BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: CLAIMANT, vs. WESTSIDE REGIONAL CENTER, Service Agency.	OAH No. 2016120014

DECISION

Ji-Lan Zang, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on May 1 and 2, 2017, in Culver City, California.

Lisa Basiri, Fair Hearings Coordinator, represented Westside Regional Center (WRC or Service Agency).

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

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on May 2, 2017.

ISSUE

Whether claimant is eligible for services and supports from the Service Agency under the Lanterman Developmental Disabilities Services Act (Lanterman Act).

EVIDENCE RELIED UPON

Documents: Service Agency's exhibits 1-10; claimant's exhibits S1-S5.

Testimony: Thompson Kelly, Ph.D.; Beth Levy, Ph.D.; claimant's mother; claimant's father.

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FACTUAL FINDINGS

PARTIES AND JURISDICTION

1. Claimant is an 11-year-old boy. Claimant's parents asked the Service Agency to determine whether he is eligible for regional center services based on a claim of autism spectrum disorder.

2. By a Notice of Proposed Action (NOPA) and letter dated October 20, 2016, the Service Agency notified claimant that he is not eligible for regional center services. The letter stated, "[Claimant] was given a diagnosis of autism, but the decision of the eligibility team was that there were not three areas of substantial handicap." (Ex. 2, p. 3.)

3. On November 7, 2016, claimant's father filed a fair hearing request to appeal the Service Agency's determination regarding claimant's eligibility. This hearing ensued.

4. At the hearing, the parties stipulated that claimant is properly diagnosed with autism spectrum disorder under the Diagnostic and Statistics Manual, Fifth edition (DSM 5)[1] and has significant functional limitations in the area of self-direction under

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[1] Under the DSM-5, section 299.00, to diagnose autism spectrum disorder, it must be determined that an individual has persistent deficits in social communication and social interaction (Criterion A) across multiple contexts, as manifested by the following: (1) deficits in social-emotional reciprocity, (2) deficits in nonverbal communication behaviors used for social interaction, and (3) deficits in developing, maintaining, and

California Code of Regulations, title 17, section 54001, subdivision (a)(2).[2] The sole issue for the purpose of the hearing is whether claimant has significant functional limitations in three or more major life activities such that he has a substantial disability within the meaning of the aforementioned regulation.

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understanding relationships. The individual must also have restricted, repetitive patterns of behavior, interests, or activities (Criterion B), as manifested by at least two of the following: (1) stereotyped or repetitive motor movement, use of objects or speech, (2) insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior, (3) highly restricted, fixated interests that are abnormal in intensity or focus, and/or (4) hyper- or hypo-reactivity to sensory input or unusual interest in sensory aspects of the environment. In addition, symptoms must be present in the early developmental period and must cause clinically significant impairment in social, occupational, or other important areas of current functioning (Criteria C and D).

[2] To be eligible for regional center services, in addition to having been diagnosed with a qualifying condition, the individual must have a "substantial disability." Under California Code of Regulations, title 17, section 54001, subdivision (a)(2), "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: (1) self-care; (2) receptive and expressive language; (3) learning; (4) mobility; (5) self-direction; (6) capacity for independent living; and (7) economic self-sufficiency. These requirements are also statutory under Welfare and Institutions Code section 4512, subdivision (*l*).

CLAIMANT'S BACKGROUND

5. Claimant's parents are legally separated and share custody of claimant and his nine-year-old sister. Claimant lives with his father from Saturday mornings until Monday mornings and lives with his mother during the rest of the week.

6. Claimant has been diagnosed with obsessive compulsive disorder. Since March 16, 2012, he has been in treatment with Michael Fitzpatrick, M.D., who prescribes medications for his psychiatric condition.

THE 2011 PSYCHO-EDUCATIONAL EVALUATION BY SANDRA R. KALER, R.N., PH.D.

7. Between March 8, 2011 and May 23, 2011, Sandra R. Kaler, R.N., Ph.D., preformed an independent psycho-educational evaluation of claimant at his parent's request. At the time of this evaluation, claimant was five-years old. Over several evaluation dates, Dr. Kaler administered a battery of ten tests, which focused on claimant's cognitive ability, adaptive behavior, and social-emotional skills. She set forth her findings in a report, dated May 23, 2011.

8. Dr. Kaler observed claimant during testing sessions and at his pre-school. During the test sessions, she noted that claimant toe-walks and observed that he engages in "numerous self-stimulatory behaviors" such has hitting his head, head-shaking, rocking, and vocal self-stimulatory behavior. (Ex. 7, p. 5.) During free play, claimant was not able to demonstrate any sequenced symbolic play at all and played in a perseverative manner by stacking chips or hitting a hammer aggressively. Dr. Kaler observed similar self-stimulatory behavior at claimant's pre-school. During free play, claimant was the only child who went off to play by himself.

9. A. Dr. Kaler administered a series of standardized tests, including Vineland Adaptive Behaviors Scales, Second Edition (VABS-2 or Vineland), with claimant's mother as the informant. VABS-2 measures claimant's adaptive ability in communication, daily

living, and socialization. She obtained the follow scores for claimant: 97 in communication (42nd percentile rank); 85 in daily living skills (16th percentile rank) and 75 in socialization (5th percentile rank). According to Dr. Kaler, the results of this test indicated that claimant's mother found his communication skills to be within the age-appropriate range but he demonstrated delays in self-help skills and social skills. Dr. Kaler found that in the socialization domain, claimant's interpersonal skills were at the 4-year 7-month level, one year below his chronological age. Of particular concern to her was that claimant's play and leisure time skills were far lower than his chronological age, as were his coping skills. (*Id.* at p. 7.)

B. Dr. Kaler also administered the Wechsler Pre-School and Primary Scales of Intelligence, Third Edition, which is designed to assess cognitive function in children of pre-school to elementary school age. Claimant's full scale intelligence quotient (IQ) was 112, which ranked him in the 79th percentile. The results of this test suggest that claimant's intellectual functioning is in the high average range.

C. Of the remaining tests administered by Dr. Kaler, the most significant was Autism Diagnostic Observation Schedule, Module 3 (ADOS) which assesses for the presence autism. On the ADOS, claimant received a score of 2 in communication, which placed him at the autism cut-off. In the area of social interaction, he received a score of 7, which placed him above the autism cut-off of 6. His combined communication and social interaction score of 9 placed him just below the cut-off for autism and in the range of autistic spectrum disorder.

