BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

and

WESTSIDE REGIONAL CENTER, Service Agency

DDS No. C50020193

OAH No. 2024081003

DECISION

H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on November 20 and 21, 2024, via teleconference.

Valerie Vanaman, Attorney at Law, represented Claimant who was not present.

Sonia Tostado, Director Designee, represented Westside Regional Center (Service Agency).

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on November 21, 2024.

ISSUE

The sole issue to be decided is whether Claimant experiences multiple substantial disabilities from a diagnosis of autism that began before age 18, and is anticipated to last indefinitely, entitling her to regional center services.

EVIDENCE CONSIDERED

1. Service Agency's Exhibits 1 through 11.
2. Claimant's Exhibits A through N.
3. Testimony of Thompson Kelly, Ph.D.
4. Testimony of Karen Dreyfuss.
5. Testimony of Marlene Garza, Psy.D.
6. Testimony of Patricia Gonzalez, LMFT.

FACTUAL FINDINGS

1. Claimant is a 23-year-old female who is seeking service agency supports and services based on a diagnosis of Autism Spectrum Disorder (ASD). She resides with her mother who has raised Claimant as a single parent. Claimant's father left the family when Claimant was two years old. Claimant has had little contact with him since then. Both Claimant and her mother are fluent in English and Spanish. Claimant identifies as a Latinx and a person of color. She has one older brother.

Preschool through High School

2. Claimant began to manifest signs and symptoms of ASD in early childhood, but those signs and symptoms went largely unnoticed by both her mother and her teachers who erroneously believed them to be indicative of other conditions. The signs and symptoms were credibly described by Claimant's mother at the hearing as follows:

a. Pre-school:

(1) In pre-school, Claimant had difficulty with transitions such as being dropped off at school. Claimant did not make friendships the way her peers did. She was not invited to peer gatherings such as sleepovers, and she was not invited into groups of friends. Transitions such as drop-offs were marked by tears and sadness. Getting shoes on and getting things together for school were difficult. Drop offs and Claimant's mother leaving for the day were tearful. Changing from the "Youngers" room to the "Olders" room at school was another difficult transition.

(2) Claimant and her mother spoke Spanish at home. Claimant spoke English at the preschool. Claimant's mother was not aware of language problems at the preschool because she was not there when those problems occurred.

(3) Claimant looked at a speaker when being spoken to. However, she did not learn from the conversation as others would. Instead, she was studying the speaker and trying to learn what was happening. After the conversation, she could not relate what was said to what would happen next. She felt criticized when there had been no criticism at all.

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(4) Complainant had no friends. If she went on a play day, she did not receive any subsequent invitations.

b. Kindergarten:

(1) Claimant attended kindergarten at a small, private, child-oriented school. It was "a bit of an alternative school." (Testimony of Claimant's mother.) She did not develop friendships, and she tended not to be invited to social events. When she was, she came home feeling excluded. She had a stuffed tiger she had to take to school with her and hold during the school day. Transitions were still difficult, and when her teacher convinced her to keep her tiger in her backpack, Claimant did it but found it difficult to transition to the new reality. She kept it with her outside the backpack when she had a difficult time during the day.

(2) Claimant continued to have difficulty with transitions such as leaving the house and getting into the car. Getting out of the car frequently involved Claimant's mother having to drive around the block a few times before Claimant could exit the car. Sometimes, Claimant got out of the car crying. It was also difficult for her to get back into the car after school. Transitioning from the school day to aftercare was difficult for her. She was uncomfortable with changes in classes.

(3) At that time, Claimant could not dress herself alone. Her mother chose her clothes and helped her put the clothes on. For approximately one and a half years, Claimant would wear only pajamas outside of the house. If she could not wear pajamas, she would resist and cry. Those disputes usually resulted in a compromise such as pajamas shirt but street pants.

