

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

In the Matter of:

CLAIMANT

and

SAN GABRIEL POMONA REGIONAL CENTER, Service Agency

DDS No. CS0021533

OAH No. 2024100505

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on January 13, 2025, in Pomona, California.

Timothy Howell appeared on behalf of claimant, who was present and participated in the hearing.

Rosa Fernandez, Appeals and Resolutions Specialist, represented San Gabriel Pomona Regional Center (SGPRC).

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on January 13, 2025.

ISSUE

Is claimant eligible for regional center services pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act) under the category of Autism Spectrum Disorder (autism)?

FACTUAL FINDINGS

Background and Jurisdiction

1. The following factual findings are derived from documentary evidence admitted at hearing and testimony presented by claimant and Mr. Howell.¹

2. Claimant is a 45-year-old man who lives with his mother, stepfather, and three adult brothers (ages 42, 35, and 32). Claimant also has a sister who does not live in the family home.

3. Claimant's birth was normal, but thereafter, claimant did not meet his developmental milestones. He has always been delayed in all that he does. Claimant received special instruction in school through the Resource Specialist Program (RSP). In the RSP program, students received support from a resource specialist teacher in a general education classroom. Due to his age, no records or Individualized Education

¹ Although the documentary evidence was provided by SGPRC, no witnesses testified on behalf of SGPRC.

Program plans (IEPs) from claimant's elementary or secondary education with respect to special education exist.² Claimant attended an adult school to graduate high school.

4. Claimant currently works at a grocery store as a janitor. He has worked there for approximately nine years. Prior to that, claimant worked at CVS for 12 years as a cashier. Claimant was fired when his cash register was noted as being short. Claimant denies it was short and feels that it may have been used as an excuse to terminate him.

5. Claimant has been hospitalized a number of times over his lifetime. He has been hospitalized for anxiety attacks over 20 times and placed on an involuntary hold pursuant to Welfare and Institutions Code section 5150 twice. He tried to commit suicide in 2023. He has been diagnosed in the past with severe anxiety, severe depression, Attention Deficit/Hyperactive Disorder (ADHD) and Obsessive-Compulsive Disorder (OCD). This information was reported in a psychological assessment as part of a clinical interview with claimant and/or claimant's mother, but no medical records

² The Individuals With Disabilities Education Act (IDEA), which amended the Education for All Handicapped Children Act that existed from 1975 to 1990, is a federal law that ensures children with disabilities receive a free and appropriate public education. IEPs are used in furtherance of the mandates of the IDEA. It is unknown, however, because of claimant's age, if IEPs were used when he was in elementary and secondary school given that most of his education pre-dated the IDEA.

regarding these diagnoses were provided. There is also a history of intellectual developmental disorder (IDD)³ in claimant's family (his uncle).

CLAIMANT'S APPEAL

6. Claimant learned of the services and supports available from SGPRC from an acquaintance and went through the intake process. Claimant contacted SGPRC on May 29, 2024. SGPRC conducted a social assessment of claimant on July 9, 2024, and although referenced in the exhibits, a copy of the social assessment was not offered. SGPRC also conducted a psychological assessment in August 2024, to be discussed below, and requested claimant be assessed for autism.

7. On September 11, 2024, an intake team at SGPRC consisting⁴ of two people, Intake Service Coordinator Jun Lan and Deborah Langenbacher, Ph.D.,

³ The Lanterman Act was amended long ago to eliminate the term "mental retardation" and replace it with "intellectual disability," as reflected in the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5). The more current DSM-5, text revision (DSM-5-TR) no longer uses the term "intellectual disability" and instead refers to the condition as IDD. Many of the regional center forms have not been updated to reflect this change, and during testimony, all of the terms were used interchangeably. Accordingly, for purposes of this decision, as well as all admissible documentary evidence, "mental retardation," "intellectual disability," and "IDD" mean the same thing.

⁴ California Code of Regulations, title 17, section 540001, subdivision (b), requires that the group include "as a minimum a program coordinator, a physician, and a psychologist."

determined claimant was ineligible for regional center services. The Statement of Eligibility form, which consists primarily of boxes to be checked, had the boxes checked for "Ineligible for services based on the following" and "Ineligible diagnostic impression." Someone wrote on the form, "depression and anxiety" and recommended "MH services."⁵ It is unknown who signed/approved the Statement of Eligibility, because no name or title are contained next to the signature line. It is noted that the signature bears a resemblance to the signature in the line next to the words "service coordinator" at the top of the form. The service coordinator is not a doctor or supervisor, and it is unknown if any supervisor or program manager reviewed the eligibility determination prior to sending out the Notice of Action.