10. Based on the test results, her observation of claimant, and a review of claimant's school and medical records, Dr. Kaler drew the following conclusion:

> On standardized tests, [claimant] is able to state social rules. He also is able to understand how others will be feeling in a verbal situation. On visual tasks, [claimant] has far more

> difficulty understanding feeling states. In addition, on a measure of social narrative, [claimant] had difficulty providing connected social stories. On the Autism Diagnostic Observation Schedule, which is considered the "goal [*sic*] standard" for diagnostic clarification, [claimant] meets criteria for autistic spectrum disorder. [3] He does not meet full criteria for autism. [Claimant] does have a lack of social-emotional reciprocity and a failure to develop peer relationships appropriate to developmental level. He also

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[3] When Dr. Kaler evaluated claimant in 2011, the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR) was the standard for diagnosis and classification. DSM-IV-TR section 299.00, Autistic Disorder, states:

> To diagnose Autistic Disorder, it must be determined that an individual has at least two qualitative impairments in social interaction; at least one qualitative impairment in communication; and at least one restricted repetitive and stereotyped pattern of behavior, interests, or activities. One must have a combined minimum of six items from these three categories. In addition, delays or abnormal functioning in at least one of the following areas, with onset prior to age three, is required: (1) social interaction, (2) language as used in social communication, or (3) symbolic or imaginative play.

> demonstrates restricted repetitive stereotyped patterns of behavior including stereotyped motor mannerisms. Further, he does demonstrate a lack of varied spontaneous make-believe play or social imitative play appropriate to developmental level. To meet criteria for autistic disorder, [claimant] would need to meet a total of six or more criteria. He currently meets a level of 5 criteria.

(Ex. 7, p. 11.)

11. Dr. Kaler's made the following recommendations: a school placement with social skills assistance and behavior support, occupational therapy services to address visual motor integration delays, pragmatic language evaluation, and establishing special education eligibility at claimant's school. Of note, Dr. Kaler found that claimant was socially motivated, but she expressed specific concerns about claimant's pragmatic difficulties, stating, "While it is clear that [claimant's] language is well developed, he has atypical conversation style." (*Id* at p. 12.) Further, Dr. Kaler found that claimant demonstrated a high degree of motor restlessness and stimulus-driven behavior, which in her opinion, stemmed from executive functioning deficits. (*Ibid*.)

CLAIMANT'S 2011 SCHOOL EVALUATION

12. On November 3, 2011, the school psychologist at claimant's kindergarten performed a psycho-education assessment of claimant at the request of his parents to evaluate claimant's eligibility for special education services. At the time of this evaluation, claimant was six-years old. The school psychologist administered a battery of tests, which assessed claimant's cognitive development, language development, perceptual skills, social/emotional development, and academic achievement. Her findings were summarized in a report dated November 8, 2011.

13. A. The school psychologist evaluated claimant's cognitive abilities with the Wechsler Intelligence Scale for Children-Fourth Edition (WISC-IV). The test measures a child's full scale IQ and various other types of cognitive ability. On the WISC-IV, claimant earned a full scale IQ of 120, classifying his overall intellectual ability as being in the superior range. In particular, claimant's verbal comprehension index[4] of 121 placed him in the superior range of verbal intellectual ability in comparison to same-age peers.

B. Although a separate speech and language assessment was performed, the report from this assessment was not submitted into evidence. However, the psychologist's report noted that "[p]arents and teacher each completed a pragmatics profile, showing that [claimant] struggles with utilizing his knowledge of socially appropriate communication skills." (Ex. 10, p. 7.)

C. Although the school occupational therapist performed a separate assessment of claimant's visual motor skills, the report was not submitted into evidence. The psychologist's report referenced the occupational therapist's assessment, noting that claimant's visual motor performance was in the average range and that he demonstrated visual motor strengths in mature grasp, motor planning, visual discrimination, visual scanning, bilateral coordination, and body awareness.

D. To assess claimant's social-emotional development, his teacher and parents completed the Behavior Assessment Scale for Children-Second Edition (BASC-2). The adaptive skills composite of the BASC-2 evaluates characteristics of adaptive behavior that are important for functioning at school, at home, and with peers. These behaviors include adaptability, social skills, leadership, study skills, functional

[4] The verbal comprehension index measures reasoning, comprehension and conceptualization, with items that ask the child to define words, describe similarities between concepts, and answer common sense questions.

communication, and for the parents, activities of daily living. Claimant's parents and teachers all placed claimant within the at-risk range on this composite. Claimant's teacher expressed significant concerns about his adaptability and mild concerns about his social skills. According to his teacher, claimant had difficulty adapting to changing situations, takes longer to recover from difficult situations than others of his age, and sometimes has difficulty giving compliments. Claimant's mother had significant concerns about adaptability and social skills, as well as mild concerns about activities of daily living. Claimant's father had significant concerns about adaptability, and mild concerns about activities of daily living and functional communication.

E. Claimant's teacher and parents also completed the Asperger Syndrome Diagnostic Scale (ASDS) to further evaluate claimant's pattern of behaviors. Claimant's teacher and parents all observed that "[claimant] talks excessively about favorite topics that hold limited interest for others; uses words or phrases repetitively; does not understand subtle jokes (e.g. sarcasm); frequently asks inappropriate questions; experiences difficulty in beginning and continuing a conversation." (Ex. 10, p. 12-13.) In the area of socialization, claimant's teacher and parents all observed that "[claimant] has difficulty in relating to others that can't be explained by shyness, attention, or lack of interest; exhibits few or inappropriate facial expressions; does not respect others' personal space; displays limited interest in what other people say or find interesting; does not understand or use rules governing social behavior; has difficulty understanding the feelings of others; has difficulty understanding social cues." (*Ibid.*) In the area of sensorimotor skills, claimant's parents observed that "[claimant] displays an unusual reaction to loud, unpredictable noise (e.g., screams, has tantrums, or withdraws); over-reacts to smells that are hardly recognizable to those around him; prefers to wear clothes made of only certain fabrics; has a restricted diet consisting of the same foods

cooked and presented in the same way; exhibits difficulty with handwriting and other tasks (i.e., buttoning) that require fine motor skills." (*Ibid.*)

F. Claimant's academic achievement, as measured by the Woodcock-Johnson III Tests of Achievement, was either at or above his grade level in reading, math, and written language.

14. Based on this assessment, the school psychologist found claimant to be eligible for special education services under the categories of Autistic-Like Behaviors and Other Health Impaired (because of his diagnosis for obsessive-compulsive disorder). She recommended for claimant to continue his education in a general education class room, but with the support of a special education teacher who provides consultation to the general education teacher.

