

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Fair Hearing Request
of:

OAH Case No. 2015030314

CLAIMANT,

vs.

FRANK D. LANTERMAN REGIONAL
CENTER,

Service Agency.

DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on February 22-25 and 29, 2016, in Los Angeles.

Claimant was represented by Patrick S. Smith, Esq., Beltran, Beltran, Smith & Mackenzie LLP.¹

Frank D. Lanterman Regional Center (service agency) was represented by Julie A. Ocheltree, Esq., Enright & Ocheltree, LLP.

The record was held open for the parties to submit additional documents and closing briefs. Admission of the subsequently submitted documents and receipt of the closing briefs are discussed in more detail in the ALJ's orders dated March 21, 2016, and

¹ The names of claimant and his family members are omitted to protect their privacy.

April 29, 2016, which were marked for identification as exhibits G and K, respectively.

The record was closed and the matter submitted for decision on May 6, 2016.

ISSUES

Claimant is an existing regional center consumer who was deemed eligible for services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) in 1995 by the North Los Angeles County Regional Center (NLACRC) on the basis of autism.

From 1995 through early 2012, claimant received funding for regional center services by both NLACRC and the Westside Regional Center (WRC).

As a result of claimant's harassment of NLACRC staff and others, which ultimately resulted in a civil restraining order against him and several convictions, NLACRC inactivated his case file and claimant stopped receiving services in March 2012. Claimant thereafter moved into the catchment area served by the service agency and requested reactivation of services. He is currently on criminal probation. The sentencing court ordered the service agency to evaluate claimant for purposes of a diversion of some of his convictions pursuant to the Penal Code.

The service agency contends the determination to deem claimant eligible for services in 1995 made by the other regional center was clearly erroneous and therefore he is not currently eligible for services. Claimant contends his diagnosis in 1995 of Asperger's Disorder by his treating psychiatrist and a psychologist to whom he was referred by NLACRC at the time supported the decision to deem him eligible and shows NLACRC's determination was not erroneous. Claimant also argues that by categorizing claimant's eligible condition as "autism," NLACRC and WRC subsequently decided claimant was autistic, and not a person with Asperger's Disorder. In addition, claimant contends the legal doctrines of waiver, estoppel and an unspecified limitations period should prevent the service agency from attempting to set-aside claimant's eligibility for

services 20 years after he was initially deemed eligible. The service agency denies those legal doctrines apply as a matter of fact and law.

Even if the determination in 1995 was clearly erroneous, claimant contends he is currently eligible for services because he has been diagnosed with the eligible condition of Autism Spectrum Disorder by three qualified experts. In addition, claimant contends the provision of the Penal Code allowing diversion for developmentally disabled defendants expands the eligibility criteria under the Lanterman Act to include a condition closely related to autism, which he meets.

The service agency contends the diagnoses made by the aforementioned experts are not supported by the record and that more persuasive opinions offered by other qualified professionals support the conclusion that claimant is not autistic, but rather suffers primarily from various psychiatric and learning disorders. The service agency also contends the Penal Code provision in question has no application to the Lanterman Act and should be disregarded.

SUMMARY

The decision made by NLACRC in 1995 that claimant was eligible for services was clearly erroneous. By that time, claimant had never received a diagnosis of Autistic Disorder by any qualified professional. His diagnosis of Asperger's Disorder was not an eligible condition for purposes of the Lanterman Act. Moreover, NLACRC deemed claimant "provisionally eligible" for two years and determined to reevaluate him thereafter. There has never been a legal basis for provisional eligibility status.

In addition, NLACRC never reevaluated claimant within two years; his transfer to WRC before the end of the two-year period indicates the failure to reevaluate him was an oversight rather than an intentional decision based on competent professional evidence that claimant actually had autism. There is no evidence that NLACRC or WRC ever determined claimant had Autistic Disorder, which would have qualified as "autism"

for purposes of the Lanterman Act in 1995.

The legal doctrines of waiver and estoppel do not prevent the service agency in this case from asserting that a separate regional center, NLACRC, made a clearly erroneous determination concerning claimant's eligibility in 1995. Claimant cited no legal limitations period that would prevent the service agency from doing so.

However, claimant met his burden of proving he currently meets the diagnosis of Autism Spectrum Disorder, which would qualify him for regional center services as a person with "autism" under the Lanterman Act. Claimant's evidence, and particularly his primary expert witness, was more persuasive on this issue than the service agency's evidence and expert witnesses. Though it is unnecessary to decide based on his qualifying diagnosis, the criminal diversion provisions of the Penal Code cited by claimant do not apply to the Lanterman Act.

Nonetheless, claimant is not eligible for regional center services at this time because he failed to meet his burden of proving both that he requires "interdisciplinary planning and coordination of special or generic services to assist [him]" and that his condition is substantially disabling for purposes of the Lanterman Act.

EVIDENCE RELIED ON

In making this Decision, the ALJ relied on service agency exhibits 1-17, 19-40, 43-48, and 50-54. Official notice was taken of exhibits 41-42. Only portions were admitted of exhibits 11, 50 and 51; those portions were described on the record during the hearing. The ALJ also relied on claimant's exhibits E and portions of C (described on the record). Official notice was taken of exhibits A and B. The ALJ also relied on the testimony of Gwendolyn Jordan, R.N.; Dr. Gordon Plotkin; Dr. Mandana Moradi; Dr. Mark DeAntonio; Tim De Haven; and Detective Jose Viramontes. The closing briefs were reviewed but are not considered to be evidence.

FACTUAL FINDINGS

The following facts were established by a preponderance of the evidence (see Legal Conclusion 5):

PARTIES AND JURISDICTION

1. Claimant is a 41-year-old male who was deemed eligible for regional center services on the basis of autism in 1995 by NLACRC.
2. As a result of transferring to and from two different regional centers, claimant received regional center services from both NLACRC and WRC from 1995 through 2012.
3. As explained in more detail below, in March 2012 NLACRC deemed claimant's behavior to be a threat to its staff and it advised claimant it would no longer serve him. Later that month, NLACRC obtained a civil restraining order prohibiting claimant from contacting NLACRC employees.
4. In June 2012, claimant advised the service agency he had moved into its geographical catchment area and requested regional center services be reactivated. After service agency staff began the process of assessing claimant, he suffered several criminal convictions and was incarcerated in the county jail. Some of the convictions related to claimant's behavior underlying NLACRC's decision to no longer serve him.
5. After claimant's release from incarceration and placement on formal probation in September 2014, the service agency was able to complete its assessment. An interdisciplinary team of the service agency concluded claimant does not have a developmental disability as that term is defined by law and that he is therefore ineligible for regional center services.
6. By a letter dated February 2, 2015, claimant and his counsel in this matter were advised in detail why service agency staff had concluded claimant was not eligible

for regional center services. Claimant was advised of his appeal rights.

7. On March 5, 2015, a Fair Hearing Request on claimant's behalf was submitted to the service agency, by which the aforementioned decision to deem claimant ineligible for regional center services was appealed. Claimant designated his counsel in this matter as his authorized representative.

8. A. The hearing of this matter was initially scheduled to commence on April 23, 2015. However, the hearing was continued at the unopposed request of the service agency.

B. The matter was next scheduled to commence on August 24, 2015, but was continued at the unopposed request of claimant's counsel.

C. The matter was next scheduled to commence on February 22, 2016; it proceeded on that date.

9. In connection with the initial continuance request, claimant's authorized representative executed a written waiver of the time limit prescribed by law for holding the hearing and for the ALJ to issue a decision.

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10. At the conclusion of the final day of the hearing, counsel for both parties stipulated that, should this Decision be subject to an appeal to the Superior Court of the State of California, the party or parties lodging the record of this proceeding shall redact claimant's personal and confidential information from any item so lodged.

CLAIMANT'S DEVELOPMENT IN CHILDHOOD AND ADOLESCENCE

11. Claimant, who was adopted, currently lives with his father. His mother passed away several years ago. He has no siblings. He is not employed. He is unconserved and, as indicated above, is serving under terms of a formal criminal probation.

12. Little information was presented concerning claimant's early development

as a toddler or child. Much of the information for that time period comes from report narratives of histories taken from claimant's parents by providers who saw or treated claimant when he was a teenager or older. In such documents, claimant was generally described by his parents as a colicky baby, who had behavior and anger problems as early as his toddler years. A report from the UCLA Neuropsychiatric Institute (NPI) states "[i]n spite of these problems, the developmental milestones were within normal limits." (Ex. 4, p. 24.) That same report shows at age seven claimant was diagnosed with attention deficit and hyperactivity disorder (ADHD) and auditory perceptual problems. (*Ibid.*)

13. A. The earliest provided documentation is from March 1989, when claimant was involuntarily admitted to the Thaliens Mental Health Center at Cedars Sinai Medical Center (Thaliens) when he was 14 years old. Claimant was admitted upon reports by his mother that he had physically abused her at home. Claimant's mother also reported to Thaliens staff that her son was on "unofficial probation" at the time after being accused of robbing a neighbor's home and, in a separate incident, vandalizing the car of a teacher at the special day school he attended. (Ex. 5, p. 41.)

B. By way of history, it was noted claimant had been "kicked out" of nursery school and had difficulty in regular school due to behavior problems. He was described as having global learning disabilities, although cognitively he "appears intact." (Ex. 5, p. 42.)

C. At the time of claimant's admission to Thaliens, he was in a special day program at Northpoint Day Treatment Service, a nonpublic school. He was classified as severely emotionally disturbed. He did poorly relating to peers and was very antagonistic to them. He demonstrated poor eye contact, but also openly responded to questions. While in Thaliens, claimant continued to engage in difficult behaviors, including being physical with staff, disruptive in class and having severe trouble focusing

and paying attention.

D. On April 12, 1989, claimant was discharged from Thaliens after one month. He was diagnosed with ADHD, with a notation to "rule out a conduct disorder." (Ex. 5, p. 49.) One of claimant's treating psychiatrists observed he "appears to have some history of possible neurologic and organic causes for his current behavior, and I would suggest a strong organic workup prior to medication intervention." (Ex. 5, p. 44.)

14. A. Due to Thaliens' staff recommendation that claimant be examined for organic or neurologic causes of his behavior problems, in late March 1989, claimant was referred for a neuropsychological assessment by Stephen Bozylinski, Ph.D., of Charter Counseling Center (Charter). (Ex. 3.) A report from that assessment was issued on April 4, 1989. The report indicates claimant had received special education services from the age of seven to address ADHD, he was experiencing behavioral problems, and had been hospitalized for out of control behavior. Dr. Bozylinski noted claimant's pediatrician reported claimant had "massive learning disabilities." (Ex. 3, p. 12.) This information seems to overlap that contained in reports from Thaliens. (Ex. 5.)