8. On September 12, 2024, SGPRC sent claimant a Notice of Action (NOA) indicating he was not eligible for regional center services and recommended he seek out mental health assistance. The NOA advised claimant of his appeal rights.

9. On October 14, 2024, claimant, with Mr. Howell's assistance, filed an appeal of SGPRC's eligibility determination. The appeal stated (errors in original):

I disagree with the decision because I strongly believe im
autistic. Autism impact my life bad. I graduate high school
late in alternative school due to autism. Nobody ever
mentioned to me in high school about autism. Kids called

⁵ Although it did not state what this meant and nobody testified concerning the form, "MH" is typically an abbreviation for "mental health" and was interpreted as such. The form also indicated claimant was ineligible because of "no developmental disability."

me names. I did not have a girlfriend. Still I dont. I only have a few people from church, Praise God, that I talk to sometimes. I work at Superior store cleaning trash from floor. My coworkers all say I an autistic. I have more to say but no one listens to me. How someone interview in one hour and tell me that I an not autistic or delay mental???? I have no attorbey like rich who have everything and no work in grocery store clearning floors. Life is not fair but I have jesus in heaven. I need help here on world. I know others in regional center and they are not as autistic as me! It seem very random who is there. I have much to say. My friend tim help me with upload the paper letter. Just to let you know, I did not know. This was hard too do. I will be 45 year old in Janury. I include the docter report. I don't think she understnad me.

10. This hearing followed.

Psychological Assessment

11. Urennaya Okoro, PsyD., a registered psychological associate, conducted a psychological assessment of claimant on August 9, 2024, August 19, 2024, and August 27, 2024. She was supervised by Jasmine Reed, PsyD., a clinical psychologist. The curriculum vitae of Dr. Okoro and Dr. Reed were not included as evidence and neither doctor testified at the hearing. It is therefore unknown what experience they have in conducting psychological assessments to ascertain someone's eligibility for regional center services, or in assessing and diagnosing someone with autism. The following observations and assessment data is taken from Dr. Okoro's report.

12. The assessment was completed in three parts. The first session was conducted via "telehealth," the second session "in person," and the third telephonically. It is unknown if by "telehealth" she meant telephone or video, as "telehealth" can be conducted either way. Dr. Okoro also did not specify in the report which portions of the assessment were conducted by video, telephone, or in person.

13. The report also indicated that claimant was referred for an assessment due to autism. Although there was some cognitive and adaptive testing completed, it is unknown whether claimant's eligibility was considered by Dr. Okoro under categories other than autism (i.e., Intellectual Developmental Disorder (IDD) or a condition similar to or that requires treatment similar to IDD [fifth category].) The assessment also did not indicate whether claimant's adaptive abilities met the criteria for "substantial disability," which is required to find someone eligible for regional center services. At the end of the assessment, it simply stated, "Final determination for Regional Center services eligibility will be evaluated by and deferred to the SGPRC eligibility team." Thus, although an assessment for autism was conducted, neither Dr. Okoro nor the Statement of Eligibility letter completed by the eligibility team following the psychological assessment indicated whether anyone considered the "substantial disability" prong of the eligibility determination.

OBSERVATIONS AND INTERVIEWS

14. Dr. Okoro wrote that background information for her assessment was obtained from claimant and his mother. Regarding claimant's communication skills, Dr. Okoro wrote claimant is able to speak in full sentences, can be understood, and is able to understand what others say to him. His challenges lie in expressing himself as often he "loses [his] words," communicating his feelings to others, and he becomes frustrated when trying to get ideas across in conversation. Claimant has difficulty when

given directions at work and stated that his "brain doesn't commute what I've been told." Claimant requires directions to be repeated to him multiple times at work and has difficulty keeping up with conversations.