(4) Nothing happened in preschool that indicated to Claimant's mother that she should have Claimant assessed, but now she wishes she had requested

assessments for comprehension, social cognition, and the ability to process information.

c. Elementary School:

(1) During elementary school, Claimant's mother arranged for a friend to pick Claimant up after school. However, Claimant's mother was Claimant's "executive function." (Testimony of Claimant's mother.) She had to walk Claimant through any preparation and then help her adjust to undo it when they got home. She had to be with Claimant for any task requiring more than two steps. To get ready for school, Claimant's mother had to get Claimant up, have her brush her teeth, and eat the breakfast her mother had prepared. Claimant's mother selected Claimant's clothes, packed Claimant's lunch, made sure she had what she needed for the day in her backpack, and talked her into getting into the car. Claimant could not get ready for school independently for the entire time she attended elementary school.

(2) During the same period, Claimant's mother had to walk Claimant through the steps of a project, and re-direct her to the project when she left it. Claimant cried when working on a project that required more than a few steps. Sometimes, Claimant did not complete an assignment, or she missed steps toward assignment completion.

(3) Claimant's mother had to help Claimant with all aspects of Claimant's life including putting information into bigger pieces, decision-making, weighing options, basic functions around their home, and interacting with other people.

(4) While in private school, no one suggested to Claimant's mother that she get Claimant assessed. The school "took children as they found them." (Testimony of Claimant's mother.) School personnel were resistant to assessments, so there was not

a culture of seeking them. Claimant watched what others did and tried to emulate it. She tried to be "charming." (Testimony of Claimant's mother.)

(5) In the last six months, Claimant's mother has come to understand that Claimant had been "masking" throughout elementary school. Specifically, she tried to look and act like other girls. She was cooperative with teachers. She did not ask many questions. She did not act out or get into disputes. However, Claimant's lack of understanding of what others said was a problem for her entire time in elementary school. She could not engage in the kind of banter her peers did. She did not fit in.

d. Middle School:

(1) Claimant attended a public middle school with a magnet program. It was a large campus with large classes.

(2) Claimant struggled in seventh grade. Some of her problems were social. She made friends but would then find herself not being in the group she thought she was in. She was confused and lonely. She thought she was acting normally, but she would get laughed at. She joined a couple of social groups but was eventually excluded from them. Interactions with boys were confusing to her. She had no lasting friendships during seventh grade.

(3) It was difficult to get Claimant ready for school without her mother's help. Claimant cried frequently. She had trouble keeping school materials together, getting her lunch, and having things she needed in her backpack. She was reluctant to leave for school, and she was disorganized without her mother's intervention. Her mother had to organize and encourage her. She could not perform self-care without her mother's assistance. Her mother continued to be Claimant's executive function.

(4) Academically, Claimant's mother sat with Claimant when she did her homework, and she talked Claimant though it when she needed help. Claimant's mother spoke with Claimant's teachers when there were problems. Sometimes, the teacher felt Claimant was not trying when she would lose a page of an assignment or skipped steps. It was different from the private school she had attended because the public school was more standardized. In hindsight, Claimant's mother believes she was encouraging and enabling Claimant.

(5) No one at the middle school suggested that Claimant be assessed. Claimant's mother believes it was because Claimant learned to perform and meet the basic criteria to do what the teachers needed her to do to get through the grade.

(6) Claimant had similar struggles in the eighth grade. Her mother continued to act as her one-to-one aide. She was concerned that Claimant might not go to high school. Claimant wanted to stay in the public school system, but her mother feared she could not be herself and get herself through the day.

(7) Claimant's mother became concerned that Claimant had to rely on her so much, but she did not get Claimant assessed. She was protective of the people she loved, so she offered "way more umbrella" (testimony of Claimant's mother) than she thought she did. She tried to give Claimant all the supports she could to help her thrive.

e. High School:

(1) Claimant's public high school experience lasted only one semester. Problems arose within two months. The school and its classes were large and were marked by constant activity. Claimant was a good dancer, but the school was a magnet school, and the dance instruction was intense. She had a strict dance teacher who was

in charge of the Dance Department. Claimant was unable to understand or follow the teacher's instructions, and the teacher quickly became frustrated with her. Claimant's mother was not a dancer, so she could not help. Therefore, Claimant's dance instruction experience was a negative one. At one point, there was some discussion that Claimant might not get promoted with her peers and might not be able to stay in the dance program.

(2) Claimant did not have any friends in the public high school. She went to the homecoming dance with someone she believed to be a friend, and she was excited about it, but she did not know how to behave at the dance, and the friend did not stay with her. Claimant felt like a failure when she arrived home, and the friendship did not last.

