BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

and

WESTSIDE REGIONAL CENTER,

Service Agency.

DDS No. CS0025854

OAH No. 2025040938

DECISION

Julie Cabos Owen, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on June 16, 2025. Sonia Tostado, Appeals & Resolution Specialist, represented Westside Regional Center (WRC or Service Agency). Claimant represented herself. (Claimant's name is omitted to protect her privacy.)

Testimony and documents were received in evidence. The ALJ continued the fair hearing for Claimant to submit additional documentary evidence (by June 18, 2025) and the Service Agency to submit any written response (by June 20, 2025). Claimant

submitted several documents: Argument Notes 1, and Argument Notes 2, which were marked as Exhibits B and C, respectively, and lodged; Sister's letter, Workers' Compensation Attorney's letter, and Photographs 1, 2, 3 and 4, which were marked as Exhibits D through I, respectively, and admitted into evidence. Service Agency submitted no written response.

The record closed and the matter was submitted for decision on June 20, 2025.

ISSUE

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

EVIDENCE

The documentary evidence considered in this case was: Service Agency exhibits 1 – 12; and Claimant exhibits A through I. The testimonial evidence considered in this case was that of licensed psychologist, Thompson Kelly, Ph.D.; and Claimant.

FACTUAL FINDINGS

Claimant Background

1. Claimant is a 46-year-old female. She seeks eligibility for regional center services based on a diagnosis of Autism Spectrum Disorder (ASD).

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2. Claimant recalls being speech-delayed as a child and diagnosed with autism when she was six or seven years old. No childhood records were obtained to substantiate this recollection.

3. Claimant recalls that, while in school, she received special education services as a student with autism. She was placed in a small classroom setting and had an instructional aide. No school records were obtained to substantiate these recollections.

4. Claimant graduated from high school in 1997. She completed two semesters of general education courses at college with accommodations and instructional assistance.

5. Claimant's early work history is unclear, with no documented employment until August 2017, when she began working with Mom's Homecare as a home health aide. In 2019, Claimant sustained an injury at work, after which she sought Workers' Compensation benefits.

2022 QME REPORT

6. As part of her Workers' Compensation case, Claimant underwent a neuropsychological evaluation by Ellen Shirman, Psy.D., QME, with Cortex Behavioral Health. On July 11, 2022, Dr. Shirman issued a report from that evaluation in which she documented Claimant's prior ASD diagnosis and found Claimant's cognitive functioning in the low average to average range, as detailed below.

7. Dr. Shirman noted that Claimant presented with emotional, cognitive, and physical symptoms Claimant attributed to the work injuries she incurred. Dr. Shirman's report sought to address "the history of injury and its effect on [Claimant's]

post-injury functional capacity, diagnostic and prognostic considerations in light of [Claimant's] medical and mental health, and psychosocial history." (Exhibit 8, p. A41.)

8. Dr. Shirman noted Claimant's developmental and mental health history as follows:

> [A]s a child, [Claimant] was diagnosed with autism. She had problems with attention. A survivor of childhood violence and sexual assault as an adult she was diagnosed with complex [Post Traumatic Stress Disorder (PTSD)] and a major depressive disorder. She received treatment for these conditions in the form of medications and counseling, which proved helpful. In the last several years, she was taking Adderall, Wellbutrin, and Buspar.

(Exhibit 8, pp. A44-A45.)

9. Claimant has one half-brother and two half-sisters. Claimant reported that her oldest sister has autism.

10. Dr. Shirman also noted, "At school, [Claimant] was attending a special education program for neurodiverse children. She had to repeat a grade and graduated a year later. She was a B student." (Exhibit 8, p. A45.)

11. Dr. Shirman's report included a lengthy history of Claimant's injury as follows:

> [Claimant] worked for Mom's Homecare as a home health aide from August 2017. [S]he was on a team of three people assigned to provide 24-hour companion homecare. She

worked alternating weekly 72- and 96-hour shifts. Her tasks included monitoring the client and reporting to the client's family, preparing light lunches, some cleaning, and running errands. The client has psychiatric issues and has been under the care of a psychiatrist. At the client's home, [Claimant] was not allowed to wear shoes or talk on the phone so as not to trigger the client. She had to limit her communication with others to texting.