CLAIMANT'S 2014 SCHOOL EVALUATION

15. Between March 31, 2014, and April 1, 2014, the school psychologist at claimant's elementary school conducted a triennial evaluation of claimant to determine claimant's continued eligibility for special education services and his current levels of performance. At the time of the 2014 evaluation, claimant was eight-years old and in the second grade. Over the course of three days, the school psychologist administered a battery of tests, which focused on claimant's cognitive development, language development, perceptual skills, social/emotional development, and academic achievement. She also interviewed claimant, his parents, and his second-grade teacher and observed claimant in his class and during recess during two separate dates. The school psychologist set forth her findings in a transdisciplinary team evaluation report, dated May 28, 2014.

16. A. The WISC-IV was administered to assess claimant's overall cognitive abilities. On the WISC-IV, claimant earned a full scale IQ of 119, classifying his overall intellectual ability as being in the high average range. In particular, claimant's verbal

comprehension index score of 114 is in the high average range in comparison to same-age peers, and he demonstrated superior performance in the vocabulary subtest.

B. Claimant's special education teacher administered the Wechsler Individual Achievement Test, Third Edition (WIAT-III). On the WIAT-III, claimant scored in the superior range in the composite areas of oral language and math fluency; above average range in total reading, reading comprehension and fluency, and total achievement; and average range in basic reading, written expression, and mathematics.

C. To assess claimant's social-emotional development, the BASC-2 was administered to claimant's teacher and parents. In adaptive skills, the school psychologist found that claimant's teacher and parents expressed concerns about adaptability, with significant concerns in the home setting and less extreme behaviors in the school setting. In the home setting, claimant appears to have significant difficulty adjusting to changes in routine, being soothed when angry, and recovering from setbacks. In the area of social skills, claimant's father did not report significant challenges. However his mother reported significant concerns and his teacher elevated concerns. Claimant's father also reported slight concerns about claimant's activities of daily living, but this was less apparent in claimant's mother's view.

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D. The Social Responsiveness Scale-Second Edition (SRS-2) was also administered to claimant's teacher and parents. SRS-2 is a behavior rating scale designed to assess various dimensions of interpersonal behavior, communication, and repetitive/stereotypic behavior characteristic of children on the autistic spectrum. Claimant's parents' reports resulted in an SRS-2 total score falling within the severe range, which "indicates deficiencies in reciprocal social behavior that are clinically significant and lead to severe interference with everyday social interactions." (*Id.* at p. 22.) According to his teacher's report, claimant's SRS-2 total score falls just within the

moderate range, which "indicates deficiencies in reciprocal social behavior that are clinically significant and lead to substantial interference with everyday social interactions" (*Ibid.*) In particular, restricted and repetitive behavior was the area of greatest concern according to claimant's teacher and parents. They reported that claimant frequently shows rigid or inflexible patterns of behavior when under stress, thinks or talks about the same things over and over, has trouble getting his mind off something once he starts talking about it, and has an unusually narrow range of interests. Additionally, his parents reported that claimant frequently shows unusual sensory interests, has difficulty with changes in his routine, and engages in repetitive behaviors.

E. On measures of autistic-like behaviors, in the social domain, claimant's parents and teacher indicated that he uses limited eye contact, has difficulty relating to others and making friends, does not respect others' personal space, has difficulty understanding the feelings of others, and has difficulty understanding social cues. In the sensorimotor domain, claimant's teacher and parents all noted claimant's preference to wear clothes made of certain fabrics, restricted diet, and difficulties with handwriting. Although characteristics of autistic-like behaviors related to language were not as prominent in the school setting, claimant's teacher and parents all reported claimant talking excessively about favorite topics. Additionally, his mother and teacher reported that he interprets conversations literally, does not understand subtle jokes, and experiences difficulty in beginning and continuing conversations.

17. Based on this assessment, the school psychologist found claimant to be eligible for special education under the categories of Autistic-Like Behaviors and Other Health Impaired. She concluded that claimant's educational needs could not be met with modifications and accommodations in the general education curriculum and that

claimant required special education services. As a result of this evaluation, the school district provide claimant with a one-on-one aide in the classroom.

CLAIMANT'S 2017 SCHOOL EVALUATION

18. Between January 2017, and March 2, 2017, the school psychologist at claimant's elementary school conducted a triennial evaluation of claimant to determine claimant's continued eligibility for special education services and his current levels of performance. At the time of the 2017 evaluation, claimant was 11 years-old and in the fifth grade. In similar fashion to the 2014 school evaluation, a battery of tests were administered; claimant, his parents, and his fifth-grade teacher were interviewed; and claimant was observed in his class and during recess during two separate dates. The school psychologist set forth her findings in a transdisciplinary team evaluation report, dated March 7, 2017.

19. During the interview with claimant's fifth grade teacher, she reported that, although his adaptive skills are appropriate in the school setting, he struggles with his personal hygiene. He fails to wash his hands after sneezing, picks his nose and scabs, and frequently discusses his bodily functions. Because of claimant's hygiene issues, he drives away his peers. In addition, according to his teacher, claimant often loses track of his school materials and needs prompts to place important items in his backpack to take home. This lack of organization impacts his ability to be prepared for tests and projects.

20. At school, claimant is being assisted at all times by a one-on-one aide. During the classroom observation on February 16, 2017, claimant became easily frustrated with a difficult math problem. He displayed disruptive behaviors, such as groaning, complaining, lying down on the ground, pushing his head into a cabinet, and banging his pencil on the floor. However, with the support of his aide, who prompted him to take a break, he was able to de-escalate within nine minutes.

21. The school psychologist administered a battery of standardized tests, the results of which are summarized below.

A. The WISC-IV was not administered because it was previously administered by Beth Levy, Ph.D. in the fall of 2016 (described below).

B. The Cognitive Assessment System, Second Edition (CAS-2) was administered to assess claimant's cognitive functioning. The CAS-2 measures overall cognitive functioning by combining a student's performance in planning, attention, simultaneous processing, and successive processing. Measurements in these four areas of processing yield scores for the student's working memory and executive functioning. The report described executive functioning as follows as the "ability to plan, develop strategies, organize information, and carry out complex human behavior over long periods of time." (Ex. S-3, p. 24.) Claimant's scores in executive functioning were in the high average to average range, indicating that he possesses well-intact executive functioning skills.

C. The WIAT-III was again administered to claimant as a measurement of academic achievement. On the WIAT-III, claimant scored in the superior range in the composite areas of oral language and math fluency; in the above average range in total reading, reading comprehension and fluency, and total achievement; and in the average range in basic reading, written expression, and mathematics.