15. Claimant gets mad easily and does not know how to express himself when someone says or does something he does not like. Claimant told Dr. Okoro he keeps it "bottled up inside" until he "explode[s]." Claimant has difficulty calming down and has challenges with inattention and hyperactivity. Claimant loses focus in conversations and often gazes off into space. Claimant frequently wanders aimlessly from one activity to another and experiences anxiety with anything new.

16. Claimant has always had social difficulties, and he has extreme difficulty looking people in the eyes. Claimant did become more comfortable with people he knew at his job. Claimant has a group of friends who have autism and who he met in a group run by Mr. Howell for neurodiverse individuals. Claimant is socially awkward and will not initiate communications. Claimant sometimes offends others when he interacts with them even though he does not intend to do so and is awkward in most social situations.

17. Regarding restricted/repetitive patterns of behavior and sensory issues, it was reported that claimant fidgets, touches his glasses, and rocks. Claimant moves his legs from side to side in a repetitive motion. Claimant uses repetitive speech and talks to himself. Claimant has difficulty with change and prefers a strict routine. Claimant becomes upset when customers at work ask him about something not in his job description (such as prices or where items are) because he is the janitor. Claimant dislikes sticky or slimy textures and is sensitive to loud sounds. He is selective in what he eats. Claimant has difficulty working efficiently when there are loud noises and distractions.

ASSESSMENTS ADMINISTERED

18. Dr. Okoro reviewed the July 9, 2024, social assessment conducted by SGPRC and utilized the following testing methods in her assessment: Wechsler Abbreviated Scale of Intelligence, Second Edition (WASI); Social Responsiveness Scale, Second Edition Adult (Self-Report) (SRS); Autism Diagnostic Observation Schedule, Second Edition (ADOS-2); Adaptive Behavior Assessment System, Third Edition (ABAS-3); and the Autism Diagnostic Interview-Revised (ADI-R).

19. While claimant was walking to the testing room, Dr. Okoro observed claimant was looking at the walls and hallway and was visibly nervous. Claimant asked why certain lights were off. Claimant engaged in some conversation while walking, but made inconsistent eye contact, had trouble finding words, and did not return social smiles. During the block design test, claimant talked to himself. Claimant took time to make sure each block was aligned and would sometimes say, "uh oh, I think I'm stuck" or "maybe not as bad as I thought" and "It ain't over yet . . . it might be." Claimant attempted to joke a few times but did so in an inappropriate way. Claimant snapped his fingers close to his face when he was trying to concentrate. Claimant also fidgeted with his glasses during the exam.

20. The WASI was used to measure claimant's level of cognitive functioning. Dr. Okoro noted that it is important to remember that no standardized test can cover all aspects of an individual's intelligence, and many other factors, such as motivation, curiosity, creativity, persistence, impulsivity, and work habits also need to be taken into consideration in the assessment process. Claimant's full scale IQ score of 76 was in the borderline range. On the individual subtests, the results were: verbal comprehension (a measure of acquired knowledge, verbal reasoning, and attention to verbal information), borderline; perceptual reasoning (a measure of fluid reasoning, spatial

processing, attentiveness to detail, and visual-motor integration), low average; block design, low average; vocabulary, borderline; matrix reasoning, low average; and similarities, low average.

21. The ABAS-3 is a comprehensive, norm-referenced assessment of adaptive behavior and skills. Items on this assessment focus on practical, everyday activities required to function, meet environmental demands, care for oneself, and interact with others effectively and independently. Claimant served as the informant for the ABAS-3. Claimant's scores were scattered across the ABAS-3, and ranged from extremely low in communication, to average in some areas. It is unusual to have the subject of the assessment serve as their own historian, and it is unknown why this occurred. The ABAS-3 could have been completed by claimant's mother, or Mr. Howell, who sees claimant on a daily basis. As Mr. Howell noted in his testimony, claimant is a pleasant person and as such, having claimant fill out the ABAS-3 might have yielded higher adaptive functioning than what is actually true because claimant would like to have others perceive him in a positive light. Nonetheless, claimant's communication abilities, including speech, vocabulary, listening, conversation, and nonverbal communication skills were noted to be in the extremely low range. Claimant's abilities to perform self-care were in the below average range, and claimant's functioning inside the home (such as cleaning, food preparation, and chores) were noted to be in the below average range.