On March 19, 2019, [Claimant] was at the client's home descending a staircase when she slipped, tumbled down the stairs, and landed on the back of her head on a carpeted floor. She managed to get up to her feet and continued with the rest of her shift. . . .

[Claimant] developed pain in her right wrist. She went to the emergency room . . . where an x-ray of the affected wrist showed some damage. The attending doctor provided her with a wristband and sent her back to work. Three to four weeks later, she began experiencing progressively worsening pain in her head, neck, and right ankle, sensitivity to light, nightmares, problems with sleeping, balance issues, bladder incontinence, and changes in her cognition and mood.

The client became fixated on [Claimant's] injury and her behavior toward [Claimant] became increasingly more aggressive. . . . On May 19, 2019, the client was visibly

> irritated and acted aggressively. . . . [Claimant] felt frightened and tried to put space between her and the client. She backed away from the client into the closet where she lost her balance and fell on her right wrist. . . .
>
> This fall aggravated [Claimant's] physical, cognitive, and emotional symptoms. She experienced a relapse of her pre-existing [PTSD] that was in remission for many years. . . . On September 26, 2019, [Claimant] reached a point where physically and emotionally she was no longer able to continue working.
>
> [Claimant] is in the care . . . an orthopedic surgeon, who has taken on the role of her primary treating physician. . . . For her headaches, she sees a neurologist, who prescribes her Fioricet and Uberly which help. For her mental problems, she receives psychopharmacotherapy at Friedman Psychiatric Group.

(Exhibit 8, pp. A43-A44.)

12. Claimant's complaints to Dr. Shirman included the following:

> [Claimant] has trouble with concentration, memory, comprehension, and brain fog. Her thinking has slowed down. She became prone to making errors. She feels anxious, irritable, fatigued, and terrified. She is worried about her ability to take care of and provide for herself. She is concerned about her financial situation which had taken a

> hit because of her being off work for the last several months. She is socially withdrawn, a recluse, and hypervigilant. She has a feeling of impending doom, panic attacks, and agoraphobia. As per [Claimant], the fall exacerbated her pre-existing symptoms that were manageable before the fall. She suffers from headaches and pain in her neck, back, right wrist, and right hip. She has urinary incontinence.

(Exhibit 8, p. A44.)

13. Among other tests, Dr. Shirman administered Claimant the Wechsler Adult Intelligence Scale-Fourth Edition (WAIS-IV), a standardized measure of general intellectual functioning. Claimant obtained a Full-Scale IQ score of 89, which falls in the Low Average range. Claimant received a Processing Speed Index score of 84 and a Working Memory Index score of 92, which fall in the Low Average and Average range, respectively. Claimant received a Verbal Comprehension Index score of 108, but received a Perceptual Reasoning Index score of 77, indicating that her nonverbal reasoning abilities are in the Borderline Range. (Exhibit 8, p. A49.) Dr. Shirman noted, "There was a remarkable difference between the indexes indicating that [Claimant's] verbal reasoning abilities are much better developed than her nonverbal reasoning abilities." (Exhibit 8, p. A47.)

14. Dr. Shirman did not conduct any testing for ASD. She did not engage in any analysis or make any conclusion regarding an ASD diagnosis.

15. Dr. Shirman diagnosed Claimant with Major Depressive Disorder, Recurrent, Mild; PTSD, by history (relapse); and Panic Disorder (provisional).

2023 PSYCHIATRIST LETTER

16. Claimant has been under the care of psychiatrist, Racquel E. Reid, M.D., since September 2021.

17. In a March 9, 2023 letter, Dr. Reid noted Claimant's current treatment and her prior ASD diagnosis as follows:

> I have followed [Claimant] at least monthly for medication management and psychotherapy. She has a provisional, historical . . . diagnosis of [ASD] from childhood, as well as [Attention Deficit Hyperactivity Disorder (ADHD)], and PTSD . . . , for which she remains under my care. She has been consistent in following her care plan as prescribed and attends her appointments as scheduled. However, she continually endorses high anxiety due to her trauma-related symptoms, including significant hypervigilance and intrusive thoughts. As a result of my medical evaluations, I believe it necessary that she receive continual medical and psychiatric care, and as well as socioeconomic accommodations to support her mental health and stability.