B. On IQ testing performed by Dr. Bozylinski, claimant's Verbal IQ was 84, his Performance IQ was also 84 and his Full Scale IQ was 82, which was described as indicative of below average intellectual functioning. Dr. Bozylinski noted claimant had difficulty focusing on tasks, demonstrated a rather immature response to social situations, was impulsive, showed poor judgment, and had a "somewhat sociopathic profile." (Ex. 3, p. 14.) Dr. Bozylinski described claimant as appearing more intelligent than his scores indicated because of "his at least average abilities to 'read' social situations for his own advantage." (*Id.*) However, claimant had lower scores on sub-tests requiring freedom from distraction. Dr. Bozylinski concluded claimant's overall cognitive scores underestimated his intellectual and academic abilities due to his distraction and poor attention. (*Id.*)

C. Dr. Bozylinski concluded there “is no evidence of psychosis, autism, or developmental disorder.” (Ex. 3, p. 15.) Dr. Bozylinski diagnosed claimant with ADHD and Learning Disabilities, among other conditions related to extreme impulse control problems and anxiety. (Ex. 3, p. 17.)

15. A. On June 7, 1990, when he was 16 years old, claimant was admitted to UCLA’s NPI hospital. He remained there until discharged on August 15, 1990. Records from UCLA state his admission was due to long-term problems with hyperactivity, aggression and bizarre behavior.

B. In terms of claimant’s early development, his mother advised UCLA staff she noticed problems with him since he was an infant. Mainly, he was hyper, angry and had a low frustration level. Medications for the hyperactivity were not successful. At school, claimant was described by his mother as having rage attacks, fighting authority, poor concentration and resorting to physical contact. She also said he had poor personal relationships and had only one friend.

C. In late June 1990, claimant had a psychological evaluation performed by Peter Mundy, Ph.D., and Mary Verdi, Ph.D. He achieved IQ estimates of 80 for verbal, 61 for performance, and 69 for full-scale. While those scores suggested mild range mental retardation (as the condition was then described), the examiners noted claimant’s depressed mood and willingness to give up too easily on some tests made it likely the IQ scores underestimated his true ability and that the scores should be approached with caution. The evaluators summarized claimant was not performing to his capability, he had problems with novel problem solving, he was depressed, and perhaps he suffered from a subtle thought disorder.

D. On July 11 and 12, 1990, claimant was also administered a neuro-psychological evaluation by Alejandra Munoz, Ph.D. It was noted in a report from the evaluation that claimant had delayed language development, i.e., he had adequate verbal

comprehension at a concrete level but severe problems for decoding the meaning at the abstract level. He could adequately communicate when provided with structure, but he had trouble with spontaneous generation of words. His general ability of intellectual functioning was described as decreasing as tasks became more complex. Dr. Munoz recommended claimant receive special education.

E1. Claimant was followed through his hospitalization at NPI by psychiatrist Mark DeAntonio, as well as the psychologist Dr. Mundy. The two wrote a psychiatry discharge summary concerning their evaluation of claimant. (Ex. 4, pp. 31-40.)

E2. The report describes claimant's early developmental history as highlighted by hyperactivity and a low frustration level when he was an infant and young child, as well as a formal diagnosis of hyperactivity at age seven. Several unsuccessful attempts to control his hyperactivity with medications were noted. His eye contact was described as poor; his intelligence was described as average; and his judgment and insight were described as impaired. Claimant's behavior outside of the NPI school setting was said to be marked by verbal threats and physical confrontation toward staff, labile mood, intolerance of limit-setting and provocation of peers.

E3. Claimant's overall clinical picture was described as being marked by a combination of three syndromes: primarily, his longstanding history of poor social skills and difficulty relating to others resulted in a diagnosis of pervasive developmental disorder not otherwise specified (PDD-NOS); second, his difficulty attending to tasks, distractibility and need for constant supervision reflected his existing ADHD diagnosis; and his dysphoric mood, agitation and poor self-esteem suggested a depressive disorder.

16. A. Dr. DeAntonio testified during the hearing. He is a board certified psychiatrist with degrees from UCLA, Stanford Medical School and Yale University. Dr. DeAntonio has been working at UCLA since 1985 and during his entire time there he has

been heavily involved in treating children and adolescents. In fact, from 1992 to 2006, he was the Director for Adolescent Inpatient Services at UCLA NPI, and from 2006 to the present he has been the Director of Child and Adolescent Inpatient Services. He has extensive experience treating children and adolescents with developmental disabilities and mental health disorders, including ADHD. He is also on the panels of three different regional centers in Southern California, through which he is involved in issues relating to diagnosis and treatment of developmental disabilities. Through his time, experience and duties at UCLA, Dr. DeAntonio has developed extensive experience diagnosing and treating those with autism spectrum and other developmental disorders.

B. Dr. DeAntonio first came into contact with claimant when he was admitted to UCLA NPI hospital in 1990. Dr. DeAntonio followed claimant throughout that hospitalization until claimant was discharged almost ten weeks later. Dr. DeAntonio has continued to follow claimant as a patient since claimant was discharged from NPI hospital in 1990 to the present time. Dr. DeAntonio's longstanding experience treating claimant for almost 26 years has given him unique insight and perspective into claimant's condition.

C. In 1990, Dr. DeAntonio viewed claimant as an adolescent with both developmental and mental disorders. Claimant's hallmark symptoms and behaviors were his irritability and hostility, "getting stuck on ideas and not getting off them," and becoming extremely agitated over trivial things. Claimant was also impulsive and had difficulty focusing. Dr. DeAntonio felt PDD-NOS was the primary diagnosis for claimant at the time because his life had been marked by social deficits, inability to relate to others reciprocally and a restricted range of interests. Dr. DeAntonio described claimant's focus on particular issues as extreme, in that he would not desist or refrain from a preferred activity or interest regardless of the reinforcement, redirection or sanction (such as loss of benefits, isolated confinement or physical restraints). Examples

provided by Dr. DeAntonio were the color of the shoes claimant wanted to wear in the unit or the time he wanted to eat. If claimant did not get what he wanted, he would rapidly escalate his behaviors to extreme levels. Dr. DeAntonio felt a developmental disorder explained those behaviors better than a mental disorder, mainly for two reasons. First, medications routinely successful for ADHD did not reverse claimant's social problems or restricted interests. Second, his behaviors were not episodic, as one would expect for a mental health problem, but instead longstanding and persistent, more like a developmental disorder. This is why Dr. DeAntonio felt claimant's mental disorder was secondary.

D. Dr. DeAntonio did not indicate in either his psychiatric discharge summary or testimony that he believed claimant had a cognitive disability.

17. A. In 1990, the Diagnostic and Statistical Manual of Mental Disorders [third edition-revised] (DSM 3R), published by the American Psychiatric Association, was recognized and commonly accepted in the medical and mental health fields as a primary tool in diagnosing developmental and mental disorders.

B. At that time, the DSM 3R contained a diagnostic category labelled Pervasive Developmental Disorders (PDD category), which contained disorders categorized by qualitative impairments in the development of reciprocal social interaction, verbal and nonverbal communication skills and imaginative activity. (Ex. 54, p. 33.) It was also noted that markedly restricted repertoire of activities and interests would be present. (*Ibid.*) Such a restriction could take various forms, including catastrophic reactions to minor changes in the environment, such as when "his or her place at the dinner table is changed." (Ex. 54, p. 35.)

C. Because clinical descriptions overlapped, there were no generally recognized subtypes in the PDD category, other than Autistic Disorder. So, the PDD category was to be used as a diagnosis for the above-described symptoms, unless the requisite criteria

of Autistic Disorder were met. (Ex. 54, p. 34.) However, it was noted that Autistic Disorder “is merely the most severe and prototypical form of the general category [PDD]. Cases that meet the general description of a [PDD category] but not the specific criteria for Autistic Disorder are diagnosed as [PDD] Not Otherwise Specified.” (*Ibid.*)

D. The criteria for an Autistic Disorder diagnosis included four major categories (labelled A through D), with two of those categories containing five or six sub-parts each; the patient would have to exhibit two or more sub-parts. (Ex. 54, pp. 38-39.) The diagnosis of PDD-NOS “should be used when there is a qualitative impairment in the development of reciprocal social interaction and of verbal and nonverbal communication skills, but the criteria are not met for Autistic Disorder. . . . Some people with this diagnosis will exhibit a markedly restricted repertoire of activities and interests, but others will not.” (Ex. 54, p. 39.)

18. During the hearing, Dr. DeAntonio testified he diagnosed claimant with PDD-NOS rather than Autistic Disorder in 1990, because claimant had sufficient verbal and communication skills such that the diagnostic criteria for a language impairment under Autistic Disorder could not be met under the DSM 3R. Since claimant had the requisite social impairments and displayed restricted interests (shoe color, time to eat, extreme insistence regarding trivial issues), Dr. DeAntonio felt the PDD-NOS diagnosis was appropriate for claimant at the time. Dr. DeAntonio’s conclusion is consistent with the above-described diagnostic recommendations of the DSM 3R.

19. Claimant’s individualized education program (IEP) concerning his special education services in 1992 indicates claimant had been placed at the Dubnoff Center, a nonpublic school. (Ex. 6.) The IEP also indicates the California Department of Mental Health (DMH) found claimant qualified for mental health services under AB 3632. It was noted claimant displayed inappropriate, intense anger and lack of control; and he found it difficult to accept responsibility for his behavior. The IEP documents several goals

related to claimant improving his reading and math skills, as well as a “social emotional” goal for claimant to “act more adult like,” and the stated objective that he “interact with peers, staff and teachers in a positive manner.” (Ex. 6, p. 2.)

20. Educational progress reports from fall 1993 highlight claimant’s continuing behavior problems, including teasing peers verbally and physically, as well as challenging authority figures. (Ex. 11.) It was noted he “has extreme difficulty when he does not get his own way, even when the rules have been explained to him. . . .” (Ex. 11, p. 73.) Objectives and goals for him were to increase his verbalization and staying on task. He demonstrated basic math and reading skills, such as using a calculator, opening a checking account, reading “want ads” and writing letters requesting more information on the “want ads” of interest. (*Ibid.*) Because he did well in vocational skills and was “able to relate well to supervisors and coworkers and to follow assigned tasks,” it was stated he was a good candidate for supported employment. (*Ibid.*)

CLAIMANT’S FAMILY CONTACTS NLACRC IN 1992

21. In 1992, claimant was enrolled in and lived at the Oak Grove Institute, a nonpublic school located in Murrieta. However, his parents were living within the NLACRC service catchment area.