22. The SRS is a 65-item rating scale measuring deficits in social behavior associated with autism, as outlined by the *Diagnostic and Statistical Manual for Mental*

Disorders, Fifth Edition.⁶ The SRS-2 identifies social impairment associated with autism and quantifies its severity. Claimant's overall score fell in the moderate range, which indicated deficiencies in reciprocal social behavior that are clinically significant and lead to "substantial interference with everyday social interactions." Dr. Okoro noted that the score claimant achieved is "typical for individuals with [autism] of moderate severity."

23. The ADI-R is a structured interview conducted with the parent or caretaker of a child or adult and is used for diagnosing autism, planning treatment, and distinguishing autism from other developmental disorders. The ADI-R was completed by claimant's mother. Dr. Okoro noted that the ADI-R "has proven very effective in differentiating autism from other developmental disorders and in assessing syndrome boundaries, identifying new subgroups, and quantifying autistic symptomatology." Some of the behaviors claimant's mother reported were: history of failure to use nonverbal behaviors to regulate social interaction; limited in his range of facial expressions used to communicate; struggles to maintain eye contact; often does not look at others while speaking to them; history of failure to develop peer relationships; did not engage in imaginative play with peers; was limited in his interest in other children; difficulty making friends; lack of socioemotional reciprocity; limited in his ability to offer comfort; inappropriate social overtures; inappropriate facial expressions; lack of varied spontaneous make believe or social imitative play; did not

⁶ Dr. Okoro referred to the DSM-5 in her report in several sections, however, the DSM-5 has been updated in a "text revised" version and is now referred to as the DSM-5-TR. It is unknown if Dr. Okoro used the current version, the DSM-5-TR and simply referred to it as the DSM-5, or if she used the earlier version of the manual.

engage in imaginative play, or engage in imitative social play; relative failure to initiate or sustain conversational interchange; limited in his ability to engage in social chat or reciprocal conversation; and makes statements or asks questions that others deem inappropriate. Claimant's mother did not report that claimant engaged in stereotyped/repetitive mannerisms or use of objects as a child but explained that claimant did not like clothing tags or Christmas tree lights when he was little. Overall, claimant met the diagnostic cutoff criteria for Qualitative Abnormalities in Reciprocal Social Interaction and Qualitative Abnormalities in Communication.

24. The ADOS-2 is a semi-structured, standardized assessment of communication, social interaction, play, and restricted and repetitive behaviors. It presents various activities that elicit behaviors directly related to a diagnosis of autism. It is the gold standard in autism diagnosis. The ADOS-2 explores a variety of domains to yield a score that classifies a person as within the category of autism, autism spectrum, or non-spectrum. Claimant's scores placed him in the autism spectrum category, with a high level of autism spectrum-related symptoms.

DR. OKORO'S DIAGNOSTIC IMPRESSIONS

25. At the end of her assessment, Dr. Okoro diagnosed claimant with Other Specified Neurodevelopmental Disorder, and by history, diagnosed claimant with anxiety disorder, unspecified, and depressive disorder, unspecified.

26. Regarding autism, Dr. Okoro created a table that set out the various criteria for autism as required by the DSM-5⁷ and explained whether claimant did or

⁷ The diagnostic criteria for autism did not change between the DSM-5 and DSM-5-TR, but regardless, Dr. Okoro did not note what version she used.

did not meet each one. The diagnostic criteria are: 1) persistent deficits in social communication and social interaction across multiple contexts; 2) restricted repetitive and stereotyped patterns of behavior, interests, or activities as manifested in at least two subcategories; 3) symptoms that are present in the early developmental period; symptoms that cause clinically significant impairment in social, occupational, or other important areas of function; and 4) disturbances that are not better explained by IDD or global developmental delay. An individual must have a DSM-5 TR diagnosis of autism spectrum disorder to qualify for regional center services based on autism.

Persistent Deficits

27. The category of “persistent deficits in social communication and social interaction across multiple contexts” has three subcategories. The first is described as: 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. The second subcategory is described as: 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 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. The third subcategory is described as: 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. According to Dr. Okoro, claimant met the three subcategories by history and observation.