(3) After one semester at the public high school, Claimant enrolled in Midland School, a boarding school founded by her great-grandfather and previously attended by several of her older relatives. The family members went to the school for Thanksgiving when Claimant's mother was growing up. Claimant did not want to attend the school even though her older brother was a student there. However, she did attend and eventually graduated from high school.

Diagnoses and Treatment

3. In October 2015, at age 14, Claimant began treatment with Rachel Thomasian, LMFT, for issues relating to anxiety, social difficulties, peer relationships, family dynamics, and identity exploration. She remained in treatment with Ms. Thomasian until January 2021. It was during that treatment that Claimant entered college. She found numerous stressors in college largely related to the pressures of academia and attempting to live and make friendships with the girls with whom she

shared a dormitory room, especially given her identity issues being a Latinx and indigenous woman. Ms. Thomasian worked with Claimant over the years using Cognitive Behavioral Therapy (CBT) and other psychotherapeutic techniques. When Claimant experienced various difficulties as a new college student, such as academic and social issues, Ms. Thomasian recommended she seek assistance in the college's Disabilities Department.

4. College was difficult for Claimant in many disparate ways. She never felt included. She was unable to sustain socializations. Her classes were academically difficult, and she frequently visited professors' offices. In her first year, Claimant moved from a shared room to a private room with a shared living area. During the pandemic, she returned to her mother's home, but she was unable to provide for herself independently, so her mother provided grooming, food, clothing, academic help, and other assistance as she had throughout Claimant's childhood.

5. Despite some progress with Ms. Thomasian, Claimant's symptoms exacerbated, and she never achieved any lasting change in response to her mental health treatment. In her undated report, Ms. Thomasian wrote:

> [Claimant] made significant strides in managing her anxiety, perfectionism, and feelings of overwhelm, especially regarding balancing social events, academic responsibilities, and self-care during our time in treatment together. Through CBT techniques such as thought stopping, redirecting, and challenging catastrophic thinking, along with mindfulness and somatic practices, she learned to manage her emotional responses. During her transition to college, she sought services through the disabilities

> office which provided crucial support for managing her anxiety.
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> Her later diagnosis of autism offers a deeper understanding of [Claimant's] social and emotional challenges. [Claimant] had developed strong coping strategies, such as masking or mirroring socially acceptable behaviors, which made it difficult to recognize her neurodivergent traits earlier. She frequently felt emotionally drained from social interactions and struggled to understand social cues, which contributed to her feelings of overwhelm. This diagnosis provides clarity on many of her struggles and opens the door for strategies that align with her neurodivergent needs.

(Exhibit F, page B27.)

6. Patricia Gonzalez has been a Licensed Marriage and Family Therapist since 2017. She holds a Master of Arts degree in Marriage and Family Therapy. Ms. Gonzalez is an LGBT specialist and works extensively with people of color. She spent between four and five years in training toward clinical and life skill building for students with marginalized identities. Ms. Gonzalez is in private practice. She was contracted to the Claremont Colleges when she met Claimant. Like Ms. Gonzalez, Claimant was a person of color, and she identified as such at the time they met. Therefore, Claimant felt a strong connection with Ms. Gonzalez.

7. In April 2021, at age 20, Claimant began treatment with Ms. Gonzalez through the university's counseling office. During the same month, she transferred to Ms. Gonzalez's private practice because she required more in services than the school

could offer. At one point during her therapy with Ms. Gonzalez, Claimant decompensated and was hospitalized for approximately one month. This occurred when she abruptly discontinued her medication on her own volition and then contracted COVID-19.

8. Ms. Gonzalez began her therapy with Claimant using Dialectical Behavior Therapy for Claimant's difficulties with emotional regulation and interpersonal effectiveness. Claimant experienced only limited improvement with that therapy. However, she did better when Ms. Gonzalez switched to other supports geared to Claimant's specific needs. She saw Ms. Gonzalez several times each week, and Ms. Gonzalez made herself available to Claimant constantly via 24/7 texting support. According to Ms. Gonzalez, "This support structure allowed her to receive immediate feedback and guidance, helping her navigate sensory sensitivities, social anxiety, and executive functioning challenges as they arose." (Exhibit G, page B29.)