22. In September 1992, claimant’s mother requested NLACRC provide her son with regional center services. She had been referred to the regional center by her local school district funding his education services, as well as the DMH.

23. A. In September 1992, claimant and his mother were interviewed by NLACRC Intake Counselor Carol Hernandez. Available school and healthcare records were also obtained and reviewed, including those related to claimant’s prior admissions to Thaliens and UCLA.

B. In her intake report, Ms. Hernandez noted claimant previously had been diagnosed with ADHD, an auditory processing disorder, mood disorder and PDD-NOS.

(Ex. 8.) She also noted difficulty finding information about the PDD-NOS diagnosis in the reviewed UCLA records. Claimant's mother reported Dr. DeAntonio told her claimant had "autistic features," in that he would "repeat on and on the same idea, will not take no for answer," had difficulty with peer relationships, could not keep a friend, etc. (Ex. 8, p. 60.) She also described claimant's interests in window shopping and collecting antique keys and locks. It also was noted claimant's mother asked for her son to be "considered eligible for Regional Center services based on 'the fifth category' having a condition similar to and requiring services like a person with mental retardation." (*Id.*, p. 59.)

C. Ms. Hernandez found claimant's speech clear and understandable and noted a number of basic skills claimant was reportedly able to perform. Claimant's mother described her son as "a more advanced learning disabled person." (Ex. 8, p. 61.)

D. Ms. Hernandez summarized her findings in her intake report. She concluded claimant's eligibility was "questionable," because he "does not have Autism . . . [and] therefore the 5th category of eligibility would be the only consideration." (Ex. 8, p. 64.) Ms. Hernandez decided to refer claimant to psychologist Carol M. Bellamy for a psychological evaluation.

24. A. Dr. Bellamy evaluated claimant on December 14, 1992. Both claimant and his mother were interviewed by Dr. Bellamy. She also administered to claimant various cognitive, academic and adaptive skills tests. Dr. Bellamy had access to some records and was privy to Dr. DeAntonio's prior PDD-NOS diagnosis for claimant.

B. Dr. Bellamy noted in her evaluation report that claimant greeted her appropriately upon introduction. His language was clear and relevant. However, he came across to her as immature and labile. She described him as "a volatile young man who struggles to control his impulses and maintain a façade of normalcy." (Ex. 10, p. 68.)

C. The cognitive test results were low-average in verbal IQ and borderline in

performance and full-scale IQ. ("Borderline" is assumed to mean below average but above cognitive disability.) He did poorly in practical reasoning, but better in abstract reasoning. His academic testing indicated he performed in the third, fifth and sixth grade levels in assorted subjects (he was almost 18 at this time), which Dr. Bellamy described as borderline for reading and spelling, but mildly delayed for arithmetic. ("Mildly delayed" is assumed to mean below borderline and within the range of cognitive disability.) Claimant's adaptive skills test results were scored in the borderline range in communication and daily living skills, but the "upper end of the mildly retarded range for socialization." (Ex. 10, p. 69.) However, it was noted he had friends at school, tried to initiate conversation on topics of interest to others and was able to respond to hints or indirect cues. (*Id.*, p. 70.)

D. Dr. Bellamy diagnosed claimant with Borderline Intellectual Functioning; Undifferentiated ADHD; and Oppositional-Defiant Disorder. (Ex. 10, p. 70.) Dr. Bellamy described claimant's overall cognitive skills to be in the borderline range, which his academic and adaptive skills seemed to mirror, except his social skills were worse. However, Dr. Bellamy did seem to slightly question the cognitive test results because claimant's effort seemed to wane "due to his fear of failing." (*Id.*, p. 71.) Dr. Bellamy noted claimant was impulsive, emotionally labile, but anxious to please. She recommended structured living and vocational opportunities for him, with a chance for him to live independently if he matured. Dr. Bellamy specifically recommended services to meet his behavioral and emotional challenges, including placement in a group home and a sheltered work program. (*Ibid.*)

25. On March 10, 1993, an eligibility team for NLACRC, including Ms. Hernandez, met and reviewed claimant's case. The team concluded claimant was not autistic, mentally retarded, and that he did not have a fifth category condition similar to mental retardation. They found him ineligible for regional center services. (Ex. 13.)

26. By a letter dated March 11, 1993, Ms. Hernandez informed claimant's parents that NLACRC determined claimant was not eligible for regional center services under any category, including the fifth category. (Ex. 15.) Claimant's family did not appeal.

CLAIMANT'S SITUATION IN 1994 AND EARLY 1995

27. By 1994, claimant was enrolled in and residing at the Devereux Foundation (Devereux), a nonpublic school located in Santa Barbara. A February 1, 1994 Devereux progress report for claimant's last semester indicates he was becoming more independent, needed less supervision, and was able to take the bus to the program. It was noted, however, that he still tried to manipulate staff to avoid riding the bus; and that "he feels that people are just there to serve him. . . ." (Ex. 16, p. 84.) Although he was said to be "doing really well working with others," it was also observed he "still will pester peers if he finds that he can irritate them easily." (*Ibid.*) It was recommended that claimant remain strictly on a vocational tract so he could get a paying job after graduation. (*Ibid.*)

28. Claimant's IEP report in May 1994 by his local school district, which was funding claimant's placement at Devereux along with the DMH, described his language skills as age appropriate. But in regard to his receptive language, it was noted he needed a great deal of time to process multi-step instructions. In regard to his expressive language, although he could express himself clearly in a casual setting, it was noted he got flustered with the same material in a serious setting. (Ex. 17, p. 89.) His self-help skills were described as in the low to average range of general ability. (*Ibid.*)

29. In April 1995, claimant was still being treated by Dr. DeAntonio of UCLA NPI. Dr. DeAntonio was asked to write a letter on claimant's behalf concerning his diagnosis and treatment. In a note dated April 13, 1995 (ex. C, p. 1), Dr. DeAntonio wrote:

His [claimant's] primary diagnosis which causes his social, interpersonal, and occupational difficulties is Asperger's Disorder. He meets all criteria for Autism, infantile onset due to his severe deficits in social, occupational, and interpersonal functioning, as well as a restricted repetitive and stereotyped patterns of behavior, interests, and activities except for lack of significant delays in language. In the past this gave him the diagnosis of Pervasive [sic] Developmental Disorder NOS. However as per DSM IV, he meets full criteria for Asperger's Disorder which is an Autistic Disorder.

30. A. Dr. DeAntonio testified the DSM 4 was first published in 1994, and it introduced Asperger's Disorder as a diagnostic condition within the PDD category. Dr. DeAntonio testified he changed claimant's diagnosis from PDD-NOS because claimant met the criteria for Asperger's Disorder. Specifically, Dr. DeAntonio believed claimant had social and behavioral deficits, as well as restricted interests, but that he did not have a significant language delay. Dr. DeAntonio classified Asperger's Disorder as an "autism related disorder," although he agreed the DSM 4 had a diagnosis for Autistic Disorder and that Asperger's Disorder was not the same as Autistic Disorder.

B. Neither party submitted an excerpt from the DSM 4. Only an excerpt from the DSM 4 [text revision] (DSM 4 TR) was presented (ex. 50, pp. 585-607), including the Asperger's Disorder diagnosis. The DSM 4 TR was first published in 2000, six years after Dr. DeAntonio diagnosed claimant with Asperger's Disorder. However, both service agency consulting psychologist Mandana Moradi and forensic psychiatrist Gordon Plotkin generally agreed in their testimony with Dr. DeAntonio's characterization of the changes made by the DSM 4 in 1994.

31. Claimant's IEP report for May 1995 indicated he was expected to graduate

in August 1995. It was expected that when he left Devereux upon graduation, he would receive services from the Department of Rehabilitation (DofR), presumably to assist him with a vocation. The goals stated for claimant were to reduce his manipulative behaviors and increase his on task behaviors. (Ex. 19.) He was described as being manipulative, "setting off" other students, continuously testing limits, poorly receiving feedback or being told "no," and difficulty with authority figures. (*Id.*, p. 95.)

32. In May 1995, claimant's mother requested NLACRC reconsider its prior denial of her son's eligibility for regional center services, based on the information provided from Devereux and Dr. DeAntonio discussed above. NLACRC advised claimant's mother that staff still believed her son was ineligible. (Ex. 22, p. 111.)

NLACRC DEEMS CLAIMANT ELIGIBLE FOR SERVICES IN 1995

33. In or about June 1995, claimant's parents requested NLACRC to reconsider providing regional center services to their son. Claimant's mother presented information from claimant's case manager at Devereux as well as Dr. DeAntonio's April 1995 note. (Ex. 22, p. 111.) Claimant's parents specifically requested independent living and vocational training services. (Ex. 20.) By this time, claimant was almost 21 years old.

34. A. On June 16, 1995, a social assessment was conducted by Regine Feldman, L.C.S.W., on behalf of NLACRC. Ms. Feldman met with claimant and his father, and contacted claimant's mother by telephone the same day.

B. In her social assessment report, Ms. Feldman noted claimant attended to all his self-care independently. (Ex. 20.) She specifically noted claimant knew how to use public transportation. In terms of his social/behavioral skills, claimant was described as being able to engage with peers but not always in a positive manner, in that he was manipulative and constantly tested boundaries. Claimant's father indicated his son had "lots of friends at Devereux but when he is at home 'he pushes people away.'" (Ex. 20, p. 98.) Two girlfriends were mentioned. It was also noted claimant liked to play with keys

and locks and had an extensive lock and key collection. Claimant's mother described her son as having very good oral expressive skills, which she felt was misleading to others. Ms. Feldman described claimant as having a broad vocabulary and speaking clearly.

C. Ms. Feldman recommended claimant receive medical and psychological evaluations. Thereafter, NLACRC referred claimant to clinical psychologist Victor C. Sanchez for a psychological evaluation

35. A. Dr. Sanchez conducted his psychological evaluation of claimant on July 31, 1995. He interviewed claimant and his father (who was present) as well as claimant's mother later that day by telephone. Dr. Sanchez reviewed available medical and school records and administered various tests to claimant. He later issued a psychological evaluation report, which NLACRC received no later than October 9, 1995. (Ex. 21.)