(Exhibit 9.)

Request for Eligibility

18. In 2023, Claimant sought regional center eligibility. (The ALJ takes official notice of Claimant's prior case file with OAH.) In that case, Claimant appealed the

Service Agency's denial of eligibility. That appeal did not go to hearing. On February 26, 2024, WRC filed a Notification of Resolution that it signed on Claimant's behalf.

19. In 2024, Claimant was again referred to the Service Agency for determination of regional center eligibility.

PSYCHOSOCIAL ASSESSMENT

20. WRC Intake Counselor, Jennifer Morales, conducted a psychosocial assessment of Claimant.

21. In her Psychosocial Assessment report, Morales noted, "[Claimant] was referred to [WRC] by her case manager because she is suspected of having [ASD]. The case manager is concerned that [Claimant] is not social with her peers, she often gets herself into trouble, and she is unable to live on her own." (Exhibit 5, p. A25.)

22. Morales noted Claimant's need for special education services in school. She also noted Claimant's reports of deficiencies in social interaction since childhood as follows:

> [Claimant] reported significant challenges in the realm of social relationships and interactions. She stated that she is unable to form and maintain friendships independently, a struggle that has persisted throughout her life. [Claimant] disclosed that she currently has no friends, highlighting a profound difficulty in establishing and sustaining social connections. Regarding social planning and initiation, [Claimant] indicated that she is unable to organize, plan, or contact people to initiate social outings, such as trips to the

> mall or movie theater. She stated that she experiences a significant barrier to participating in typical social activities and experiences. [Claimant] provided an insight into her social interactions through an example involving her sister. She mentioned that when conversing with her sister, the latter focuses on discussing crystals, a topic of interest to [Claimant]. This detail reveals that [Claimant's] sister has identified a specific way to connect with her, likely adapting to [Claimant's] tendency to engage primarily with her preferred interests.
>
> [Claimants] reported that these social challenges have a substantial impact on her quality of life, leading to social isolation and limiting her opportunities for typical peer relationships and social experiences.

(Exhibit 5, p. A26.)

23. Claimant reported difficulties with communication, particularly non-verbal communication. Morales also noted Claimant's challenges in her daily functioning as follows:

> [Claimant] reported significant challenges with flexibility and adaptability in her daily life. She stated that she is not reasonably flexible and cannot adapt to minor changes without experiencing overt distress. This rigidity impacts various aspects of her functioning and ability to cope with the unpredictability of everyday life. [Claimant] indicated a

> lack of problem-solving skills when faced with difficult situations. She stated that she struggles to navigate challenges independently, leading to increased stress and reliance on others for support.

(Exhibit 5, p. A26.)

24. Morales recommended Claimant undergo a psychological evaluation.

PSYCHOLOGICAL EVALUATION

25. On December 11, 2024, and January 23, 2023, Licensed Clinical Psychologist Jeffrey Nishii, Psy.D., conducted a psychological evaluation of Claimant on behalf of WRC "to rule out or substantiate a diagnosis of [ASD] and clarify [her] current level of functioning." (Exhibit 6, p. A31.) Dr. Nishii issued his report on January 27, 2025.

26. Dr. Nishii noted Claimant's relevant history included depression, PTSD, anxiety, abuse, and head trauma with other injuries. He also noted Claimant's reports of childhood speech delays, receiving special education services as a child with autism, being placed in a small classroom with an instructional aide, and completing courses in college with accommodations and instructional assistance. Claimant reported that one of her siblings is on the autism spectrum. Dr. Nishii further noted Claimant had been unhoused and living out of her car since October 2023.