9. When they began therapy, Claimant described herself as always feeling weird and different. She had many social difficulties making and keeping friends. She had felt constantly overwhelmed throughout her entire life. She needed several opinions to make decisions. She felt as if her feelings would "explode." (Ms. Gonzalez's term.) Claimant had trouble picking out her clothes, and she needed someone to sit next to her when she cleaned her room.

10. Ms. Gonzalez met with Claimant several times per week. Claimant's symptomology increased every day, and her executive dysfunction continued to get worse. She could not order or structure, and she could not choose what to do. Together, Ms. Gonzalez and Claimant planned Claimant's entire day every day for six months. At that time, Ms. Gonzalez did not realize Claimant was going through autistic

burnout. It was during that time that Claimant suffered a psychotic break and was hospitalized.

11. Ms. Gonzalez thought she was treating Post-Traumatic Stress Disorder (PTSD) and possibly Bipolar Disorder with anxiety and depression. Hospital personnel treated Claimant for Bipolar Disorder for two to three months both as an inpatient and in intensive aftercare. Claimant masked extensively. Nothing improved, but it demonstrated to Claimant that she could get out of the hospital if she could self-regulate. Ms. Gonzalez changed her diagnosis after Claimant’s hospitalization.

12. While Claimant was still hospitalized, Ms. Gonzalez realized Claimant was being treated for the wrong illness, she saw specific symptoms in Claimant such as extreme heat sensitivity. Their sessions were in the park because of the pandemic. They lasted only about 20 minutes. When the weather was hot, Claimant could not function or understand what Ms. Gonzalez was saying. Claimant had a job working outside, but it was the middle of summer, and she struggled even though her shifts were very short. So, Ms. Gonzalez decided Claimant should be evaluated for autism. She believed that Claimant was not responsive to being treated for mental health problems because that was a secondary condition to autism.

13. Claimant’s challenges intensified during her senior college year in areas such as academics, social/romantic relationships, and environmental changes. In order to keep her in school and enable her to graduate, several accommodations and adjustments were necessary.

14. Ms. Gonzalez found that Claimant was suffering from substantial disabilities in the areas of Social Disability, Economic Self-Sufficiency, Independent Living, Self-Care, and Communication. Several of those disabilities were a function of

Claimant's severe heat, light, and fabric texture sensitivities. In her November 11, 2024 report, Ms. Gonzalez wrote:

> [Claimant's] significant sensory processing, executive functioning, and social-emotional challenges have impacted her independence, self-care, social relationships, and economic self-sufficiency. These documented limitations align with the DDS requirements for "substantial disability" in multiple life areas further supported by her need for frequent accommodations and targeted therapeutic interventions. Her symptoms have consistently affected her functioning since early adolescence, with increased challenges as she transitioned to less structured settings, providing strong support for her eligibility for DDS services.

Id. at page B32.

15. Ms. Gonzalez found that Claimant's presentation was consistent with characteristics of high-masked ASD, and she supported that finding with areas of Claimant's presentation and clinical course. She also distinguished a diagnosis of ASD from other disorders including Persistent Depressive Disorder, Depressive Disorder with psychotic features, Bipolar Disorder, Acute Psychosis vs. Depressive Disorder with psychotic features, ADHD vs. Executive Functioning Challenges in ASD, and Consideration of Late ASD Diagnosis and Impact of Environment. This made a compelling case for an ASD diagnosis and a showing of substantial disabilities in several areas.

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16. Ms. Gonzalez proposed diagnoses of Autism Spectrum Disorder (high-masked, with sensory processing challenges) and Attention-Deficit/Hyperactivity Disorder, predominately inattentive presentation.

17. On March 24, 2024, April 6, 2024, and April 7, 2024, at age 23, Claimant underwent an extensive neuropsychological evaluation by Marlene Garza, Psy.D. Dr. Garza is a licensed psychologist who regularly performs such evaluations in California, New York, and Nevada, as well as individual therapy in California and New York. Claimant's evaluation included both a 90-minutes interview and 18 neurocognitive and psychological tests. She decided against administering the Autism Diagnostic Observation Schedule (ADOS) because it is normed for male juveniles. Claimant was a female in young adulthood.