B. Claimant's parents had difficulty specifying to Dr. Sanchez their son's developmental milestone achievements, but what they described seemed to be within grossly normal limits, including using clear words by age one and phrases by age three. However, they noted claimant had difficulty finding and keeping friends and generally focused on just one or two best friends throughout his life. Claimant's mother felt her son always "showed interest in making friends." (Ex. 21, p. 103.) As he got older, he had more success in this area and was said to have several friends at Devereux.

C. Dr. Sanchez noted Dr. DeAntonio's recent diagnosis that claimant had Asperger's Disorder. He also reviewed records from Charter, Thaliens and UCLA NPI, which described claimant's other diagnoses. Dr. Sanchez summarized claimant's poor behavioral history as described by claimant's parents, including poor eye contact; his fascination with keys and locks; little interest in cooperative play with other children; an odd habit of sniffing clothes; not adapting well to change; frequent tantrums when younger; fascination with flipping lights off and on, etc. On the other hand, his parents described claimant's more positive attributes, such as awareness of others' feelings;

desire to share interests; lack of self-stimulatory behaviors; affection with family members; appropriate responses to painful stimuli; no ritualistic behaviors, etc.

D. Dr. Sanchez administered five different tests to claimant. Cognitive testing yielded results "at the upper end of the borderline range to the lower end of the low average range." (Ex. 21, p. 107.) Dr. Sanchez found those results consistent with prior tests done by Charter, Thaliens and Dr. Bellamy. (*Id.*) Claimant's academic achievement was "somewhat below what would be expected given the obtained level of cognitive abilities." (*Id.*) Therefore, Dr. Sanchez felt a learning disorder was probably present. Claimant's adaptive skills were described similar to his cognitive skills.

E. In terms of claimant's emotional/behavioral situation, Dr. Sanchez wrote that the "symptoms described above suggest that Asperger's Disorder may be the most appropriate – given the limits of retrospective history taking. As required by the DSM-IV, it appears that 3 or more of the symptom cluster can be identified as having been or continuing to be present." (Ex. 21, p. 107.) Dr. Sanchez detailed in his report the criteria from the DSM 4 diagnosis for Asperger's Disorder claimant met. (*Id.*)

F. Dr. Sanchez ultimately diagnosed claimant, in Axis I, with Asperger's Disorder, as well as Reading, Writing and Math Learning Disorders; and, in Axis II, with High Borderline Intellectual Functioning. He recommended claimant be referred to the DofR for job training/placement; continue psychiatric treatment; and that his parents be referred to a "support group for families whose children exhibit Asperger's Disorder." (Ex. 21, p. 108.) While it is clear Dr. Sanchez diagnosed claimant with Asperger's Disorder, nowhere in his report did he conclude claimant was eligible for regional center services or describe any service traditionally funded by regional centers which he recommended for claimant.

36. A. On October 13, 1995, an eligibility staffing team from NLACRC met to reconsider claimant's eligibility for regional center services. Carol Hernandez, who was

involved with claimant's 1992 eligibility request, was part of the team.

B. Notes from the meeting were kept by Ms. Hernandez. (Ex. 22, pp. 114-115.) The notes indicate the team felt claimant was substantially handicapped in the areas of self-direction (because he did not go out at night alone and did not care for his own health); capacity for independent living (because he did not make major purchases); mobility (because he did not go to distant points alone); and "other," identified as "behavioral/ emotional problems requiring medications and psychiatric supervision." (*Id.*, p. 114.)

C. A report was issued from the eligibility meeting. (Ex. 22, pp. 111-113.) The report acknowledged Dr. DeAntonio's diagnosis of Asperger's Disorder for claimant, as well as Dr. Sanchez's similar conclusion. It was also noted claimant's adaptive skills "most closely approximate the average 16.5 year old" and the Street Skills tool "revealed age appropriate ability." (Ex. 22, p. 112.) The report does not mention the above-described areas in which the team concluded claimant was substantially handicapped.

D. The proposed plan stated in the report was that claimant "is provisionally eligible for Regional Center services based on a diagnosis of Autism. Reevaluation for continuing eligibility in two years – October 1997." (Ex. 22, p. 113.)

37. The aforementioned eligibility staffing documents do not explain how claimant was deemed to have autism when no professional had diagnosed him under either the DSM 3R or the DSM 4 with Autistic Disorder. However, Dr. DeAntonio testified he remembers speaking with Ms. Hernandez at or about the time this decision was made, and that she told him she felt claimant "had more than Asperger's." Moreover, a document created by NLACRC in 1997 (and discussed in more detail below), states claimant had "a diagnosis of Asper's Syndrome which is an Autistic Disorder." (Ex. 23, p. 116.) That document, though issued after the release of the DSM 4, indicates NLACRC's thinking about claimant's situation was that Asperger's Disorder was a form of Autistic

Disorder.

38. Based on the above, the NLACRC found claimant “provisionally eligible” for regional center services on the basis of autism.

39. Dr. DeAntonio testified he was concerned at this time whether NLACRC could fund services helpful to claimant because he was so “high functioning.” In fact, Dr. DeAntonio testified that when he spoke with Ms. Hernandez about claimant’s situation, he was not advocating or pushing for NLACRC to deem claimant eligible for services because he was “doubtful the regional center could help him.”

40. Gwendolyn Jordan, a registered nurse employed by the service agency as its Clinical Director, and a member of the eligibility team that most recently assessed claimant’s situation, testified that there is no such status as “provisional eligibility;” one is either eligible for services or not. Moreover, she testified that, in 1995, when NLACRC was reviewing claimant’s second request for regional center services, Asperger’s Disorder was not considered by the service agency to qualify for services; to be considered a person with autism, the person must have been diagnosed with Autistic Disorder under the DSM 3R or DSM 4. Consulting psychologist Dr. Moradi agreed that, in 1995, Asperger’s Disorder was not considered to be an eligible condition for purposes of receiving regional center services.

NLACRC BEGINS FUNDING SERVICES FOR CLAIMANT

41. On a date not established but in or after October 1995, claimant and his parents met with NLACRC staff and developed an individualized program plan (IPP) for claimant. None of claimant’s IPPs were submitted, so the initiation and level of services provided was not established.

42. However, it was established that by May 1997, NLACRC was funding the Institute for Applied Behavior Analysis (IABA) to provide claimant 128 hours per month of supportive living services (SLS), 30 hours per week of a STEP behavioral management

day program, and supported employment at a bagel shop. (Ex. 23.)

43. A. Little evidence was presented regarding the specifics of the services funded by NLACRC during this period.

B. One document describes the state of claimant's services by July 1997. (Ex. 24.) At about that time, claimant's roommate moved out due to his own personal and emotional challenges; claimant wanted another roommate. Another document indicated claimant was "very excited about his job at the bagel shop and was getting along well with his roommate." (Ex. 23, p. 116.)

C. However, it was noted claimant "has shown poor motivation with his supportive living program." (Ex. 24, p. 118.) It was also noted that although claimant participated in the STEP program, "he has also shown poor attendance in that program as well." (*Ibid.*) It was also noted claimant was able to complete his daily living skills when he wants to and is able to use public transportation, but that he does not like to ride the bus and refuses to use public transportation. (*Ibid.*)

CLAIMANT TRANSFERS TO THE WESTSIDE REGIONAL CENTER

44. By the time of an IPP conference held on May 20, 1997, the IPP team realized claimant's supportive living arrangement was in West Los Angeles and his supported employment program was in Santa Monica, areas both located within the catchment area served by WRC. Claimant and his family requested his case be transferred to WRC for case management and NLACRC staff agreed. (Ex. 23.)

45. The transfer process began in May 1997 and was completed by September 1997, which is when claimant began being served by WRC staff. (Exs. 23 & 24.)

46. None of the evidence presented indicates NLACRC reevaluated claimant's eligibility for regional center services before his case was transferred to WRC. In fact, a document prepared by NLACRC in 2012 stated, "No [re]evaluation was completed as [claimant] was being served by [WRC] at that time." (Ex. 33, p. 337.) The sparse evidence

emanating from WRC presented indicates its staff never performed such an evaluation either. WRC's transfer document states simply that claimant has "Asperger's Syndrome and High Borderline Intelligence." (Ex. 24, p. 118.) Collectively, the transfer documents indicate that NLACRC accepted claimant as a client with an Asperger's Disorder diagnosis, believing such constituted a diagnosis of "autism" within the meaning of the Lanterman Act, and that WRC essentially accepted the case with the same understanding.

47. A. On April 4, 1998, claimant's WRC counselor completed a review report summarizing claimant's situation. (Ex. 25.) The report indicates claimant moved back home in December 1997, but he wanted to remain being served by WRC because he was looking for a new roommate and wanted to live in West Los Angeles. Claimant was still receiving support services from IABA, mainly in helping him find a new roommate, as well as helping claimant access resources in the community. (*Ibid.*)

B. It was noted claimant no longer participated in the STEP program, presumably meaning he no longer worked in the bagel shop. However, claimant was interested in a program offering visual or performing arts activities.

C. Claimant was described as verbal, ambulatory, able to complete all his self-care tasks independently, and capable of using public transportation on his own (although he did not like doing so). His interests were painting, shopping for vintage clothing, computers and using the internet.

48. Dr. DeAntonio testified IABA decided to drive claimant wherever he wanted to go as a way of getting him into the community. Dr. DeAntonio became concerned that driving claimant around like that would cause him to become dependent and he would "never readjust." Dr. DeAntonio noticed claimant began to "order people to drive him around" at this time. He believed claimant did not like to use public transportation because he did not like to be around many people, which he describes as

a trait "related to autism."

49. By 2006, claimant was again living in an apartment somewhere in West Los Angeles, although it appears he was living alone at that time. In June 2006, IABA was replaced by My Life Foundation (My Life) as the provider of SLS and day program services, for reasons not established. All that is known about the change is that IABA staff asked claimant to no longer contact them without their prior consent and that claimant was not critical of IABA's services when he first met with My Life staff.

50. A. Tim De Haven was in charge of My Life's program for claimant. He testified at the hearing and provided the following information. He first met claimant in May 2006 at his apartment. Mr. De Haven found claimant engaging, charming and eager to please. Claimant made direct eye contact with Mr. De Haven and was very articulate.