D. An occupational therapy assessment was performed by the school occupational therapist. Based on her evaluation, claimant scored in the average range in the areas of visual perception and visual motor integration. He scored just below average in the area of motor coordination. When asked to produce writing samples, one of the two samples claimant wrote was

illegible. (S-1, p. 3.) An assistive technology assessment performed by the school's assistive technology specialist found that claimant evidenced difficulties with the motor aspects of handwriting and that he requires the use of assistive technology for writing. She recommended that claimant uses a computer or tablet device in his classes for writing assignments greater than one to two sentences in length. (S-2, p. 10.)

E. To assess claimant's social-emotional development, the BASC-2 was administered to claimant's teacher and parents. In the domain of adaptive skills, which measures adaptability, social skills, and functional communication, claimant's overall skills are in the average range according to his teacher and in the at-risk range according to his mother. Both claimant's mother and teacher reported some degree of concern about adaptability, with scores in the at-risk to clinically significant range in the school and home settings respectively. In the school setting, claimant's teacher reported that he has difficulty handling winning and losing well, accepting things as they are, adjusting well to changes in routine, accepting advice, and being calmed when angry. His mother also reported a clinically significant degree of concern about claimant's social skills, noting that he does not make positive comments about or compliment others, does not make others feel welcome, does not encourage, compliment or congratulate others, and he only sometimes shows interest in others' ideas.

F. To assess various dimensions of claimant's interpersonal behavior, communication, and repetitive/stereotypic behavior, the SRS-2 was again administered to claimant's parents and teacher. On the SRS-2, claimant's parents and teachers all indicated many concerns about repetitive and ritualistic behaviors. For instance, "claimant has an unusually narrow range of

interests, behaves in ways that seem strange or bizarre, has more difficulty than other children with changes in his routine, is regarded by other children as odd or weird, and can't get his mind off something once he starts thinking about it." (Ex. S-3, p. 38.) Claimant's parents and teachers all noted that claimant has some difficulty focusing his attention to where others are looking or listening, walks in between two people who are talking, has difficulty understanding what others are thinking or feeling, and has poor personal hygiene. Claimant's parents and teachers all indicated that claimant has difficulty making friends even when trying his best, has difficulty imitating others' actions, has trouble responding appropriately to mood changes in others, and does not know when he is too close to someone or is invading someone's space. Additionally, his father and teacher reported that he gets frustrated trying to get ideas across in conversations.

22. Based on the information from her review of the documents as well as the testing data, the school psychologist concluded that claimant continued to meet the eligibility criteria for special education under categories of Characteristics Often Associated with Autism and Other Health Impairment. Claimant's 2017 individualized education program (IEP) included several goals to address the issues raised by this evaluation, but it did not contain any goals relating to claimant's needs for occupational therapy services.

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SERVICE AGENCY'S EVALUATION OF CLAIMANT

23. In May 2016, claimant made a request for a determination of eligibility for regional center services. The Service Agency's intake coordinator referred claimant to Beth Levy, Ph.D., for a psychological evaluation of claimant to determine claimant's

eligibility for WRC's services. Dr. Levy reviewed claimant's prior evaluations, interviewed claimant's parents, and administered standardized tests to complete her evaluation. She set forth her findings in an undated psychological evaluation report.

24. On June 8, 2016, Dr. Levy observed claimant in his elementary school for approximately one hour and spoke to claimant's principal for approximately 30 minutes. In the classroom, claimant's one-on-one aide was present but sat back during the observation. The students were working in groups of three on a project. While it was clear that two of the boys in claimant's group were working together, claimant "was doing his own thing." (Ex. 4, p. 7.) Claimant put his project on the floor, which impeded the walkway, but he was not aware of the problem. When another student in the group saw where it was, he became very upset and moved it. In the meantime, claimant stepped on a group of girls' project and broke it. Both groups were upset with claimant and excluded him. Claimant then went to his desk, and put his head down and began rocking back and forth. Although his aide tried to talk to him, claimant would not move. After about 25 minutes, the aide gave up. The principal came in the classroom and reported to Dr. Levy that social relationships are very difficult for claimant and that he has not formed any real connections with the other students.

25. On July 14, 2016 and August 25, 2016, Dr. Levy administered a battery of standardized tests to claimant. She made the following behavioral observation during the testing:

> In terms of language, it was clear that claimant has a strong vocabulary, is very bright, and was able to speak in sentences. However, [claimant's] speech often was one sided, as he talked about topics of interest (Mario Brothers and specific details related to Mario Brothers), while he did not exchange conversation, as he did not listen to the

> psychologist's responses. He also did this when he talked about a vacation, he rambled on about the trip, and knew very precise details about what cities they visited and what was there, however, had limited to no interest if the psychologist wanted to interject her experience or ideas. Throughout the conversation, claimant made very limited eye contact, and when he did it seemed as if he was looking toward, but not at the psychologist. Further, it seemed as if he could not sustain eye contact. Overall, eye contact was as if he was looking through the psychologist and not at her. [Claimant's] ideas were also perseverative, as on the second testing session, he conveyed the same ideas.

(Ex. 4, p. 8.)

26. A. In standardized tests, Dr. Levy administered the Wechsler Intelligence Scale of Children, Fifth Edition (WISC-V). Claimant's overall performance on the WISC-V yielded a full scale IQ of 133, which suggests a general level of intellectual ability in the very superior range. Specifically, claimant scored in the superior range in verbal comprehension index, which provides an indication of claimant's ability to use verbal skills in reasoning and problem solving and his capacity to learn verbal information.

B. With claimant's parents serving as informants, Dr. Levy administered the VABS-2 to evaluate claimant's adaptive functioning. Claimant scored 79 in communication, which fell in the moderately low range in communication. Specifically, his receptive abilities fell in the low range, indicating mild deficits, and his expressive language skills were in the moderately low range. In daily living skills, claimant's score of 73 fell within the moderately low range, indicating mild deficits. In socialization, claimant's score was 57, which fell in the low range, indicating mild to moderate deficits.

C. Dr. Levy also administered the ADOS-2 for a further assessment of autism spectrum disorder. On the ADOS-2, claimant scored 4 in the domain of communication, which met the autism spectrum cut off score of 2 and the autism cut off score of 3. In the domain of reciprocal social interaction, claimant scored 9, which met the autism spectrum cut off score of 4 and the autism cut off score of 6. Claimant's combined score in communication and social interaction was 13, which met the autism spectrum cut off score of 7 and the autism cut off score of 10. Notably, Dr. Levy wrote:

> Based on this assessment, claimant was [*sic*] demonstrated significant challenges with regard to emotional and social reciprocity. He was very literal, and had difficulty relating and elaborating on his ideas when it was a story not of his interest. However, he was able to elaborate on ideas of his own. Mutual affect and responsiveness is impaired. He engaged in conversation by answering questions, and he did not initiate conversation. His overall affect was restricted, and he showed little affect and emotion with regard to what he was talking about.