27. Claimant reported difficulty forming and maintaining friendships, challenges with communication and reading social cues, and struggles in group social situations. She described herself as inflexible and dependent on routines. Claimant experiences significant stress when faced with minor changes and disruptions. She also

has difficulty learning new tasks, budgeting, keeping track of appointments and time, problem solving, and decision making. She is currently unable to prepare simple meals on a stove or microwave.

28. Claimant complained of sensitivity to smells, loud sounds, busy environments, and fluorescent lighting. She has fixated interests in the supernatural and numbers, and she has rituals where she checks objects a certain number of times. She reported tendencies to constantly move her legs, to sway her body from side to side, and to mimic others whenever something is said with an irregular tone or quality.

29. Regarding Claimant's observed speech, language, and conversational skills, Dr. Nishii noted:

> [Claimant] avoided eye contact and looked away as she spoke. She showed effort to engage in eye contact from time to time. At one point, she looked at the examiner and said, "I know I'm supposed to make eye contact with you." [Claimant] appeared socially anxious and displayed shallow rapid breathing at times. She displayed occasional use of gestures. She also displayed a frequent tendency to shake her feet nervously.
>
> [Claimant] exhibited challenges with communication. Her speech was stilted and came with frequent pauses. She appeared to have difficulty articulating herself, organizing her thoughts, and holding ideas long enough to produce statements. She often appeared to lose her train of thought. She was noticed to frequently squint her eyes and labor to

> put her thoughts into words. She also grew emotional and showed signs of becoming overwhelmed when asked to recall details from her childhood. She indicated not wanting to get into too much detail about her childhood as she feels it may trigger her into upset. [Claimant] claims to have met the examiner before, however this is believed to be false. She stated, "I met you before in April or May." It was unclear if this was a delusion. [¶] . . . [¶]
>
> [Complainant] complained of the lighting inside the examination room being too bright. . . . The examiner offered to turn the lights off and allow the natural sunlight to come in and she agreed.
>
> [Complainant] exhibited examples of idiosyncratic speech. When asked to state her date of birth, she referred to her birthday as "Christmas in July" as her date of birth falls in July. When asked to state her phone number, she stated "619 919 1999 never mind it's not mine." [Claimant] would go on to explain that she often makes decisions based on the numerical properties of the options available. She shared that numbers provide her with a sense of comfort.

(Exhibit 6, pp. A33-A34.)

30. To assess Claimant's adaptive functioning, Dr. Nishii administered the Vineland Adaptive Behavior Scales, Third Edition (VABS-III). The VABS-III measures adaptive ability in four areas: Communication, Daily Living Skills, Socialization, and

Motor Skills as compared to same-aged peers. Claimant scored in the low range in each of the four areas, and her composite score of 53 indicated her overall adaptive functioning was in the low range. (Although Dr. Nishii documented, "[Claimant's] mother acted as informant regarding his/her adaptive functioning skills," (Exhibit 6, p. A34), this appears to be a typographical error. While Dr. Nishii did not testify to at hearing and thus could not provide clarification, Claimant testified that her mother was not present and did not provide responses for the VABS-III.)

31. Dr. Nishii administered the Autism Diagnostic Observation Schedule, Second Edition (ADOS-2), which is a direct observational measure of social communication and behaviors to determine the likelihood of ASD. Claimant's score total was in the autism range of classification.

32. Taking into consideration all available data from interviews, observations, and assessment measures, Dr. Nishii concluded Claimant meets criteria for ASD. In his detailed analysis, Dr. Nishii indicated what criteria Claimant "met" to confirm the ASD diagnosis as follows:

> In order to receive a diagnosis of ASD, the following criteria must be met:
>
> A. Persistent deficits in social communication and social interaction across multiple contexts, as manifested by the following, currently or by history:
>
> 1. Deficits in social-emotional reciprocity, ranging from abnormal social approach and failure of back-and-forth conversation; to reduced sharing of interests, emotions, or affect; to failure to initiate or respond to social interactions

- *MET; difficulty communicating about emotions; limited social reciprocity; awkward social response.*

