a considered factor until the individual is about 15 to 16 years old and seeking employment. Claimant's mother noted that, if Claimant cannot attend school on a daily basis, holding a job would be difficult. However, there was insufficient evidence of Claimant's inability to participate in vocational training, particularly if that training was provided online.

54. There is insufficient evidence to establish Claimant currently has a significant functional limitation for a person his age in the area of economic self-sufficiency.

55. The preponderance of the evidence established Claimant has significant functional limitations for a person his age in just one of the areas of major life activity: the area of self-direction.

LEGAL CONCLUSIONS

Jurisdiction and Burden of Proof

1. An administrative hearing to determine the rights and obligations of the parties is available under the Lanterman Developmental Disabilities Services Act (Lanterman Act) to appeal a regional center decision. (Welf. & Inst. Code, §§ 4700-4716.) Claimant timely requested a hearing following the Service Agency's denial of eligibility, and therefore, jurisdiction for this appeal was established.

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2. When a party seeks government benefits or services, he bears the burden of proof. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits].) Where a change in services is sought, the party seeking the change bears the burden of proving that a change in services is necessary. (Evid. Code, § 500.) The standard of proof in this case is a preponderance of the evidence because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.)

3. In seeking eligibility for regional center services, Claimant bears the burden of proving by a preponderance of the evidence that he meets all eligibility criteria. Claimant has failed to meet his burden of proof in this case.

Determination of Claimant's Eligibility under Lanterman Act

4. To be eligible for regional center services, a claimant must have a qualifying developmental disability. As applicable to this case, Welfare and Institutions Code section 4512, subdivision (a), defines "developmental disability" as:

> a disability that originates before an individual attains 18 years of age; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for that individual. . . [T]his term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability, but shall not include other handicapping conditions that are solely physical in nature.

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5. A claimant must show that his disability fits within one of the five categories of eligibility set forth in Welfare and Institutions Code section 4512. The first four categories are specified as: intellectual disability, epilepsy, autism, and cerebral palsy. The fifth and last category of eligibility is listed as "Disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with intellectual disability." (Welf. & Inst. Code, § 4512.)

6. The Lanterman Act and its implementing regulations contain no definition of the qualifying developmental disability of "autism." Consequently, when determining eligibility for services based on autism, that qualifying disability has been defined as congruent to the definition of "Autism Spectrum Disorder" as set forth in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5). (The ALJ takes official notice of the DSM-5 as a generally accepted tool for diagnosing mental and developmental disorders.)

7. The DSM-5, section 299.00 discusses the diagnostic criteria which must be met to provide a specific diagnosis of ASD, as follows:

> A. Persistent deficits in social communication and social interaction across multiple contexts, as manifested by the following, currently or by history (examples are illustrative, not exhaustive; see text):
>
> 1. Deficits in social-emotional reciprocity, ranging, for example from abnormal social approach and failure of normal back-and-forth conversation; to reduced sharing of interests, emotions, or affect; to failure to initiate or respond to social interactions.

2. Deficits in nonverbal communicative behaviors used for social interaction, ranging, for example, from poorly integrated verbal and nonverbal communication; to abnormalities in eye contact and body language or deficits in understanding and use of gestures; to a total lack of facial expressions and nonverbal communication.

3. Deficits in developing, maintaining, and understanding relationships, ranging, for example from difficulties adjusting behavior to suit various social contexts; to difficulties in sharing imaginative play or in making friends; to absence of interest in peers. [¶] . . . [¶]

B. Restricted, repetitive patterns of behavior, interests, or activities, as manifested by at least two of the following, currently or by history (examples are illustrative, not exhaustive; see text):

1. Stereotyped or repetitive motor movements, use of objects, or speech (e.g., simple motor stereotypies, lining up toys or flipping objects, echolalia, idiosyncratic phrases).

2. Insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior (e.g., extreme distress at small changes, difficulties with transitions, rigid thinking patterns, greeting rituals, need to take same route or eat same food every day).

3. Highly restricted, fixated interests that are abnormal in intensity or focus (e.g., strong attachment to or preoccupation with unusual objects, excessively circumscribed or perseverative interests).

4. Hyper- or hyporeactivity to sensory input or unusual interests in sensory aspects of the environment (e.g., apparent indifference to pain/temperature, adverse response to specific sounds or textures, excessive smelling or touching objects, visual fascination with lights or movement). [¶] . . . [¶]

C. Symptoms must be present in the early developmental period (but may not become fully manifest until social demands exceed limited capacities, or may be masked by learned strategies in later life).

D. Symptoms cause clinically significant impairment in social, occupational, or other important areas of current functioning.

E. These disturbances are not better explained by intellectual disability (intellectual development disorder) or global developmental delay. Intellectual disability and autism spectrum disorder frequently co-occur; to make comorbid diagnoses of autism spectrum disorder and intellectual disability, social communication should be below that expected for general developmental level.

(DSM-5, at pp. 50-51.)

8. As determined by Dr. Park, Claimant meets the criteria under the DSM-5 for a diagnosis of ASD.

9. A claimant must prove the existence of a developmental disability within the meaning of Welfare and Institutions Code section 4512. Thus, in addition to falling within an eligibility category, a claimant must show that he has a "substantial disability."

10. Pursuant to Welfare and Institutions Code section 4512, subdivision (*l*)(1):

> "Substantial disability" means the existence of significant functional limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person:
>
> (A) Self-care.
>
> (B) Receptive and expressive language.
>
> (C) Learning.
>
> (D) Mobility.
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> (E) Self-direction.
>
> (F) Capacity for independent living.
>
> (G) Economic self-sufficiency.

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11. Additionally, California Code of Regulations, title 17, section 54001 states, in pertinent part:

> (a) "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.

12. A claimant's substantial disability must not be solely caused by an excluded condition. The statutory and regulatory definitions of "developmental

disability" (Welf. & Inst. Code, § 4512; Cal. Code. Regs., tit. 17, § 54000) exclude conditions that are solely physical in nature. California Code of Regulations, title 17, section 54000, also excludes conditions that are solely psychiatric disorders or solely learning disabilities. Therefore, a person with a "dual diagnosis," that is, a developmental disability coupled either with a psychiatric disorder, a physical disorder, or a learning disability could still be eligible for services. However, someone whose conditions originate only from the excluded categories (psychiatric disorder, physical disorder, or learning disability, alone or in some combination) and who does not have a developmental disability would not be eligible.

13. Claimant has significant functional limitations for a person his age in one area: self-direction. However, he does not meet the Lanterman Act's requirement that he demonstrate significant functional limitations in three areas of major life activity. Consequently, Claimant has failed to establish his ASD constitutes a substantial disability as defined by Welfare and Institutions Code section 4512, subdivision (*l*)(1), and California Code of Regulations, title 17, section 54001.

14. The preponderance of the evidence established Claimant is not eligible to receive regional center services under the diagnosis of autism because he does not have a substantial disability as defined by the Lanterman Act.

15. Given the foregoing, WRC's denial of eligibility for Claimant to receive regional center services was appropriate.

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ORDER

Claimant's appeal is denied. Westside Regional Center's denial of Claimant's eligibility to receive regional center services is upheld.

DATE:

JULIE CABOS OWEN
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 may appeal the decision to a court of competent jurisdiction within 180 days of receiving the final decision.