18. After lengthy assessments, Dr. Garza made the following diagnoses: Autism Spectrum Disorder requiring support without intellectual or language impairment; Attention Deficit Hyperactivity Disorder-Predominantly Inattentive Presentation; Posttraumatic Stress Disorder-Chronic; Persistent Depressive Disorder with anxious distress, moderate; and Major Depressive Disorder with psychotic features. Dr. Garza based her diagnosis of ASD on the criteria set forth in the American's Psychiatric Association's Diagnostic and Statistical Manual, Fifth Edition (DSM-V.), In her report (Exhibit E), she added a lengthy list of supports and services from which Claimant could benefit. That list endorses a finding that Claimant suffers from numerous substantial disabilities that support her claim that she qualifies for regional center services.

19. Dr. Garza did not believe Claimant was suffering exclusively from mental health issues. She pointed out that Claimant masked many of her experiences, she tried to manage her environment by wearing sunglasses or a large hat to minimize her

heat and light issues, and she tried to avoid being involved in conversations. Dr. Garza also explained that females present autism differently from males. Females face more interpersonal challenges, and they attempt to mimic others' appropriate behaviors. That is why females tend to be diagnosed with autism later in life than males

20. In Claimant's case, while some of the scores on the objective tests were in the average to high average range, some of the tasks, such as understanding the rules, were more challenging.

21. At the fair hearing, Dr. Garza opined that autism is a life-long condition for which mental health issues, such as anxiety and major depression, can be a co-morbid condition. Claimant's challenges are from autism, and she is substantially disabled by it.

22. After Dr. Garza formally diagnosed Claimant with autism, Ms. Gonzalez changed her treatment. She continues to see Claimant twice per week. She ensures Claimant's medication compliance through a regular routine, much self-regulation, and sensitivity management. Claimant is beginning to unmask. She is relieved to know that she is not the problem, and she has become more in line with her identity. However, according to Ms. Gonzalez, Claimant still has extensive recovery ahead of her. She still has a difficult time knowing she will experience the world as a challenge. She does not want to be different

23. Ms. Gonzalez opined that Claimant requires support services from the Service Agency because she has not been, and will not be able to, live independently with the skills she presently possesses.

24. On May 23, 2024, Claimant underwent a psychosocial assessment by Service Agency personnel. Claimant reported challenges in the areas of social

relationships, daily activities, employment (she could not keep a job), and finances. Her mother reported Claimant's challenges to include basic skills such as communication, reading others' signals and messages, self-sufficiency, hygiene, cooking, and consistency. During their clinical interviews, Claimant and her mother reported Claimant's history consistently with the description that had been provided to Ms. Gonzalez and Dr. Garza, including but not limited to Claimant's great sensitivity to light, heat, and food and fabric textures. Among her reported deficits were social isolation, academic struggles, understanding social cues, inappropriate responses, hopelessness, feeling "stuck," depression, feelings of being misunderstood, responding to on-topic or relevant information, the need for repetition, eye contact with others, personal hygiene, cooking, grocery shopping, skin picking, and making choices. She had trouble answering simple questions posed by the interviewer such as, "Tell me about your main concerns," and "What do you do every day?" (Exhibit 5, page A22.)

25. On June 11, 2024, Claimant underwent a Multidisciplinary Psychological Assessment conducted by Service Agency personnel, Kristen M. Prater, Psy.D. Mayra Mendez, Ph.D., LMFT, and Thompson J. Kelly, Ph.D., the Service Agency's Intake Psychological Services Manager, observed but did not participate. The evaluation was limited to "assessing [Claimant's] quality of functioning based on her diagnosis of autism." (Exhibit 11, page A52.). Claimant was interviewed and the following tests were listed on the report as having been conducted: Adaptive Behavior Assessment System-Third Edition (ABAS-3), Gilliam Autism Rating Scale-Third Edition (GARS-3), and the Childhood Autism Rating Scale, Second Edition, High Functioning (CARS-2-HF).

26. Claimant did not manifest behaviors indicative of children with autism. The CARS-3-HF is designed to identify children with ASD. However, based on test completion by Claimant's mother, Claimant showed marked difficulties on the ABAS-3

that resulted in a finding of below average. The Service Agency did not report the results of the GARS-3. Whether it was administered was not disclosed by the evidence.