Restricted/Repetitive Interests

28. The category of restricted repetitive and stereotyped patterns of behavior, interests, or activities, includes four subcategories. A person must meet at least two of them. Claimant met one by history and observation according to Dr. Okoro. The other three categories Dr. Okoro claimed were not met, of which claimant only needed one to meet diagnostic criteria, were A) stereotyped or repetitive motor movements, use of objects, or speech (e.g., simple motor stereotypies, lining up toys or flipping objects, echolalia, idiosyncratic phrases); B) 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); and C) hyper- or hypo-reactivity 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 of objects, visual fascination with lights or movement).

Remaining Two Categories

29. According to Dr. Okoro's report, claimant's symptoms were present during the early developmental period and cause clinically significant impairment in social, occupational, or other important areas of function; and his disturbances are not better explained by IDD or global developmental delay.

Overall Conclusion and Recommendations

30. Dr. Okoro concluded that because claimant did not meet at least one of the three unmet subcategories identified above under restrictive/repetitive interests, claimant did not meet the full DSM-5 diagnostic criteria for autism. She wrote:

[Claimant] faces significant challenges with anxiety, depression, and communication difficulties, which can impair his daily functioning. While he exhibits some traits of autism, such as social and communication difficulties, he does not meet the full criteria for Autism Spectrum Disorder. Despite this, his struggles with social interactions, emotional regulation, and communication are real and impact his ability to navigate social and vocational environments effectively. These challenges can lead to increased stress, difficulty maintaining relationships, and employment. Recognizing and addressing his needs is essential, even though he does not have a formal autism diagnosis, as his impairments still **significantly** affect his quality of life (family life, hopes/desires, ability to live independently).

[Claimant] exhibits social communication deficits such as poor eye contact, social anxiety, and a lack of gestures. His tone and speech fluency are also odd due to processing of receptive language, limited variation in tone, and [claimant's] challenges in expressing himself: though peculiar, his speech is not readily identified as odd.

[Claimant] exhibits deficits in peer relationships and has had difficulty making friends his entire life. He has difficulty relating with family, peers, and avoids initiating interactions with new people. Though he does not exhibit any stereotyped or repetitive use of objects; highly restricted, fixated interests that are abnormal in intensity or focus; or ritualized patterns of verbal or nonverbal behavior, [claimant] engages in repetitive speech and body movements such as rocking. [Claimant] exhibits some rigidity in adherence to routine, insistence on sameness (Dickies black pants), inflexible adherence to routines, and is sensitive to [l]oud sounds (has a history of sensitivity to clothing tags).

Overall, [claimant's] symptoms restrict his ability to function socially and adaptively in an age-appropriate manner across various settings. He exhibits significant difficulties interacting with others socially, which impacts his ability to form and maintain relationships, thereby impairing his daily functioning.

(Emphasis added.)

Testimony Provided at Hearing

TIMOTHY HOWELL'S TESTIMONY

31. Timothy Howell is a friend of claimant. Mr. Howell has a background in special education and has started a group for adults with developmental challenges,

including autism. He is familiar with regional centers and works with regional center consumers. His group is a social group that takes the individuals out in the community for social experience.

32. Mr. Howell has known claimant for about a year and a half. When claimant told him he "didn't pass" his psychological assessment, Mr. Howell helped him obtain the information and file an appeal. Mr. Howell does not believe there was "any maliciousness" in finding claimant not eligible, however, he pointed out that Dr. Okoro only met with claimant for an hour, and everything else was on Zoom or the telephone. He does not see how an outcome can be determined based on such limited information in a case as important as this one.

33. Mr. Howell went through the psychological assessment and identified things with which he disagreed. He noted that on one hand it says claimant can speak in full sentences, but later in the report it says he has difficulty when given directions at work. The report also says claimant is not "self injurious," but claimant in fact has been hospitalized under Welfare and Institutions Code section 5150 for a suicide attempt, and other times for various things.

34. Mr. Howell described claimant as happy and "go lucky," so he is not surprised claimant might not have been identified in school as autistic because he is "a pleaser." Claimant did not cause any major behavioral problems and in general is a pleasant person. Mr. Howell, based on his experience in the field of education, believes claimant "fell through the cracks" because in the 80s schools were not really aware of autism.

35. Claimant was developmentally delayed as a child, did not speak until 36 months, and was even put in the "Head Start" program at one point. Mr. Howell thinks

there should have been a referral during claimant's elementary school years to regional center and does not know why there was not.