B. Claimant wanted staff at his apartment from 11:00 a.m. to 5:00 p.m., as well as overnight because he was anxious at night. The My Life goals for claimant included optimizing his health, increasing his community involvement and socialization, and helping him with his anxiety at night. Mr. De Haven testified most of My Life's staff activity with claimant involved waking him up in the morning, and driving him around town for food or his errands. Mr. De Haven testified his staff did not teach claimant any independent living skills he did not already know and that claimant was able to care for himself. Claimant was able to clearly express his needs and wants. He was also able to buy things on his own. Mr. De Haven described claimant as being friendly with other people; but that he was also manipulative when it came to getting what he wanted. Mr. De Haven also described claimant as technologically savvy: he could set up his own e-mail address and find things on the internet; could text when texting was new; and was able to turn off his parents' utilities on-line as a prank.

C. On the other hand, Mr. De Haven described other features and behaviors of claimant that are not typical. Claimant was adamant about not wanting to use public

transportation, even though he could do so if he wanted. Claimant was only interested in his own interests; he did not want to talk about Mr. De Haven's interests. Claimant insisted on getting his way and over-reacted extremely when he did not get it. While he was interested in making friends, he did not have many; and he alienated the few relations he had.

51. A. Over time, relations between claimant and My Life staff eroded. Claimant got upset over unexpected staffing changes made by My Life or when claimant wanted last-minute changes Mr. De Haven could not accommodate. Claimant severely overreacted to such set-backs, including becoming physical and assaultive with staff, damaging property and making repeated and/or harassing telephone calls.

B. The situation became volatile when Mr. De Haven decided to reduce the number of times staff drove claimant on his errands. Mr. De Haven believed the amount of driving was excessive, not cost-effective and ultimately not good for claimant to be so dependent on staff to access the community. After claimant assaulted a My Life staff member while he was driving, Mr. De Haven directed staff to no longer drive him until things "settled down." Claimant threatened Mr. De Haven that if he was not driven where he wanted to go, "things will get worse." They did. Claimant repeatedly telephoned Mr. De Haven's home at all hours of the day and night, and later did the same to his cell phone, as well as his wife's and son's cell phones. This continued for months. Claimant also made complaints against Mr. De Haven to the Los Angeles Police Department (LAPD) and the Los Angeles County Department of Children and Family Services (DCFS). These actions were an attempt to get Mr. De Haven to relent and allow My Life staff to drive claimant on his errands.

52. By late 2008 or early 2009, relations between claimant, My Life and Mr. De Haven had ruptured. My Life was replaced by another vendor. By Mr. De Haven's account, this was done at claimant's request, not his.

CLAIMANT'S CASE FILE IS INVOLUNTARILY TRANSFERRED BACK TO NLACRC

53. By October 2009, claimant moved from his apartment in West Los Angeles back home with his father; claimant's mother had recently passed away. In early 2010, after discovering claimant no longer lived in its catchment area, WRC advised claimant it intended to transfer his case back to NLACRC. (Ex. A.) Claimant objected to the proposed transfer and the matter went to a Fair Hearing. (*Ibid.*) A hearing was held before the ALJ on September 23, 2010. In a Decision dated October 5, 2010, the ALJ concluded applicable law and the facts warranted claimant's case file management responsibility being transferred to NLACRC, since claimant was residing in NLACRC's catchment area. (*Ibid.*)

54. NLACRC accepted claimant's case file on November 1, 2010. (Ex. 33, p. 338.) NLACRC had a difficult time finding a local vendor to provide an individualized day program for claimant, but eventually retained People Creating Success (PCS)/FADE. (*Ibid.*)

55. Claimant received services from PCS from May 2011 to November 19, 2011. (Ex. 29, p. 185.) PCS terminated services after, among other things, claimant harassed employees via telephone, used "spoofing" to make it appear that one staff member was calling another, threatened to make staff lives a "living hell," threatened violence, and informed them he knew where their families lived. (Ex. 29, at pp.185-187, 291-304; Ex. 33, p. 338.)

56. In 2011, NLACRC proposed to terminate funding for SLS services because claimant lived with his father instead of in an independent residence. The matter went to another Fair Hearing, which was heard on February 7, 2012. In a Decision dated February 17, 2012, another ALJ upheld NLACRC's decision. (Ex. B.) Specifically, the other ALJ concluded: "Claimant lives in his father's home and has stated that he has no current intention to live independently, making claimant ineligible for SLS under applicable

statutes and regulations." (*Id.*, p. 6.)

57. At some point in early 2011, claimant became upset with NLACRC's handling of his case file management. The reason was not established, though it is inferred the transfer of his case to NLACRC and the termination of his SLS funding were involved. Dr. DeAntonio testified claimant had become too dependent on being driven around by SLS staff for so many years and was extremely anxious about NLACRC's decision to get him to start using public transportation. Dr. DeAntonio believed claimant's extreme displeasure with that change in his services was "very consistent with autism." In any event, claimant began an unrelenting campaign of harassing, stalking and terrorizing several NLACRC employees, including its director, fair hearing coordinator and the supervisor of his case management.

58. In April 2011, in the Superior Court of the State of California, Los Angeles County (Superior Court), NLACRC filed a Petition for Orders to Stop Workplace Violence, and related documents, requesting an order preventing claimant from contacting certain employees of NLACRC. (Ex. 29, pp. 166-167.) At the May 11, 2011 hearing on the petition, the parties settled. (*Id.*, p. 167.) The most significant part of the settlement agreement was that claimant would only contact his service coordinator, or his/her supervisor (and not other NLACRC employees) and the contacts would only be made at work and not at the employees' homes.

59. However, on March 27, 2012, in the Superior Court, NLACRC filed a petition for a Temporary Restraining Order (TRO), alleging claimant had violated the settlement agreement. (Ex. 29, p. 147.) The declarations and evidence filed in support of the petition included allegations that claimant made threats to certain regional center employees and their families; contacted them at home and mailed things to their homes; said he would make their lives a "living hell," among other things; threatened to harm them physically; called them incessantly at work and home, sometimes disguising

his voice or making sounds; and threatened to put one employee's personal information on a bondage sex website. (Ex. 28; Ex. 29, pp. 166-184.)

60. Claimant's harassment went beyond annoying and into the realm of extreme and shocking. For example, claimant did indeed post the NLACRC employee's personal information (as well as his wife's) on a bondage sex website and a person who read the posting went to the employee's house because the address was made public. (Ex. 29, pp. 168-170, 256-258.) In addition, claimant threatened one female NLACRC employee that he would violently sexually assault her and have a friend do the same if she did not agree to what he was requesting; he thereafter sent her a postcard to her home and began a series of phone calls to her home. (Ex. 29, pp. 177-178.)

61. On April 16, 2012, the Superior Court granted NLACRC's petition and issued a TRO against claimant, in which he was ordered to stop harassing, stalking, contacting and posting any personal information about various listed individuals, mainly NLACRC staff, on the internet or by any means. (Ex. 30.)

62. A. The LAPD was called to investigate complaints made by NLACRC staff against claimant. LAPD Detective Jose Viramontes, of the LAPD Threat Management Unit, was assigned to investigate. He credibly testified at hearing and established the following.

B. Detective Viramontes' investigation revealed that, in addition to the above-described actions against NLACRC employees, claimant had harassed employees of a gym, employees of a tow truck company and a neighbor.

C. During the investigation, Detective Viramontes and other LAPD officers executed a search warrant of claimant's father's home, where claimant lived, and seized claimant's computer. A search of the computer showed he had used computer technology, applications and websites to seek personal information about NLACRC employees and others; he had made "spoof" calls to people; made hundreds of

repeated phone calls to the same people; changed his voice on calls by use of a device; and played recordings on calls.

D. After the LAPD confiscated claimant's computer, claimant began calling Detective Viramontes repeatedly asking for the return of his computer. After it was clear the computer would not be returned soon, claimant began barraging Detective Viramontes' unit with so many phone calls that it interfered with the unit's ability to operate. Claimant continued to make those calls, even after Detective Viramontes told claimant to stop and advised him that he could be arrested if he continued making them.

E. Claimant still did not stop calling Detective Viramontes' unit. On May 23, 2012, the Superior Court issued a protective order against claimant and in favor of the Threat Management Unit, as well as various NLACRC employees, prohibiting him from any contact with the unit and the listed individuals and ordering him to stay clear of them. (Ex. 31.)

63. Detective Viramontes had a number of telephone conversations with claimant, as well as face-to-face meetings. Given his professional experience and training, as well as intimate contacts with claimant, Detective Viramontes has unique insight into claimant. Detective Viramontes testified claimant appeared as a typical person at first; but the more contact he had with him, the more he understood claimant was not typical. Claimant always tried to manipulate the conversations to issues of his interest. He only wanted to discuss the return of his computer. When Detective Viramontes searched claimant's room while executing the search warrant, he saw adult diapers and water bottles filled with urine, suggesting claimant spent inordinate amounts of time on his computer in the room to the point of not using the bathroom. Detective Viramontes gave a mixed description of claimant's computer technology skills. He believes "spoofing" is not difficult; only the right software is needed. He also believes

posting information on the bondage sex website was not sophisticated. However, it appeared to the detective that claimant had done significant skip-tracing work to find out where his victims lived and that skip-tracing is intricate work.

NLACRC DECIDES TO NO LONGER SERVE CLAIMANT

64. By a letter dated March 29, 2012, NLACRC notified claimant's attorney, Alan Rosen, it had decided to no longer serve claimant and that his regional center case would be "inactivated." (Ex. 32.) According to the letter, NLACRC's decision was based on the fact claimant's behavior constituted a threat to the health and safety of the regional center's employees because he was stalking, harassing, and threatening them with violence. Mr. Rosen was advised NLACRC would no longer coordinate claimant's services, provide any funding or have any contact with claimant. Mr. Rosen was advised of claimant's appeal rights. (*Ibid.*) No appeal was made.

65. A. In light of the above, NLACRC inactivated claimant's case file, effective April 29, 2012.

B. In a May 2, 2012 case management summary discussing that action, claimant's recently funded services were described. (Ex. 33.) PCS's above-described termination of services was noted, along with an explanation that the termination was due to claimant's behavior toward staff and that he "refused to work on any of his identified goals. . . . [Claimant] only wanted personal rides to locations and that was the only service he wanted." (Ex. 33, p. 338.) The only other service being provided at the time was respite funding for claimant's father. (*Ibid.*)

C. The case management summary also contained recommendations that, prior to claimant receiving future services, a complete and independent psychiatric assessment was required, for the purpose of obtaining current diagnoses and clinical recommendations for the effective treatment of symptoms/behavior presenting a barrier to the provision of services and supports claimant says he wants and needs; and

that future providers and service coordinators should be provided with various cautions and advisements about working with claimant. (Ex. 33, p. 339.)