27. The Service Agency concluded:

> Based on the present evaluation, including her score on the CARS-2-HF, [Claimant] appeared to manage her symptoms of Autism Spectrum Disorder (ASD) well. The CARS-2-HF indicated non-clinically significant scores for diagnostic criteria for ASD. According to the DSM-5, ASD is a life-long disorder that changes over time as expectations of life change and develops (*sic*)

Exhibit 11, page A57

28. At the fair hearing, Dr. Kelly addressed Dr. Garza's report. He pointed out that she diagnosed a number of separate co-occurring conditions. He explained that young women learn to mask some of the symptoms of autism, especially in high-functioning individuals. They are trying to fit in with their peers, so they camouflage their symptoms. Masking occurs in mental health and autism. With respect to sensory issues, sound, sight, and texture are primarily related to autism, but those with mental health issues also demonstrate them. There is a great deal of overlap between autism and mental health issues.

29. Dr. Kelly also explained that autism is a neuro-developmental disorder that tends to manifest early in life. That is why clinicians look for the origins of the disorder during the developmental period. Onset begins with a regression in skills. They look for sensory seeking behaviors in high-functioning individuals. There is a consistent pattern before age 18 that shows the symptoms of autism. There is a

marked increase in symptoms and a concurrent decline in functioning around junior high school age. Mental health issues are different. They can change markedly with good and bad years. They are “a roller coaster ride.” (Dr. Kelly’s term.) Autism is different in that, while mental health issues vary, autism is consistent.

30. On July 1, 2024, Dr, Kelly wrote to Claimant denying her request for regional center supports and services. He explained, “The reason for this decision is that it was determined that you are not substantially handicapped by intellectual disability, cerebral palsy, epilepsy, autism spectrum disorder, or other conditions similar to intellectual disability as referenced in the California Welfare and Institutions Code section 4512 and Title 17 of the California Administrative Code section 54000.” (Exhibit C.)

31. At the fair hearing, Claimant’s mother described some of Claimant’s current disabilities: (a) When she is spoken to, she knows to look at the person speaking, but she will not do so if she is uncomfortable. (b) Claimant can speak about herself, but she cannot extrapolate. She speaks about her own experiences. (c). Claimant can understand steps in a process but cannot perform them. (d) Claimant cannot go to the grocery store alone and do what is necessary. She will get the wrong groceries, or she will buy only some of them, or she will not go to the store. (e) Claimant’s mother must oversee Claimant’s bank account. Claimant does not keep track of or manage the nuances of the account. (f) Claimant goes out with her brother when he is in town. She has friends but, at any time, there might be one or two people. They are not sustained friendships. (g) Claimant knows she has trouble making eye contact. (h) She engages in skin ticking, often on her head. She becomes fixated on that one place. (i) Claimant cannot schedule something without her therapist talking

her through it. (j) She texts her therapist several times per day. (k) Left to her own devices, Claimant will bathe between once every two to three days to one week.

32. Claimant satisfies the majority of the criteria for substantial disabilities that are set forth in the Association of Regional Center Agencies Clinical Recommendations for Defining "Substantial Disability" for the California Regional Centers. (Exhibit 10.) For example:

Self-Care: She lacks the ability to perform the skills even though she knows how to do them. She never learned how to use a table knife to cut her food. She asked her mother to show her, but when her mother did so, Claimant still could not do it. She would rather not use a fork or spoon. She can use a fork to eat, but she holds it differently from others. Her mother has tried to correct Claimant's drinking technique (gulping) but has been unsuccessful even though Claimant is self-conscious about it. Her mother believes it is related to autism because Claimant is neither stubborn nor rude. She wants to fit in, but she still engages in her behaviors.

Expressive Language: Claimant has difficulty communicating information. She gets tongue-tied describing anything that requires more than a few words. She becomes confused when trying to communicate something to someone. She has trouble participating in conversations. It comes across as awkwardness. She appears to be thinking about something else. She answers inappropriately. She goes off topic more than the average person. She can learn, but she cannot apply it in a real-world situation. She needs guidance, direction, reminding, and encouragement.