36. Mr. Howell pointed out that the psychological assessment states claimant was diagnosed with ADHD and OCD, but there are no reports that support this – no documentation available – so he is concerned about what actually occurred. Mr. Howell believes that whatever might have been going on with claimant was likely due to autism but “they went to a medical model” and just started giving claimant pills to address the behaviors. Autism is not OCD or ADHD, and he can see how an “overworked” doctor might see claimant's challenges as such. Claimant has not been taking those medications for over a year, and he has been fine.

37. When claimant is at work, he requires a job coach to help him. Claimant has a lot of trouble staying organized. He requires simple commands because anything with multiple steps is difficult. Claimant did not graduate on time and had to go to adult school to complete his education.

38. Regarding the ABAS-3, Mr. Howell felt that it was crucial to recognize that claimant was the sole informant for that measure. He knows claimant, in filling out a survey about himself, would do the “best” he could, again, describing claimant as a “pleaser.” Mr. Howell feels claimant should not have been filling out the assessment on his own because the results would not be an accurate portrayal of his challenges; rather, claimant needs a team of people observing him.

39. Claimant worked at CVS for 12 and one-half years as a cashier, but he was fired because his drawer was short. Claimant felt they were trying to get rid of him. Claimant's self-care is “not so good,” and Mr. Howell does not believe claimant

ever had friends. Mr. Howell noted that claimant had one friend in all 12 years of his elementary and secondary education.

40. Claimant has no ability for personal growth or education. Claimant simply spends time on his phone. Mr. Howell believes when claimant completed the ABAS claimant was "trying to score high." Claimant lacks the executive skills necessary to plan and do things in life; claimant tells him all the time that at work, he "gets lost."

41. Claimant is a good janitor. If you look in claimant's closet, he has to have all of his mops, brooms, and everything structured and organized a certain way. He completes his job in a rigid sequence. Claimant also has obsessive/repetitive behaviors. Claimant will text him 10 times a day about various things. Claimant is obsessed with earthquakes. Claimant will sometimes find out there is an earthquake somewhere and continuously text Mr. Howell about it. Claimant has an unusual nervousness about wind speed. Mr. Howell described claimant's interests in earthquakes and wind speed as perseverative. Claimant uses strange words sometimes in social contexts that people misunderstand. The important thing to realize is that while claimant may be trying to communicate normally, claimant's communication is impaired, and other people don't get that.

42. Claimant has many unusual motor movements. He rocks all the time. Claimant walks on his toes. Claimant does a lot of eye-blinking. Claimant rubs his eyes for self-stimulation. Claimant fidgets with his glasses constantly. Claimant also snaps his fingers for stimulation and to engage himself. When approaching an elevator, claimant will snap his fingers at it. Claimant lines up all his janitorial equipment. Claimant is obsessed with WWE – he does not miss a single show. He is "deathly" afraid of driverless cars. It might not be toys or other things, but it is still a fixation.

43. Mr. Howell believes claimant meets the categories in the psychological assessment for autism that Dr. Okoro said claimant did not meet. Specifically, the categories about stereotyped or repetitive motor movements, and highly restricted, fixated interests that are abnormal in intensity or focus. Claimant should qualify for regional center services.

CLAIMANT'S TESTIMONY

44. Claimant is 45 years old. Claimant has tried to hurt himself in the past. His "last 5150" was about 16 days. He was prescribed Celexa after the 5150 in 2023 but stopped taking it. Claimant has also been hospitalized for anxiety attacks in the past.

45. Claimant obtained his high school diploma from adult school. He found school in general to be very hard. When he was in elementary school, he was in the Resource Specialist Program. He does not know if he ever had anything called an IEP.

46. Claimant worked for CVS for 12½ years as a cashier and janitor. Claimant does not like to take care of himself because he is afraid of many things. Claimant has not been to the dentist since 2012 because the last time he went they used something to "numb" his mouth, and he had a panic attack. Claimant now works at a grocery store as a janitor. Claimant is a full-time employee but is getting less than 40 hours of work per week. Claimant likes to have everything in his closet organized. He gets to work by using public transportation. He would like to have a driver's license but finds it too scary. He also believes public transportation is scary.