CLAIMANT'S CRIMINAL CASES

66. A. On October 9, 2012, a misdemeanor criminal complaint was filed against claimant in the Superior Court. He was charged with one count of making repeated telephone calls to the Burbank Police Department (BPD) with the intent to annoy another in violation of Penal Code section 653m, subdivision (b). (Ex. 41, pp. 430-432.)

B. On November 16, 2012, claimant resolved that matter by pleading nolo contendere to the count charged and he was convicted. A criminal protective order was issued against claimant and in favor of two BPD officers. Claimant was placed on two years' probation under terms including he serve 30 days community service. (Ex. 41, pp. 433-447.)

67. A. On November 29, 2012, another misdemeanor criminal complaint was filed against claimant in the Superior Court. This time he was charged with four counts of violating Penal Code section 653m, subdivision (b), as well as a fifth count of harassing and making a credible threat of death or great bodily injury to another in violation of Penal Code section 646.9, subdivision (a). The alleged victims were also BPD officers. (Ex. 41, pp. 448-450.)

B. On November 30, 2012, claimant resolved that matter by pleading nolo contendere to one count of violating Penal Code section 653m, subdivision (b), and he was convicted. He was placed on three years' probation under terms including he serve 30 days of community service. A criminal protective order was also issued against claimant and in favor of two BPD officers. (Ex. 41, pp. 462-466.)

68. A. On April 26, 2013, another misdemeanor criminal complaint was filed against claimant in the Superior Court. He was charged with one count of possessing

composite or wooden knuckles in violation of Penal Code section 21710 and one count of being intoxicated in a public place in violation of Penal Code section 647, subdivision (f). (Ex. 41, pp. 470-473.)

B. On July 26, 2013, another misdemeanor criminal complaint was filed against claimant in the Superior Court. He was charged with two counts of violating Penal Code section 653m, subdivision (b), and two counts of violating a prior court order in violation of Penal Code section 166, subdivision (a)(4). (Ex. 41, pp. 474-477.)

C. On August 21, 2013, another misdemeanor criminal complaint was filed against claimant in the Superior Court. He was charged with three counts of violating Penal Code section 653m, subdivision (b). (Ex. 41, pp. 478-481.)

D. The disposition of these three cases was not established, but it appears the matters were subsumed in the resolution of subsequent felony criminal complaints discussed below. The crimes alleged in the matters described in subparagraphs A through C above involved or were witnessed by BPD officers.

69. A. On September 23, 2013, a felony criminal complaint was filed against claimant in the Superior Court. He was charged with two counts of threatening to commit a crime which would result in death or great bodily injury to another person in violation of Penal Code section 422 and one count of stalking another person in violation of Penal Code section 646.9. The alleged victims were BPD officers. (Ex. 41, pp. 482-485.)

B. On January 21, 2014, an amended felony criminal complaint was filed against claimant in the Superior Court. He was charged with three felony counts of violating Penal Code section 646.9 and three felony counts of violating Penal Code section 422. The alleged victims in three of the counts were the NLACRC employee and his wife about whom claimant posted personal information on the bondage sex website; the alleged victims of the other three counts were BPD officers. (Ex. 40, pp. 368-373.)

C. Since there was substantial overlap in the charges concerning the BPD officers, these two cases were consolidated and given a case number ending in 63. (Ex. 41, p. 485.) One of the counts was later dismissed.

70. On June 19, 2014, a felony criminal complaint was filed against claimant in the Superior Court. He was charged with one count of vandalism in violation of Penal Code section 594, subdivision (a), and one count of battery upon a custodial officer in violation of Penal Code section 243.1. It was alleged that claimant intentionally damaged the interior of a police cruiser belonging to the Los Angeles County Sheriff's Department and used unlawful force against a custodial officer. This matter was given a case number ending in 53. (Ex. 40, pp. 374-378.)

71. A. On or about June 18, 2014, in connection with the various criminal cases discussed above, the Superior Court ordered claimant to submit to a psychological evaluation by clinical psychologist Catherine Scarf. (Ex. 38, p. 352.) Dr. Scarf had been a long-time NLACRC employee and is known by the ALJ to have expertise in developmental disabilities in general and autism in particular. Dr. Scarf wrote a psychological assessment report documenting her findings. (Ex. 38.)

B. Dr. Scarf assessed claimant on July 30, 2014, and August 16, 2014, while he was still in custody awaiting trial. In addition to interviewing and observing claimant, Dr. Scarf reviewed a number of documents, including many of those described above, as well as a number of documents relating to services funded by NLACRC and WRC that were not presented during the hearing. Dr. Scarf also administered a few psychological tests to him.

C. During her first visit with claimant, Dr. Scarf observed his gait and motor movements were slow; on both visits he was slouched in a chair. (Ex. 38, p. 355.) On the first visit, claimant's eye contact was described as fair; his speech was slurred, he mumbled at times and exhibited a flat intonation. (*Ibid.*) He was taking Klonopin, Prozac,

Seroquel and Thorazine. (*Ibid.*) He reported a history of alcoholism. (*Ibid.*)

D. Dr. Scarf noted claimant had been a regional center consumer for many years “second [sic] to autism.” (Ex. 38, p. 355.) The results of a personality assessment she administered suggested “depression, anxiety, somatization, alcohol problems, as well as borderline and antisocial personality features.” (*Id.*, pp. 358-359.) Dr. Scarf did not perform any testing for autism. (Ex. 38.) The results of intellectual functioning tests indicated claimant had low average to borderline range skills. Overall, Dr. Scarf described claimant as having low average intellectual functioning. His reading skills were described as low average as well. (Ex. 38, pp. 357-358.)

E. Dr. Scarf concluded that claimant “meets DSM-V criteria for Autism Spectrum Disorder, Alcohol Use Disorder and Major Depressive Disorder-Recurrent.” (Ex. 38, p. 360.) However, Dr. Scarf provided no explanation why she gave the diagnosis of Autism Spectrum Disorder or which criteria of the DSM 5 claimant met.

72. A. On September 19, 2014, claimant entered a plea bargain resolving all of his outstanding criminal cases, including the charges in the cases ending in numbers 63 and 53. (Ex. 40, pp. 379-384.)

B. For the case number ending in 63, claimant pled nolo contendere to one felony count of violating Penal Code section 646.9 and two counts of violating Penal Code section 422 (one count was a felony, the second had been previously reduced to a misdemeanor). For the two felony convictions, imposition of sentence was suspended and claimant was placed on three years’ formal probation, under terms including he serve one year in the county jail, pay fines totaling \$100 and obey the protective orders issued in that case and others. (Ex. 40, pp. 379-384.) For the misdemeanor conviction, the court scheduled a sentencing hearing for December 4, 2014, and ordered a probation report be prepared in consideration of the diversion relief provided by Penal Code section 1000.22. (*Id.*, p. 384.) The court’s determination at that sentencing hearing

or thereafter was not established.

C. For the case number ending in 53, claimant pled nolo contendere to one count of violating Penal Code section 243.1, and was placed on three years' formal probation, under terms including he serve 120 days in county jail. (Ex. 39, pp. 365-367.)

D. Since claimant had been in custody while the cases were pending, he was given credit for one year of time already served and was released from custody at that time.

CLAIMANT REQUESTS THE SERVICE AGENCY REACTIVATE HIS SERVICES

73. In late June of 2012, less than two months after NLACRC inactivated his case file, claimant contacted the service agency and informed staff he had moved into its geographic service catchment area. Claimant requested his case file be reactivated.

74. In early July 2012, a letter was sent by service agency counsel to Mr. Rosen, claimant's attorney, indicating the service agency had obtained information which led staff to question whether claimant was eligible for services. (Ex. 34.) For that reason, the service agency indicated it would conduct a comprehensive reassessment in order to clarify claimant's diagnosis and needs, including a review of NLACRC's records and scheduling evaluations of claimant as necessary. (*Ibid.*)

75. By a letter sent to claimant dated July 20, 2012, the service agency's associate director documented that, on the previous day, claimant had called 17 times asking to speak to her and his calls were disruptive to the service agency. Claimant was directed to not contact the service agency again or else he would be reported to the police. (Ex. 35.)

THE SERVICE AGENCY DECIDES TO COMPREHENSIVELY REASSESS CLAIMANT

76. By a letter dated August 30, 2012, claimant's attorney, Mr. Rosen, was advised a record review led service agency staff to believe claimant never had been

found to have the eligible condition of autism; and that NLACRC had only made him “provisionally eligible” based on the diagnosis of Asperger's Disorder, the validity of which the service agency questioned. (Ex. 36, p. 343.) The service agency therefore requested claimant’s consent to be evaluated by forensic psychiatrist Gordon Plotkin. Claimant agreed.

77. The service agency arranged for claimant to be assessed by Dr. Plotkin on December 19, 2012. The meeting lasted two to three hours, but Dr. Plotkin was not able to complete his interview with claimant. Before a second appointment could be scheduled, the aforementioned criminal cases were being filed and prosecuted, with claimant ultimately being arrested, held in custody and therefore unavailable to complete the assessment.

78. The DSM was revised with the May 2013 publication of the DSM 5. “Autism Spectrum Disorder” became the new diagnostic nomenclature encompassing the DSM 4 TR’s diagnoses of Autistic Disorder, Asperger’s Disorder, childhood disintegrative disorder, Rett’s syndrome, and PDD-NOS. (Ex. 51, p. 625.) Thus, individuals with a well-established DSM 4 TR diagnosis of Autistic Disorder, Asperger’s Disorder, or PDD-NOS are now given the diagnosis of Autism Spectrum Disorder (ASD). (*Ibid*)

79. A. The DSM 5 criteria for ASD includes, in category 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):”

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. The DSM 5 criteria for ASD includes, in category 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):"

1. Stereotyped or repetitive motor movements, use of objects, or speech (e.g., simple motor stereotypes, 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 interest in sensory aspects of the environment (e.g. apparent indifference to pain/temperature, adverse response to specific sounds or textures, excessive smelling or touching of objects, visual fascination with lights or movement).

C. The DSM 5 criteria for ASD also includes, in category 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. The DSM 5 criteria for ASD also includes, in category D, “Symptoms cause clinically significant impairment in social, occupational, or other important areas of current functioning.”

80. As discussed above, on September 19, 2014, after claimant entered into his plea agreements and was placed on formal probation, he was released from custody. At that time, the service agency moved forward with its assessment of claimant.