2. Deficits in nonverbal communicative behaviors used for social interaction, ranging 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 - *MET; avoidance of eye contact; limited use of gestures; restricted facial expression; difficulty interpreting nonverbal social cues.*

3. Deficits in developing, maintaining, and understanding relationships, ranging 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 - *MET; difficulty initiating, establishing, and maintaining friendships over time; difficulty adjusting to various social situations; limited interest in peers.*

Severity Level: 1 Requiring Support

B. Restricted, repetitive patterns of behavior, interests, or activities, as manifested by at least two of the following, currently or by history:

1. Stereotyped or repetitive motor movements, use of objects, or speech - *MET; repetitive leg movements, body swaying; social mimicry.*

2. Insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior - *MET; strict adherence to rules; relies on routines; difficulty adapting to unexpected changes and disruptions.*

3. Highly restricted, fixated interests that are abnormal in intensity or focus - *MET; fantasy, folklore, demons, numbers.*

4. Hyper- or hyporeactivity to sensory input or unusual interest in sensory aspects of the environment - *MET; sensitive to noise, lighting. Overwhelmed in sensory rich environments. Carries around scented objects, while avoiding certain other smells.*

Severity Level: 1 Requiring Support

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

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

E. These disturbances are not better explained by intellectual disability 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. ***MET.***

(Exhibit 6, pp. A36-A37; emphasis in original.)

33. Dr. Nishii concluded:

> [Claimant] presents with a complicated developmental and mental health history. She reported a history of multiple traumatic experiences, including childhood abuse and an abusive relationship with her ex-husband. She has also received previous diagnoses of Major Depressive Disorder, Recurrent, Mild, and Panic Disorder which appear to be consistent with her self-report and current presentation. Her challenges are further complicated by what appears to have been a traumatic brain injury suffered during a work injury sustained in 2019. Presumably, all of these factors contribute to [Claimant's] current challenges with executive functioning, performance of daily living skills, memory, processing, and communication.

(Exhibit 6, p. A37.)

34. Dr. Nishii did not apportion which of Claimant's "challenges" were attributable to Claimant's ASD and which were attributable to her other mental health and physical diagnoses. Consequently, the behaviors meeting ASD criteria and the

adaptive deficits that Dr. Nishii identified during his evaluation are associated, at least in part, with Claimant's ASD.

35. Dr. Nishii diagnosed Claimant with ASD; PTSD, per history; and Panic Disorder, per history.

ELIGIBILITY DENIAL AND APPEAL

36. Despite Claimant's ASD diagnosis, the WRC multidisciplinary team determined Claimant is ineligible for regional center services.

37. On February 14, 2025, WRC sent Claimant a Notice of Action (NOA) and a denial letter, finding her ineligible to receive regional center services because she did not meet eligibility criteria.

38. According to the Notice of Action and denial letter, although Claimant has a diagnosis of ASD, she "is not substantially disabled by that condition pursuant to [Welfare and Institutions Code section 4512, and California Code of Regulations, title 17, section 54001], because she does not have a "severe handicap in three or more areas." (Exhibit 4, p. A22.)

39. Claimant filed a Fair Hearing Request to appeal the denial of eligibility. This fair hearing was set.

Evidence at Fair Hearing

40. WRC asserts Claimant does not qualify for regional center services because she 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.)

41. 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.

42. 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 12, p. A62; 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. A62.) 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. A63.)

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43. As Dr. Nishii observed, Claimant exhibited challenges with communication. Her speech was stilted, with frequent pauses. She appeared to have difficulty articulating herself, organizing her thoughts, and holding ideas long enough to produce statements. Additionally, in determining Claimant met the social communication criteria for an ASD diagnosis, Dr. Nishii found Claimant had limited social reciprocity, awkward social response, avoidance of eye contact, limited use of gestures, restricted facial expression, and difficulty interpreting nonverbal social cues. Claimant also reported difficulty following directions. Consequently, Claimant has established significant functional limitations in receptive and expressive language.