47. Claimant loves WWE (wrestling) and watches it on his phone. Claimant likes to read his bible and meet up with Mr. Howell's group. Claimant likes to watch church online. When asked about earthquakes, claimant's demeanor instantly changed, and his face lit up. Claimant feels he has a "delayed memory." Claimant did

the “best he could” on the tests that were given to him by Dr. Okoro. Claimant has seen several videos regarding autism and believes he qualifies for services.

LEGAL CONCLUSIONS

Applicable Law

1. The Legislature enacted the Lanterman Act (Welf. & Inst. Code, § 4500 et seq.) to provide an array of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. The purpose of the Lanterman Act is twofold: To prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.)

2. Welfare and Institutions Code section 4501 outlines the state’s responsibility for persons with developmental disabilities and the state’s duty to establish services for those individuals.

3. The Department of Developmental Services (department) is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.)

4. 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." A developmental disability includes "disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability." (*Ibid.*)

Handicapping conditions that are "solely physical in nature" do not qualify as developmental disabilities under the Lanterman Act. (*Ibid.*)

5. Any person believed to have a developmental disability, and any person believed to have a high risk of parenting a developmentally disabled infant, and any infant at a high risk of becoming developmentally disabled shall be eligible for initial intake and assessment services in the regional centers. (Welf. & Inst. Code, § 4642, subd. (a)(1).) Initial intake includes, but is not limited to, providing information and advice about the nature and availability of services provided by the regional center and by other agencies in the community, and "shall also include a decision to provide assessment." (*Id.* at subd. (a)(2).)

6. California Code of Regulations, title 17, section 54000, provides:

(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.

(c) Developmental Disability shall not include handicapping conditions that are:

(1) Solely psychiatric disorders where there is impaired intellectual or social functioning which originated as a result of the psychiatric disorder or treatment given for such a disorder. Such psychiatric disorders include psycho-social deprivation and/or psychosis, severe neurosis or personality disorders even where social and intellectual functioning have become seriously impaired as an integral manifestation of the disorder.

(2) Solely learning disabilities. A learning disability is a condition which manifests as a significant discrepancy between estimated cognitive potential and actual level of educational performance and which is not a result of generalized mental retardation, educational or psycho-social deprivation, psychiatric disorder, or sensory loss.

(3) Solely physical in nature. These conditions include congenital anomalies or conditions acquired through disease, accident, or faulty development which are not associated with a neurological impairment that results in a need for treatment similar to that required for mental retardation.

7. California Code of Regulations, title 17, section 54001, provides:

(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.

(b) The assessment of substantial disability shall be made by a group of Regional Center professionals of differing disciplines and shall include consideration of similar

qualification appraisals performed by other interdisciplinary bodies of the Department serving the potential client. The group shall include as a minimum a program coordinator, a physician, and a psychologist.

(c) The Regional Center professional group shall consult the potential client, parents, guardians/conservators, educators, advocates, and other client representatives to the extent that they are willing and available to participate in its deliberations and to the extent that the appropriate consent is obtained.

(d) Any reassessment of substantial disability for purposes of continuing eligibility shall utilize the same criteria under which the individual was originally made eligible.

8. In a proceeding to determine whether an individual is eligible for regional center services, the burden of proof is on the claimant to establish by a preponderance of the evidence that he or she meets the proper criteria. (Evid. Code, §§ 115; 500.)

Evaluation

9. A preponderance of the evidence established that claimant is eligible for regional center services under a diagnosis of autism.

10. According to Dr. Okoro's psychological assessment, claimant meets all the diagnostic criteria for autism except for the category for restricted/repetitive interests. In that category, a person must meet at least two of the subcategories to be

found to have met the criteria for restricted/repetitive interests. The other three subcategories Dr. Okoro claimed were not met were A) stereotyped or repetitive motor movements, use of objects, or speech (e.g., simple motor stereotypies, lining up toys or flipping objects, echolalia, idiosyncratic phrases); B) 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); and C) hyper- or hypo-reactivity 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 of objects, visual fascination with lights or movement).