(Ex. 4, p. 12.)

27. Using the DSM-5, Dr. Levy diagnosed claimant with autism spectrum disorder without impaired cognitive and language functioning, although with impaired social communication/pragmatic language. She concluded:

> Testing is consistent with previous testing, and suggests that claimant is presenting with characteristics of Autistic Spectrum Disorder (although his clinical presentation would have been consistent with a student with Asperger's

> Disorder[5] if that were still a diagnosis), with deficits in self-care, self-direction and social and social/pragmatic communication skills. He would benefit from social skills groups and behavioral intervention in both his mother and father's home. Based on this assessment, claimant meets eligibility criteria for Autism Spectrum Disorder, according to DSM 5 (see criteria below). It is notable that claimant has also received a diagnosis of Obsessive-Compulsive Disorder, and while this may be a diagnosis it does not account for [claimant's] limited pragmatic skills, challenges with social conversation, repetitive and stereotypical interests and repetitive behaviors.

(Ex. 4, p. 15.)

28. Dr. Levy recommended for claimant to participate in social skills group and in home behavioral intervention, as well as continuation of ongoing mental health counseling. She also recommended for his parents to contact the WRC's Family Resource Center to learn about parent education classes and/or support groups offered.

[5] Released in May 2013, the DSM 5 no longer recognizes a specific diagnosis of autistic disorder. It establishes a diagnosis of autism spectrum disorder which encompasses disorders previously referred to as early infantile autism, childhood autism, Kanner's autism, high-functioning autism, atypical autism, pervasive developmental disorder not otherwise specified, childhood disintegrative disorder, and Asperger's disorder.

TESTIMONY OF THOMPSON KELLY, PH.D.

29. Thompson Kelly, Ph.D. is the Chief Psychologist at the Service Agency. He has been a licensed credentialed psychologist for the past 16 years. Prior to becoming a psychologist, Dr. Kelly was a special education teacher for 10 years.

30. As the chief psychologist at the Service Agency, Dr. Kelly is a member of the eligibility committee which determined on October 19, 2016 that claimant was not eligible for regional center services. The eligibility committee consisted of the Service Agency's intake coordinator, an autism specialist, a physician, and a psychology consultant. The committee reached a consensus a claimant's eligibility for regional center services by majority vote.

31. At the hearing, Dr. Kelly opined that claimant was not eligible for WRC's services because he is not substantially disabled in three of the seven areas of major life activity. Specifically, Dr. Kelly agreed with Dr. Levy's diagnosis of claimant for autism spectrum disorder. He also agreed with Dr. Levy's assessment that claimant suffered deficits in self-care, self-direction, and social and social/pragmatic communication skills. Nevertheless, according to Dr. Kelly, while claimant's deficits in self-direction was substantially disabling, his deficits in self-care and social and social/pragmatic communications skills were not. Although Dr. Kelly has never met claimant in person, he reviewed claimant's school evaluations and the evaluations by Drs. Kaler and Levy described above in reaching this opinion.

32. Dr. Kelly emphasized that Dr. Levy's findings of claimant's deficits in self-care and social and social/pragmatic communication skills were based on the Vineland test, the validity of which he questioned. He criticized the test has having "constructional deficits," in that it is based on parent reporting and is therefore subject to misinterpretation. Dr. Kelly explained that the Vineland is asking for the capacity of the child to perform a certain task. However, parents as informants often assess a child's

skills without considering his or her underlying ability. As a result, a parent may rate a child on the Vineland as unable to perform a task when he or she may need promoting or reminding, even though the issue is whether the child can actually perform the task. Parents may also ignore motivation as a factor in assessing a child's ability. Dr. Kelly provided an example of a child who fails to brush their teeth adequately, but if offered $100, he or she would be able to complete the task without trouble.

33. In claimant's case, Dr. Kelly noted that in the area of communication, there is a discrepancy between claimant's IQ scores and the Vineland. Specifically, according to Dr. Levy's testing, claimant's IQ was in the superior range on the verbal comprehension index. (Factual Finding 26). However, based on the Vineland, his receptive and expressive language skills indicated deficits. Dr. Kelly asserted that claimant's IQ score on the verbal comprehension index is consistent with his general intellectual capability. Further, these scores are also consistent with those obtained through objective testing in claimant's school evaluations. (Factual Findings 13A and 16A). In Dr. Kelly's opinion, this consistency across the board demonstrates that claimant has strong, intact verbal communication skills. Although Dr. Kelly acknowledged that claimant experienced challenges in expressing ideas and having a good flowing conversation with a peer, he believed that the ability to carry on a back-and-forth conversation falls into the domain of self-direction, not expressive/receptive language.

34. In the area of self-care, Dr. Kelly opined that claimant may have some mild delays. He acknowledged several references to claimant's struggles with personal hygiene in the school evaluation and in the evaluations of Dr. Kaler and Dr. Levy. However, Dr. Kelly maintained that claimant teacher's report that his adaptive skills are appropriate in the school setting. (Factual Finding 19). According to Dr. Kelly, this variability across settings suggests that claimant has the capacity for self-care but does not always apply it.

35. In the area of mobility, Dr. Kelly did not find that claimant was substantially disabled because he has the ability to ambulate independently. While he recognized that claimant had some fine motor skills issues in terms of handwriting, which was outlined in the school occupational therapist's report, Dr. Kelly found no indication that claimant's gross motor skills were impacted.

36. Dr. Kelly further opined that claimant was not substantially disabled in the areas of learning, capacity for independent living, or economic self-sufficiency.

37. In sum, Dr. Kelly concluded that claimant's primary area of deficit is behavioral, in that he lacks the ability to regulate himself, to manage his anger, and to follow directions. Dr. Kelly asserted that claimant has the capacity for self-care and to facilitate conversations but is impeded by these self-regulatory issues. In support of his contention that claimant has the capacity for these skills, he cited to the 2017 school evaluation which found that claimant's executive functions are well intact. Dr. Kelly explained that the frontal lobe controls executive functions, which allows the brain to prioritize competing demands and is an indicator of capacity.