81. A. The service agency also arranged for a psychological assessment of claimant by Ruzanna Agamyan, Ph.D., on December 2, 2014. (Ex. 43.) Ms. Jordan testified Dr. Agamyan had been a service agency vendor for four years. Neither party called Dr. Agamyan to testify, although her report (exhibit 43) was admitted. However, both Ms. Jordan and Dr. Moradi testified about the events of Dr. Agamyan’s interview of claimant.

B. Ms. Jordan testified the evaluation was performed at the service agency office late in the afternoon. Around 20 minutes into the assessment, Ms. Jordan heard yelling from the testing room. She went into the room and found claimant yelling, crying and claiming the service agency was “playing games.” Dr. Agamyan suggested to claimant he would need him to return another day to finish the testing. Claimant became very upset and stated he would not return. Ms. Jordan left the room. She testified the assessment continued for about 45 minutes to an hour, which included a 15 to 20 minute interview of claimant’s father.

C. Dr. Moradi also had some interaction with Dr. Agamyan. Dr. Moradi testified Dr. Agamyan told her after the assessment that claimant presented with classic borderline personality disorder; that he had threatened her; he got very upset during the examination; and it was difficult to complete the testing.

82. A. Dr. Agamyan later completed her report and submitted it to the service

agency on a date not established.

B. She indicated in her report reviewing many of the reports issued by other evaluators discussed above. (Ex. 43, pp. 497-500.)

C. Dr. Agamyan summarized her behavioral observations of claimant during the evaluation. She provided a more detailed description of claimant's outbursts during the assessment than that provided by Ms. Jordan in her testimony. She also described claimant engaging in similar behavior toward his father when he was in the room. Overall, Dr. Agamyan described claimant as a fair historian. She wrote he used fair eye contact, his speech was clear, but the themes of his speech were perseverative, i.e., only reflecting his concerns. (Ex. 43, p. 501.)

D. Claimant's father was interviewed about his son's developmental history. (Ex. 43, p. 503.) Claimant's father told Dr. Agamyan his son did not make good eye contact when he was younger; had limited nonverbal communication; did not comfort others; did not show his toys or work with others; was fascinated with locks and keys; got upset with changes; and did not like to get his hands dirty. In the same part of her report, Dr. Agamyan noted related descriptions given by claimant's parents to Dr. Sanchez in 1995. (*Ibid.*)

E1. Dr. Agamyan administered a number of tests to claimant during their meeting. She described the cognitive test results as showing claimant's overall performance was in the range of extremely low intellectual functioning. However, the various sub-tests showed claimant's abilities varied, with his strength being in verbal skills, but his weakness in attention and coordination. His adaptive skills were similarly scored as being in the low range showing a moderate deficit.

E2. Claimant was also tested for the presence of autistic traits with the Autism Diagnostic Observation Schedule-2 (ADOS-2), which is a commonly accepted test among psychologists for such use. It was noted claimant used few spontaneous

gestures. His social overtures were described as inappropriate and repetitive. Although he did not engage in repetitive body mannerisms, his speech was repetitive on certain themes. Dr. Agamyan also used the Autism Diagnostic Interview-Revised (ADIR), another commonly accepted and used screening instrument for assessment of patterns of behaviors indicative of autism. The results suggested to Dr. Agamyan that claimant was impaired in social reciprocity; had difficulty communicating with others; and evidence was presented of claimant's repetitive use of objects and interests at an early age. Dr. Agamyan found scores on those tests suggested ASD, except in the area of nonverbal communication. (Ex. 43, pp. 504-510.)

E3. Dr. Agamyan found claimant demonstrated a relative strength in expressive and written communication. "His self-help skills and his functioning at home and in the community appear to be his relative strength." (Ex. 43, p. 507.)

F1. In terms of her diagnostic impressions, Dr. Agamyan opined claimant's cognitive test results fell in a range suggesting mild intellectual disability. However, she cautioned claimant had performed better in several series of tests done years earlier, and that his disruptive behavior during her testing may have negatively impacted his motivation. Thus, she concluded claimant's cognitive abilities were higher than her test results suggested.

F2. Dr. Agamyan also discussed the diagnostic criteria for ASD set forth in the DSM 5. She correlated to that criteria the traits and behaviors she observed during her interview with claimant, saw in her record review, and heard from claimant's father. (Ex. 43, pp. 507-508.) Dr. Agamyan concluded claimant "meets criteria for an Autism Spectrum Disorder (ASD). His current symptoms are very mild and the diagnosis is assigned mainly due to social impairments. [Claimant's] childhood history provided additional evidence for the ASD diagnosis." (*Id.*, p. 508.)

F3. Dr. Agamyan also felt a mood disorder was present, given the severity of

claimant's behaviors and the impact on his life. She found claimant's moods went in cycles, where he had some periods of decreased sleep and increased activity, and other periods of major depression. She therefore believed a diagnosis of Bipolar Disorder was appropriate.

F4. Finally, she believed claimant had traits of Borderline Personality Disorder. "Given the fact that unstable mood is a concurrent feature of Borderline Personality disorder, in [claimant's] situation the mood disorder is very pronounced and thus will be considered as his primary diagnosis." (Ex. 43, p. 508.) The personality disorder was considered as a provisional diagnosis due to "insufficient time for assessment." (*Id.*, p. 509.)

G. Based on the above, Dr. Agamyan diagnosed claimant with Unspecified Bipolar Disorder; Autism Spectrum Disorder, Mild with Intellectual Impairment; Intellectual Disability, Mild (potential for Borderline Intellectual Functioning); Borderline Personality Disorder, provisional; and History of Alcohol Abuse. (*Id.*, p. 509.)

H. Dr. Agamyan recommended that claimant receive individual and group counseling/therapy; psychiatric monitoring and medication; and vocational training.

83. A. Ms. Jordan and Dr. Moradi testified they were concerned about Dr. Agamyan's assessment based on their observations of claimant's behavior the day of his assessment and Dr. Agamyan's reaction. Because Dr. Agamyan mentioned needing more time for the assessment, Dr. Moradi believed Dr. Agamyan may not have completed the assessment and that she had been intimidated by claimant to reach a hasty conclusion. However, Ms. Jordan testified that when later contacted by the eligibility team, Dr. Agamyan indicated she was able to complete her assignment and did not need to see claimant again.

B. Dr. Agamyan's report does not support the concerns raised by Ms. Jordan and Dr. Moradi. Dr. Agamyan states in her report she was able to conclude her assessment

based on the testing completed, with the exception of her provisional diagnosis of a borderline personality disorder. Dr. Agamyan made that diagnosis provisional due to insufficient assessment time; she made no such limitation concerning her other diagnoses. It is inferred the behavior issues exhibited by claimant were not new for a veteran regional center vendor like Dr. Agamyan. It also is inferred that, as a licensed professional, Dr. Agamyan would have not issued a report if she felt unable to render valid conclusions. Instead of calling Dr. Agamyan to testify, the service agency relied on the hearsay testimony of Ms. Jordan and Dr. Moradi. The ALJ gives minimal weight to that hearsay evidence; alone it is not sufficient to impeach Dr. Agamyan's report, which otherwise appears full and complete and offers detailed explanations for her conclusions and diagnoses.

C. In addition, the service agency's concerns over the validity of Dr. Agamyan's report are undercut by the fact that staff never sought to have claimant reassessed by another psychologist. By deciding to have claimant evaluated by both a psychiatrist (Dr. Plotkin) and a psychologist (Dr. Agamyan), the service agency dictated both evaluations comprised its comprehensive reassessment of NLACRC's determination in 1995. If service agency staff believed Dr. Agamyan's part of the assessment was invalid, it is assumed claimant would have been referred to another psychologist.

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84. A. Claimant met with Dr. Plotkin again on October 13, 2014. Dr. Plotkin was able to complete his assessment at that time. Dr. Plotkin generated a thorough, 26 page report dated December 15, 2014. (Ex. 44.) Approximately 21 pages of the report contain Dr. Plotkin's summary of records he reviewed, his two interviews with claimant, and a brief telephonic interview he had with Dr. DeAntonio. Dr. Plotkin did not administer to claimant any tests, but rather relied on those done by others previously.

B. Dr. Plotkin described claimant as having good eye contact throughout both

interviews. His affect was bright. Claimant appeared responsive to his questions. Dr. Plotkin felt claimant was able to read his (Dr. Plotkin's) facial expressions and he (claimant) was quite animated. Claimant told Dr. Plotkin that he had "Asperger's." (Ex. 44, p. 527.) He seemed to be able to generally describe how he lost his regional center services and had been convicted, though in those instances he accused NLACRC and the victims of his crimes of wrongdoing and seemed to deny any personal responsibility. (*Id.*, pp. 529-530.)

C. Dr. Plotkin also described his telephone interview with Dr. DeAntonio. He noted that Dr. DeAntonio described claimant as "pretty classic for Asperger's." (Ex. 44, p. 532.) According to Dr. Plotkin, Dr. DeAntonio said claimant "can't work a computer or a cell phone." (*Ibid.*) During the hearing, Dr. Plotkin testified similarly. He testified that because claimant was convicted of crimes involving extensive use of both phone and computer, Dr. DeAntonio appeared to him to not understand claimant's abilities; he also described Dr. DeAntonio as defensive and an advocate for claimant rather than a credible source of information. However, when Dr. DeAntonio testified, he adamantly denied telling Dr. Plotkin claimant could not use a computer or cell phone. Instead, he testified telling Dr. Plotkin that, although claimant was preoccupied with electronic gadgets and acted like he knew how to use them, he only had superficial knowledge of how to use them and he could not go any deeper. Dr. DeAntonio's testimony concerning his conversation with Dr. Plotkin is more plausible than Dr. Plotkin's version. Moreover, Detective Viramontes described the skills attributed to claimant's use of the phone and computer in committing his crimes as fairly basic (with the exception of skip-tracing), which tends to corroborate Dr. DeAntonio's testimony on the topic.

D1. Before rendering his diagnostic impressions and conclusions, Dr. Plotkin pointed out how difficult it is to make a diagnosis of an autism-related disorder after the person in question had been an adult for so many years. For that reason, Dr. Plotkin

observed it is important to rely on historical observations and weigh those against more recent data or observation that may be motivated by advocacy or secondary gain.

D2. Dr. Plotkin viewed the historical record as demonstrating claimant suffered from a cluster of psychiatric problems, including depression, anxiety, impulsivity, behavioral issues and perhaps alcohol dependency/abuse. He noted another contributing factor was a borderline intellectual disability.