Self-Direction and Personal Judgment: Claimant's compromised self-direction and personal judgment are displayed throughout the day and in all areas. She has deficits in peer relationships and is emotionally immature. She has difficulty coping with her fears and anxieties. Even though she has reached young adulthood, her mother must still serve as her executive functioning coach.

Capacity for Independent Living: Claimant has significant difficulty performing age-appropriate simple household tasks and managing multiple-step domestic activities such as grocery shopping, meal planning and preparation, laundry, care and selection of clothing, and home repair and maintenance. She has significant difficulty with money management, budgeting, and taking the basic steps necessary to obtain appropriate health care.

LEGAL CONCLUSIONS

1. Claimant has established that she suffers with substantial disabilities from a diagnosis of autism that began before age 18 and is expected to continue indefinitely, entitling her to regional center supports and services.

2. Claimant bore the burden of proof to establish she is eligible for regional center supports and services. The standard of proof is a preponderance of the evidence. A preponderance of the evidence requires the trier of fact to determine that the existence of a fact is more probable than its nonexistence. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

3. The Service Agency previously conceded that Claimant bears a diagnosis of ASD, but Service Agency personnel found that the disorder is not substantially disabling. During closing argument, for the first time in the hearing, the Service Agency argued that the disorder did not begin before the age of 18. However, in its Position Statement (Exhibit 1) its case note of June 26, 2024 (Exhibit A), its Diagnostic Eligibility Sheet (Exhibit B), its Multidisciplinary Psychological Assessment (Exhibit 11),

and its July 1, 2024 denial letter (Exhibit C), the Service Agency conceded the ASD diagnosis without any finding of age of onset, and it did not offer any evidence or argument at the fair hearing regarding the timeliness of onset. However, as is further described below, Claimant offered ample evidence of autism onset with substantial disabilities beginning in early childhood and expected to continue indefinitely. She sustained her burden of proof on those issues.

4. Given the above, to argue for the first time in closing argument that Claimant's ASD began after her 18th birthday lacks foundation. Accordingly, the Service Agency's argument regarding age of onset fails.

5. Welfare and Institutions Code section 4512 provides in relevant part:

> As used in this division:
>
> (a) (1) "Developmental disability" means 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. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this 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. [¶] . . . [¶]

> (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.
>
> (E) Self-direction.
>
> (F) Capacity for independent living.
>
> (G) Economic self-sufficiency.

6. California Code of Regulations, title 17, section 54000, states in pertinent part:

> (a) "Developmental Disability" means a disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation.
>
> (b) The Developmental Disability shall:
>
> (1) Originate before age eighteen;

> (2) Be likely to continue indefinitely;
>
> (3) Constitute a substantial disability for the individual as defined in the article.

7. California Code of Regulations, title 17, section 54001, subdivision (a), states:

> (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.

8. The evidence established that Claimant satisfies the diagnostic criteria for a finding of autism that began long before age 18 and is expected to last indefinitely. The evidence further established that she is substantially disabled in the areas of receptive and expressive language, self-care, self-direction, capacity for independent living, and economic self-sufficiency, at the least.

9. The credible testimony of Claimant's mother, Ms. Gonzalez, and Dr. Garza was compelling. Both individually and in concert, they established that Claimant has suffered with several substantial disabilities secondary to autism, that she has done so since childhood, and that she continues to do so today. They further established that mental health treatment methodologies led to only little improvement, which indicated that Claimant's mental health issues were co-morbid conditions secondary to her primary autism diagnosis. Further, although treatment methodologies have been changed to address Claimant's autism, and although there has been some encouraging improvement with those methodologies, there is a long way to go, and Claimant must understand her current identity although she has been resistant to do so. Their collective prognosis is that Claimant's autism and the substantial disabilities that accompany it are expected to last indefinitely.

10. The Service Agency, through Dr. Kelly, takes a differing view. The Service Agency contends that, although the Service Agency conceded that Claimant suffers from autism, she is not substantially disabled by it. Dr. Kelly's testimony, albeit credible, was not persuasive in light of the powerful and robust evidence to the contrary.

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ORDER

1. The Westside Regional Center's determination that Claimant is not eligible for regional center services is overruled. Claimant's appeal of that determination is granted.

2. The Westside Regional Center shall accept Claimant as a client forthwith.

DATE:

H. STUART WAXMAN
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.