38. During cross examination, Dr. Kelly admitted that he did not have the opportunity to observe claimant even though the best practice for assessing an individual is to conduct multiple observations across multiple settings. Under questioning, Dr. Kelly could not recall, based on the documents that he reviewed, anything peculiar regarding claimant's gait, whether he takes any medication, or whether he has any sensory issues. Although Dr. Kelly questioned the validity of the results of the Vineland test administered by Dr. Levy, Dr. Kelly did not ask to see her protocols for the test to determine their accuracy.

39. Additionally, Dr. Kelly could not answer a number of questions regarding the process under which the Service Agency's eligibility committee made the determination regarding claimant's eligibility for regional center services. Although Dr.

Kelly stated that the eligibility committee meetings may occur over multiple sessions and with only two members present at any one time, he could not recall, in claimant's case, how many meetings occurred, the dates of the meetings, who was present at the meetings, what was discussed at the meetings, and whether all five members of the committee were present at the meetings at the same time to review claimant's case.

40. Under further questioning regarding claimant's self-care skills, Dr. Kelly did concede, as a hypothetical, that if claimant had self-care skills of a six-year old, he would be considered as having a substantial disability in the area of self-care. Dr. Kelly described the self-care standards of a six-year old as toilet-trained; may have difficulties with fasteners and buttons; and requiring some assistance with dressing, bathing, and teeth brushing.

TESTIMONY OF BETH LEVY, PH.D.

41. At the hearing, Dr. Levy, the contracting psychologist who performed the psychological evaluation at the Service Agency's request, testified on behalf of claimant. Dr. Levy obtained her doctorate in clinical psychology from the California School of Psychology in 1997. Since then, she has been in private practice. Since 2002, she has contracted with WRC to conduct psychological evaluations, and she has conducted over 2000 assessments.

42. In her testimony, Dr. Levy recalled that, during her observation of claimant at his school on June 8, 2016, she was struck by how much claimant was reliant on his one-on-one aide. She observed claimant's increasing frustrations while working in group settings. As set forth above in Factual Finding 24, claimant then stepped on another girl's project, with no awareness that the girl was upset. Claimant's aide then guided him through the process of saying sorry to the girl. Claimant's aide also helped him to stay on task and to help him through any emotional outburst. Based on her observation, Dr.

Levy concluded that claimant would have a very difficult time functioning in a classroom setting without a one-to-one aide.

43. Dr. Levy disagreed with Dr. Kelly's opinion that parent reporting on the Vineland is unreliable and completely subjective. She believes that claimant's parents provided an accurate description of claimant's adaptive skills. Dr. Levy noted that, according to her testing protocol, claimant's parents were interviewed alone and on separate dates in order to ensure accuracy of the testing data. She believes that the results of Vineland demonstrate that claimant is not functioning in an age-appropriate manner. Specifically, in her opinion, claimant is functioning at the level of a five- or six-year old in term of his adaptive skills. In the home setting, claimant required some assistance with dressing, taking showers, and brushing his teeth. In the school setting, claimant had persistent problems with hygiene and experienced difficulties finding his jacket and his lunch. Based on these facts, Dr. Levy opined that claimant suffered significant functional limitations in the area of self-care.

44. Dr. Levy disagreed with Dr. Kelly's opinion that social communication skills fall into the domain of self-direction. She defined self-direction as the ability to contain oneself. She did not believe that claimant's deficits in the areas of social communication and self-care involve problems with self-direction. Dr. Levy made a further distinction between language functioning and social and social/pragmatic communication skills. She stated that a child can have good understanding of language but suffer deficits in social/pragmatic language, which is the ability to engage in conversation or to relate an experience. Based on claimant's test results on the ADOS, she found that claimant had difficulties relating his peers, his parents, and teachers due to a lack of social communication skills. In her opinion, claimant suffers significant functional limitations in the area of expressive and receptive language.

45. Dr. Levy disagreed with Dr. Kelly's opinion that claimant has the capacity for self-care and social communication. She stated that claimant's inability to perform tasks in these areas is a part of his autism and that claimant "can't do it no matter how hard he tried." She cited to claimant's 2017 IEP showing that he has received behavioral intervention and social skills services since he was in the second grade as evidence that claimant's issues are functional in nature. She believed that if claimant had the capacity, he would have been remediated after having received these services for several years.

46. Additionally, Dr. Levy opined that claimant suffers significant functional limitations in mobility. She asserted that claimant has poor spatial awareness. He does not know when he is too close to someone. He bumps into other students, cannot sit still in his chair. Moreover, she opined that claimant suffers significant functional limitations in learning, in that claimant has difficulties with changes in routine and imitating other's actions, which impact his ability to learn. Although claimant's academic achievement is at grade level, Dr. Levy contended that, given claimant's superior IQ, his academic achievement should be above grade level. Finally, she opined that claimant suffers significant functional limitations in independent living, in that he is not aware of his health and safety and could not call the fire or police department in the event of an emergency. Claimant also has a narrow field of interest, which affects his ability to enjoy leisure time.

47. During cross-examination, Dr. Levy admitted, that according to the school occupational therapist's report, claimant's gross and fine motor skills (except for motor coordination) are age-appropriate and that his 2017 IEP contains no goal for occupational therapy.

TESTIMONY OF CLAIMANT'S MOTHER

48. Claimant's mother testified at the hearing regarding her observations and concerns of claimant's behavior. According to the mother, claimant has sensory issues

with certain objects. He refuses to touch strings, string-like objects, or anything wet or sticky such as glue. Claimant always wears long-sleeved shirts and long pants because he becomes upset about the wind touching his arm and legs. When he becomes agitated or exhausted, he engages in self-injurious behavior such as banging his head on the ground or against a wall, or making a fist with his hand and smacking himself on the forehead. He does not have any friends, and he is not invited to any birthday parties by his peers.

49. Claimant's mother detailed his functional limitations in major areas of life activities as follows:

A. *Self-care*. Claimant has difficulties with eating, grooming, and personal hygiene. He fixates on eating only one type of food, such as grilled cheese sandwiches, over a period of time. In terms of grooming, claimant's mother assists him with the putting on clothes because he often puts on his shirt backwards. Claimant also cannot fasten small buttons and cannot tie his shoes. In terms of personal hygiene, his mother washes his hair, and she also assists him with teeth brushing because he cannot brush his teeth well. She also repeatedly prompts claimant to wash his feet because he does not notice the smell. He picks his nose and his scabs, and he frequently puts his hands into his pants. Claimant also smears lip moisturizer on his face and legs.

B. *Receptive and expressive language*. Claimant has trouble carrying on conversation unless the topic is video games. While speaking to others, he frequently makes beeping sounds. Claimant also repeats song lyrics for 10 minutes at a time, which occurs both at home and in the school.