44. In the area of Self-Care, an individual must have "significant limitations in the ability to acquire and perform basic self-care skills." (Exhibit 12, p. A62.) 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.*)

45. The evidence did not establish Claimant currently has significant functional limitations in self-care.

46. 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 12, p. A63.)

47. Claimant required special education services, accommodations, and instructional aides. She also complains of difficulties learning new tasks. However, Claimant has demonstrated low average to average intellect, and there is no evidence Claimant's ability to acquire knowledge with special intervention is significantly

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

48. 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 12, p. A63.)

49. Although Claimant does have some mobility issues, they are physical issues related to her work injury. Consequently, the evidence did not establish Claimant has significant functional limitations in mobility.

50. 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 12, p. A63.) 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. A64.)

51. The evidence established Claimant has substantial functional limitations in self-direction, given her inability to establish peer relationships and reported lack of problem-solving skills and decision-making difficulties. As noted below, WRC maintains that any of Claimant's limitations are caused by her mental health diagnoses. However, WRC failed to establish Claimant's mental health issues are the sole cause of her limitations in self-direction.

52. 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 12, p. A64.) 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.*)

53. Claimant has reported difficulties with budgeting and keeping track of appointments, and she is currently unable to prepare simple meals on a stove or microwave. She is currently unhoused. Claimant has significant functional limitations, for a person her age, in her capacity for independent living. Furthermore, WRC failed to establish Claimant's mental health issues are the sole cause of Claimant's limitations in her capacity for independent living.

54. 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 12, p. A64.)

55. At age 46, Claimant has no reported work history, except from 2017 until 2019. However, Claimant was able to maintain that employment for two years until her work injury. Consequently, there is insufficient evidence to establish Claimant currently has significant functional limitations for a person her age in the area of economic self-sufficiency.

56. The preponderance of the evidence established Claimant has significant functional limitations for a person her age in three of the areas of major life activity: receptive and expressive language, self-direction, and the capacity for independent living.

57. While Claimant currently experiences significant symptoms and limitations, WRC attributes these symptoms to Claimant's mental health diagnoses instead of her ASD.

58. Licensed psychologist, Thompson Kelly, Ph.D., testified at the fair hearing. He opined that Claimant's significant limitations are caused by her mental health diagnoses, and thus not attributable to a qualifying developmental disability. Although an individual may have co-occurring mental health issues with ASD, Dr. Kelly did not identify to which psychiatric disorder Claimant's significant deficits are attributable, but insisted they are not attributable to a developmental disability. Dr. Kelly's observations did not establish that Claimant's significant limitations are attributable solely to her mental health issues. Consequently, the evidence established that Claimant's significant limitations are attributable, at least in part, to her ASD.

59. At hearing, WRC raised a new basis for denial that was not stated in its February 14, 2025 NOA or denial letter. WRC asserted Dr. Nishii's diagnosis of Claimant with ASD is incorrect because Claimant provided no documentation that her ASD arose before age 18. Claimant was provided no notice of this assertion, and it cannot now be used as a basis to deny eligibility. Moreover, the assertion is not persuasive. Claimant reported to several evaluators her recollection of being diagnosed with autism as a child and receiving special educations services throughout her schooling as a child with autism. There is no evidence or argument that the Diagnostic and Statistical Manual of Mental Disorders requires documentation of this

recollection, and through his independent evaluation, Dr. Nishii apparently accepted Claimant's recollection as true. In diagnosing Claimant with ASD, and Dr. Nishii found Claimant "met" the criterion that "symptoms must be present in the early developmental period."

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.

2. When a party seeks government benefits or services, she 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 she meets all eligibility criteria. Claimant has met her burden of proof in this case.

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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.

5. A claimant must show that her 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. Nishii, 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 she 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.
>
> (E) Self-direction.
>
> (F) Capacity for independent living.
>
> (G) Economic self-sufficiency.

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 her age in three areas of major life activity: receptive and expressive language, self-direction, and the capacity for independent living. Consequently, Claimant has established her 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 eligible to receive regional center services under a diagnosis of autism.

ORDER

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

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.