11. The evidence and testimony do not support the conclusion that claimant met subcategory C (hyper- or hypo-reactivity to sensory input or unusual interests in sensory aspects of the environment). However, the evidence and testimony does support a finding that claimant meets subcategories A (stereotyped or repetitive motor movements, use of objects, or speech) and B (highly restricted, fixated interests that are abnormal in intensity or focus). Dr. Okoro did not have the benefit of speaking to Mr. Howell. Mr. Howell's testimony demonstrated that claimant does use stereotyped or repetitive motor movements, use of objects, or speech. Specifically, claimant rocks all the time. Claimant walks on his toes. Claimant does a lot of eye-blinking. Claimant rubs his eyes for self-stimulation. Claimant fidgets with his glasses constantly. Claimant also snaps his fingers for stimulation and to engage himself. When approaching an elevator, claimant will snap his fingers at it. Even Dr. Okoro's report contained information she likely obtained by observation and/or history, which included: claimant fidgets, touches his glasses, and rocks; claimant moves his legs from side to side in a repetitive motion; and claimant uses repetitive speech and talks to himself. On the ADI-R, Dr. Okoro also personally observed claimant snapping his

fingers close to his face when he was trying to concentrate and fidgeting with his glasses during the exam. Dr. Okoro's report, coupled with Mr. Howell's testimony, supports a conclusion that claimant more than meets the subcategory for stereotyped or repetitive motor movements, use of objects, or speech.

12. Claimant also, to a lesser degree than subcategory A, meets subcategory B (highly restricted, fixated interests that are abnormal in intensity or focus). Mr. Howell's testimony established that claimant has a fixated interest with things like earthquakes, wind speeds, and watching WWE. The interests are unusual in both intensity and focus. More information might have been obtained had claimant not been his own historian for the ABAS-3; had Mr. Howell completed the test instrument, claimant's highly restricted, fixated interests that are abnormal in intensity or focus might have been more prominent.

13. Claimant only needed to meet the criteria for one additional subcategory under restricted/repetitive interests to meet the full diagnostic criteria for autism; claimant meets the criteria for subcategories A and B. Therefore, claimant does meet the full DSM-5-TR diagnostic criteria for autism.

14. In order to qualify for regional center services, claimant must also have significant functional limitations in three or more areas of a major life activity. Claimant met his burden to establish that he has significant functional limitations in the areas of receptive and expressive language, learning, capacity for independent living, and economic self-sufficiency. Dr. Okoro stated multiple times in her report that claimant has significant expressive and receptive communication challenges, and although his intellectual functioning was assessed as borderline, Mr. Howell's testimony and the narrative portions of Dr. Okoro's report established claimant struggles with learning. It is not impossible for him to learn, but he is significantly limited in his ability to

progress, learn new skills, and function outside of his rigid routine and structured job. Dr. Okoro's own conclusion supports a finding that claimant is significantly limited in the above-referenced areas. Dr. Okoro determined claimant faces "significant" challenges with communication that impairs his "daily functioning." She concluded claimant's communication challenges make it difficult for claimant to "navigate social and vocational environments effectively." These challenges, she observed, also lead to difficulty in "maintaining relationships" and "employment," as such, claimant's challenges, which are now deemed attributable to his autism, "significantly affect his quality of life," which include his "ability to live independently" Dr. Okoro concluded claimant's symptoms "restrict his ability to function socially and adaptively in an age-appropriate manner across various settings . . . which impacts his ability to form and maintain relationships, thereby impairing his daily functioning."

15. Dr. Okoro's clinical interview of claimant and his mother, her observations, and the testimony of claimant and Mr. Howell, demonstrate that claimant meets the California Code of Regulations, title 17, section 54001, definition for substantial disability in the areas of receptive and expressive language, learning, capacity for independent living, and economic self-sufficiency.⁸

⁸ Notably, given claimant's adaptive challenges, even if he did not have autism, it is likely he would be eligible for regional center services under the fifth category because the evidence suggests claimant has a condition similar to IDD and one which requires treatment similar to IDD. However, claimant did not appeal under that category and regional center did not consider whether he was eligible under that category. As such, whether he qualifies under the fifth category is not at issue in this hearing.

16. Accordingly, claimant is eligible for regional center services under a diagnosis of autism.

ORDER

Claimant's appeal is granted. Claimant is eligible for regional center services due to a substantial disability that results from autism.

DATE: January 27, 2025

KIMBERLY J. BELVEDERE

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision. Each party is bound by this decision. Either party may request a reconsideration pursuant to Welfare and Institutions Code section 4713, subdivision (b), 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.