C. *Capacity for independent living*. Claimant's mother holds his hands when crossing the street because he does not look to both sides. His mother does not leave him alone for even 10 minutes at a time due to his lack of safety

awareness. She stated that if there was a fire, she does not believe that claimant would be able to call 911, to get water to put it out, or to seek out the assistance of a neighbor. Claimant's only leisure time activity is playing video games.

D. *Mobility*. Claimant walks with his arm hanging straight to his sides "like a robot." He often stumbles or trips and is unable to participate in sports. He has trouble with his fine motor skills, especially in writing, which has been problematic at school.

E. *Learning*. Claimant's mother expressed concerns about claimant's ability to engage in abstract thinking and problem solving beyond rote memorization. She testified that as her son advances through elementary school, his IQ can no longer "cover up" the effects of his autism spectrum disorder. Claimant's grades in reading and math recently fell below grade level, which is troubling to her because her son will enter middle school next year.

50. Claimant's mother stated that, in the past, she had "put her head in the sand" about claimant's condition and believed that he would get better over time. However, in her view, her son's condition has only worsened. She asserted that claimant "wants more than anything to be like any other child," but he is unable to do so because of his autism spectrum disorder. Last year, claimant attempted suicide, which prompted her to seek the services from the Service Agency.

TESTIMONY OF CLAIMANT'S FATHER

51. Claimant's father also testified at the hearing. Of note, claimant's father compared the day-to-day living skills of his daughter, who is two years younger than claimant, to that of her brother. Claimant's nine-years-old sister can shower, wash her own hair, clean after herself, and play by herself without relying on media. However, claimant requires constant supervision, except when he is playing video games. When

claimant is crossing the street or walking in a parking, his father either holds his hand or guides him by placing a hand on his neck, because claimant is "oblivious" to his own personal safety. Claimant's father expressed surprise at Dr. Kelly's testimony that claimant has the capacity to perform certain tasks, noting that his son does not pick up social cues and does not understand the concept self-regulation. Claimant's father also stated that claimant cannot carry on a real conversation because "there's no give and take." In December 2016, claimant's father and mother consulted with Ken Curtis, who is an applied behavioral analysis therapist. Mr. Curtis has worked with claimant for approximately three sessions in the last month.

CREDIBILITY FINDINGS REGARDING EXPERT OPINIONS

52. Dr. Levy presented as a very credible witness, as she testified in a clear, concise, and forthright manner. In contrast, Dr. Kelly's demeanor throughout the hearing was awkward. He fidgeted in his seat, and he repeatedly ran his hands through his hair in a gesture of exasperation. This obvious discomfort is striking particularly in light of his position as the Service Agency's chief psychologist who routinely testifies in these hearings. Dr. Kelly's responses during both the direct examination and cross examination reflected his unease, in that his answers were often evasive, circuitous, and oblique. Particularly concerning is Dr. Kelly's inability to recall any details regard the circumstances under which the Service Agency's eligibility committee came to a consensus regarding claimant's eligibility on October 19, 2016. It not only calls into question Dr. Kelly's credibility but also whether the other members of the eligibility committee provided any meaningful input into the decision to deny claimant's eligibility.

53. Significantly, Dr. Levy is the psychologist who had hands-on experience with claimant and his parents. In conducting her evaluation, she interviewed claimant's parents on separate dates, and she observed claimant both in school and during the standardized testing sessions. It is understandable that Dr. Kelly rendered his opinions

based on the documentary evidence because he did not have an opportunity to assess claimant in person. Nevertheless, he conceded that the best practice for assessment is to observe an individual across multiple settings. Because Dr. Kelly did not observe claimant in person, he failed to demonstrate a full grasp of claimant's condition. He could not describe claimant's gait, whether he takes any medication, or whether he has any sensory issues. Dr. Levy, as the practitioner who followed the best practice and exhibited better knowledge of claimant's condition, is in the better position to make findings regarding claimant's condition.

54. A. In her testimony, Dr. Levy convincingly refuted Dr. Kelly's opinions that claimant's deficits fall mostly in the domain of self-direction and that claimant has the capacity for self-care and social communication. Specifically, Dr. Levy opined that claimant's deficits in self-care and social communication do not involve self-direction. Dr. Levy further opined that claimant's deficits in self-care and social communications do not involve capacity but are features of his autism spectrum disorder. Dr. Levy's opinions are consistent with the evidence in this case.

B. The evidence does not indicate that claimant's deficits are related to behavioral problems or his lack of motivation. For example, in the domain of social communication, as early as 2011, when claimant was in kindergarten, Dr. Kaler noted that he had difficulties in understanding feeling states and providing connected social stories, even though he was socially motivated. (Factual Findings 10 and 11.). Claimant's school evaluations in 2011, 2014, and 2017 all indicate that claimant talks excessively about favorite topics, has difficulty imitating others, fails to make age-appropriate social relationships, and that these difficulties cannot be explained by shyness, attention, or a lack of interest.[6] (Factual Findings 13E, 16D, 16E, and 21F.)

[6] The 2014 and 2017 school evaluations contain some observations by the school psychologist that claimant engaged in age-appropriate conversations with

C. Dr. Kelly relied on claimant's IQ score and his scores in executive functioning on CAS-2 as indicators of capacity. However, in her report, Dr. Kaler expressed a contrary opinion that claimant's stimulus-driven behavior is a result of executive functioning deficits. (Factual Finding 11.) Additionally, Dr. Kelly did not adequately explain how intelligence and the ability to plan, strategize, and organize information, as measured by standardized testing, would remediate the effects of claimant's autism spectrum disorder in the pragmatic aspects of his life. The ability to carry on a conversation, for example, requires reading social cues, understanding others' feelings, and responding to others' interests. The evidence also shows that claimant's deficits in these areas are a result of his autism spectrum disorder. For instance, both Dr. Levy and the school psychologist noted that claimant repeatedly scratched himself and picked at his scabs. (Ex. 4, p. 6; Ex. 9, p. 26.) The school psychologist opined that this behavior does not appear to be associated with his eczema, but is one of the self-stimulating, ritualistic behaviors in which claimant engages. (Ex. 9, p. 26.)

55. In light of these factors, Dr. Levy is deemed to be the more credible expert witness, and her opinions are afforded greater weight than Dr. Kelly's.

FINDINGS REGARDING SUBSTANTIAL DISABILITY

56. Claimant established by a preponderance of the evidence that he has significant functional limitations in the following areas of major life activity, as appropriate to a person of his age:

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peers during recess. (Ex. 10, p. 14; S-3, p. 10.) However, given that record did not establish how long these observations lasted and the circumstances under which they were made, this evidence was given little weight.

A. *Self-direction.* The parties agree that claimant has significant functional limitations in self-direction.

B. *Self-care*. As set forth above, Dr. Levy's opinion in this domain is deemed to be more credible than that of Dr. Kelly. Dr. Levy found that claimant's self-care skills were at the level of a five- to six-year old. Dr. Kelly had conceded that this level of deficit for a child of claimant's age would be considered as substantially disabling.

C. *Receptive and expressive language.* Similarly, Dr. Levy's opinion in this domain is deemed to be more credible than that of Dr. Kelly. She opined that a child can have good understanding of language but suffer deficits in the social/pragmatic language, which is the ability to engage in conversation or to relate an experience. This opinion was persuasive, especially in light of Dr. Kaler's express concerns in 2011 regarding claimant's pragmatic language skills and her recommendations for a pragmatic language evaluation. (Factual Finding 11.) Thus, although claimant obtains high scores on standardized test in language, he has significant functional limitations in the pragmatic aspects of receptive and expressive language.

D. *Capacity for independent living*. Claimant's parents' testimonies established that he lacks basic safety awareness to the extent that he would not be able to seek assistance in the event of an emergency. Moreover, claimant's restricted interests affect his ability to enjoy leisure time, as his only leisure activity is playing video games. His capacity for independent living is not appropriate for his age, and he has significant functional limitations in this area.

57. Claimant did not establish by a preponderance of the evidence that he has significant functional limitations in the following areas of major life activity, as appropriate to a person of his age:

A. *Learning.* Standardized testing in claimant's school evaluations indicate that he is performing at or above grade level in terms of academic achievement. While claimant clearly faces challenges and needs the additional support that he is receiving at school, he does not have significant functional limitations in the area of learning.

B. *Mobility*. Although claimant has a strange gait and have issues in recognizing interpersonal space, the occupational therapist's report from his school evaluation indicate that his gross and fine motor skills are in the average range, with the exception of motor coordination, which was just below average. Claimant's 2017 IEP contains no goals relating to occupational therapy. Although clamant does have a problem with handwriting, it is being addressed through assistive technology. Therefore, he does not have significant functional limitations in the area of mobility.

C. *Economic self-sufficiency.* No evidence was presented that claimant has significant functional limitations in the area of economic self-sufficiency.

LEGAL CONCLUSIONS

1. Claimant established that he suffers from a developmental disability entitling him to receive regional center services, as set forth in Factual Findings 5 through 57, and Legal Conclusions 2 through 9.

2. Because claimant is the party asserting a claim, he bears the burden of proving, by a preponderance of the evidence, that he is eligible for government benefits or services. (See Evid. Code, §§ 115 and 500.) He has met this burden.

3. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 et seq.) Eligibility for regional center services is limited to those persons meeting the criteria for one of the five categories of developmental disabilities set forth in Welfare and Institutions Code section 4512, subdivision (a), as follows:

> "Developmental disability" means a disability that originates before an individual attains age 18 years, 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 intellectual disability [commonly known as the "fifth category"], but shall not include other handicapping conditions that are solely physical in nature.

4. The qualifying condition(s) must also cause a substantial disability. (Welf. & Inst. Code, § 4512, subd. (a); Cal. Code Regs., tit. 17, § 54000, subd. (b)(3).) A "substantial disability" is defined by California Code of Regulations, title 17, section 54001, subdivision (a), as:

(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.[7]

4. California Code of Regulations, title 17, section 54002, defines the term "cognitive" as "the ability of an individual to solve problems with insight, to adapt to new situations, to think abstractly and to profit from experience."

5. In this case, applying the evidence to the above-described categories reveals claimant is substantially disabled because of his autism spectrum disorder. Claimant is unable to solve pragmatic problems with insight, to adapt to new situations, and to profit from his experience. Thus, claimant's condition has resulted in a major impairment of his cognitive and social functioning, as required by California Code of Regulations, title 17, section 54001, subdivision (a)(1). He has significant functional limitations in all areas of his major life activity listed in California Code of Regulations, title 17, section 54001, subdivision (a)(2), except for learning, mobility, and economic self-sufficiency.

6. A. Excluded from eligibility are handicapping conditions that are solely psychiatric disorders, learning disabilities and/or disorders solely physical in nature. (Cal. Code Regs., tit. 17, § 54000.) If an applicant's condition is *solely* caused by one or more of these three "handicapping conditions," he is not entitled to eligibility.

B. "Solely psychiatric disorders" are defined as "impaired intellectual or social functioning which originated as a result of the psychiatric disorder or treatment given for such a disorder." (Cal. Code Regs., tit. 17, § 54000, subd. (c)(1).)

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[7] Welfare and Institutions Code section 4512, subdivision (*l*), defines "substantial disability" similar to that of California Code of Regulations, title 17, section 54001, subdivision (a)(2).

C. "Learning disorders" are defined as a significant discrepancy between estimated cognitive potential and actual level of educational performance which is not "the result of generalized mental retardation, educational or psycho-social deprivation, [or] psychiatric disorder. . . ." (Cal. Code Regs., tit. 17, § 54000, subd. (c)(2)).

7. The fact that an individual has received or requires mental health treatment does not disqualify that individual from regional center services if he otherwise meets the requirements of Welfare and Institutions Code, section 4512 discussed herein. (*Samantha C. v. State Department of Developmental Services* (2010) 185 Cal.App.4th 1462.)

8. In this case, although it was established that claimant has obsessive compulsive disorder, it was not established that this is the sole cause of his impaired cognitive and social functioning. Dr. Levy opined that claimant's psychiatric condition does not account for his limited pragmatic skills, challenges with social conversation, repetitive and stereotypical interests, and repetitive behavior. (Factual Finding 27.) In addition, despite being diagnosed with psychiatric disorders and prescribed medications and treatments, claimant remains impaired in terms of his social, communicative, and cognitive functions.

9. Since the parties stipulated that claimant is properly diagnosed with autism spectrum disorder, he established a basis of eligibility for regional center services under the Lanterman Act. He also established that his qualifying condition has caused him to be substantially disabled. Under these circumstances, claimant's appeal must be granted.

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ORDER

Claimant established that he is eligible for services under the Lanterman Developmental Disabilities Services Act. Claimant's appeal of the Westside Regional Center's determination that he is not eligible for regional center services is therefore GRANTED.

DATE:

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JI-LAN ZANG

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.