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D3. Dr. Plotkin opined that if claimant had a disabling condition, such was caused by a combination of personality, impulse control, anger/hostility and social dysfunction issues. For example, claimant's intellectual delay made him vulnerable to poor decisions. His personality disorders exacerbated that problem. Finally, his anxiety, alcohol use/abuse, poor social skills and lack of impulse control further compounded the situation. Dr. Plotkin opined the best treatment for this constellation of problems was psychiatric care and psychological counseling.

E1. Dr. Plotkin next wrote about autism. He discounted Dr. DeAntonio's diagnoses because he felt Dr. DeAntonio had treated claimant for so long his judgment became clouded. Dr. Plotkin also critiqued Dr. DeAntonio's failure to specify in his letters and reports the symptoms he believed supported his diagnoses. Dr. Plotkin also commented he believed Dr. Sanchez made his diagnosis and then worked backward through claimant's developmental history to justify it. Dr. Plotkin also expressed doubt over Dr. Sanchez's diagnosis because in his report he noted a variety of symptoms which both supported and undercut his diagnosis. Dr. Plotkin also critiqued Dr. Scarf's report as being unconvincing.

E2. Dr. Plotkin opined the prior diagnoses of Asperger's Disorder made by Drs. DeAntonio and Sanchez were unsupported and did not meet the criteria established by the DSM 4 TR. Dr. Plotkin believed the historical data and records did not show claimant

had a social interaction impairment. For example, while he acknowledged claimant had difficulty developing peer relationships, Dr. Plotkin still noted claimant had made friends in the past and he felt it was “impossible to tease out the effect of his anger difficulties.” (Ex. 44, p. 535.) Dr. Plotkin noted some other factors “are equivocal (with an overly liberal interpretation),” but he did not believe they were positive for any of the DSM criteria. (*Ibid.*) Dr. Plotkin also opined claimant did not show restrictive, repetitive or stereotypical patterns of behaviors, interests or activities. He downplayed claimant’s collection of keys and locks as simply a hobby; viewed his refusal to take public transportation as related to his psychiatric disorders; and discounted claimant’s early childhood behavior of flicking lights on and off as a childhood activity that did not qualify. Dr. Plotkin opined that although claimant was significantly impaired in areas of functioning, such was explained by his cluster of psychiatric problems and not autistic spectrum issues. Finally, Dr. Plotkin felt there was insufficient data to show a significant language delay.

E3. Dr. Plotkin similarly concluded claimant did not meet the requisite criteria of the DSM 5 to justify a diagnosis of ASD. Dr. Plotkin concluded claimant did not have the type of social communication or social interaction deficits required. He noted claimant “could potentially have [met] the inflexibility pattern and adverse responses” parts of the criteria, but he cautioned that, even if so, he believed that was only some criteria out of many more that must be met in order to justify an ASD diagnosis. (Ex. 44, p. 536.) Finally, Dr. Plotkin opined the required level of severity for any social communication impairments and restrictive interest/activity categories “are clearly not met in this individual.” (*Ibid.*) Claimant’s functional impairments are better explained by the combination of his intellectual delays and psychiatric disorders. Dr. Plotkin also questioned whether the lack of early evidence of autistic-like behaviors in claimant’s childhood could be overcome by a later “manifestation” of such behaviors more recently

observed and described by professionals such as Dr. Sanchez and Dr. DeAntonio.

F. In conclusion, Dr. Plotkin opined there “is insufficient data to suggest that [claimant] has one of the five required disorders for Regional Center benefits.” (Ex. 44, p. 537.) He concluded mental health services are more appropriate for claimant.

85. A. Dr. Plotkin testified during the hearing. He reiterated most of the points he made in his report, and provided specifics concerning his training and experience.

B. Dr. Plotkin also provided more specifics concerning his opinion that claimant does not have ASD. Dr. Plotkin went through the various criteria for ASD contained in the DSM 5 (ex. 51, pp. 624-625) and explained why he believed claimant did not meet a sufficient number of the required criteria. For example, in category A, concerning deficits in social communication, Dr. Plotkin testified claimant showed an understanding of humor, was able to read social cues during their interview, made sufficient eye contact, and seemed to understand the consequences of his actions. For category B, concerning restricted interests/activities, Dr. Plotkin testified he saw nothing from claimant’s childhood suggesting restricted movements; his inflexibility to change was caused by his psychiatric issues; his prior hobbies such as collecting keys were not fixations; and he did not demonstrate sensory sensitivity, such as sniffing beddings, in the frequency or severity required. As for category C, concerning symptoms being present in early development, Dr. Plotkin testified the fact that all the professionals who evaluated claimant in childhood and early teens did not diagnose him with an autism-type disorder showed this category was not met. As for category D, concerning symptoms causing clinically significant impairment in social, occupational or other important areas of life functioning, Dr. Plotkin testified claimant’s impairment is related to his psychiatric disorders.

C. In addition, Dr. Plotkin testified claimant did not appear to him as a person who was intellectually disabled or had a fifth category condition. Specifically, claimant

can make purchases, can manage his daily environment, does not require external observers or training to function, and does not require services similar to those needed by one who is intellectually disabled.

86. A. Dr. Moradi also testified. She is a licensed psychologist and consultant with the service agency. For the past 16 years she has been involved in assessing whether individuals have developmental disabilities and what services are needed by those who do. She has significant experience on issues related to eligibility for regional center services and working with autistic people.

B. She did not meet or assess claimant. Dr. Moradi therefore testified she could not diagnose claimant. She was, however, part of the service agency's team considering claimant's eligibility and in that capacity she reviewed six volumes of claimant's regional center case file. She also spoke with Dr. Agamyan and Dr. Plotkin after their evaluations were completed. Based on that work, Dr. Moradi testified that, in her opinion, claimant does not have ASD, intellectual disability or a fifth category condition.

C. Dr. Moradi testified at length concerning the medical and educational records generated from claimant's early childhood and teenage years discussed above. The common thread of her testimony was that the documents do not show evidence of claimant displaying symptoms consistent with a developmental disability during that period; instead, the records support only diagnoses of learning disabilities and psychiatric disorders. For the most part, Dr. Moradi believes claimant's behaviors depicted in those reports are inconsistent with autism. For example, she cited claimant's ability to regulate his behavior in a focused way, as demonstrated by his teasing peers at school and being manipulative at home, school or with service providers.

D. She criticized the UCLA reports containing a PDD-NOS diagnosis for claimant as being unsupported and unjustified, especially in terms of social and communication delays. She offered the same critique for Dr. DeAntonio's diagnosis of Asperger's

Disorder. Dr. Moradi testified Dr. Sanchez' diagnosis of Asperger's Disorder was similarly unsupported. Her primary concern with Dr. Sanchez's diagnosis is that he admitted there "were chronological limits" to his diagnosis; he did not tease out the inter-play of claimant's psychiatric disorders; and he seemed to equivocate by writing that Asperger's Disorder "may be the best available diagnosis."

E. Dr. Moradi also criticized NLACRC's decision deeming claimant eligible for services as being erroneous. First, even if claimant had been correctly diagnosed with Asperger's Disorder, such was not an eligible condition in 1995; Autistic Disorder was required. Second, NLACRC's statement of claimant's substantial handicap was "paltry" and unsupported. Moreover, there was no evidence indicating NLACRC ever reevaluated claimant, despite the notation that his "provisional" status would be reviewed two years later.

F. She also criticized the ASD diagnoses made by Dr. Scarf and Dr. Agamyan. Dr. Moradi's main critiques of Dr. Scarf are that she did not use commonly accepted autism tests; and she did not substantiate her reason for concluding claimant had ASD. As for Dr. Agamyan's opinions and report, Dr. Moradi's concerns arising from Dr. Agamyan's interview of claimant are discussed above. In addition, Dr. Moradi opined that Dr. Agamyan used the ADI-R incorrectly and also had erred in applying several of the DSM 5 criteria for ASD to claimant. She generally disagreed with how Dr. Agamyan characterized the historical evidence of claimant's behaviors matching the applicable criteria, testifying Dr. Agamyan stated incorrect facts, stated them inconsistently or did not satisfactorily explain why the criteria in question were met.

G. Finally, Dr. Moradi questioned whether claimant was substantially handicapped. For instance, she testified any handicap claimant has in learning, self-direction and economic self-sufficiency is caused by learning and psychiatric disorders. She opined claimant is not substantially disabled in other areas.

THE SERVICE AGENCY DETERMINES CLAIMANT IS NO LONGER ELIGIBLE FOR SERVICES

87. The service agency convened an interdisciplinary team (team) to consider claimant's eligibility for services. The team was comprised of Hasmig G. Mandossian, M.A.; Ms. Jordan; Dr. Moradi; and Wendy Leskiw, M.D. The team reviewed claimant's case file received from NLACRC, as well as the evaluation reports described above from Dr. Scarf, Dr. Plotkin and Dr. Agamyan.

88. On January 21, 2015, the team met and determined claimant no longer qualifies for regional center services because he does not have a developmental disability. (Ex. 46.) The team opined that when Dr. Sanchez diagnosed claimant with Asperger's Disorder in 1995, he did so with limited developmental history information and his report seemed equivocal. The team believed such a diagnosis had never been well substantiated in claimant's records. (*Id.*, p. 1.) The team also determined claimant had neither an intellectual disability nor a fifth category condition. The team believed records showed claimant functioned in the low average to borderline range of intelligence. Whatever cognitive delays he had were more likely attributable to his psychiatric disorders, consumption of psychiatric medications and alcohol abuse. (*Ibid.*)

89. A. By a letter dated February 2, 2015, the service agency advised claimant and his counsel in this matter (Mr. Smith) of its determination that claimant was not developmentally disabled and was no longer eligible for regional center services. (Ex. 1.)

B. The letter explained the records reviewed by the team showed that, from a very young age, claimant exhibited learning disabilities and emotional/psychiatric and behavioral problems, which are excluded conditions. While claimant may be substantially disabled, his disability was attributable to excluded conditions, not one of the five eligibility categories under the Lanterman Act. Claimant had never been diagnosed with cerebral palsy or epilepsy. No qualified professional had concluded

claimant has intellectual disability, formerly referred to as “mental retardation.” Though claimant’s intellectual functioning had been described as within the low average to borderline range, the team concluded claimant’s condition was not within the fifth category.

C1. The letter also explained that claimant was not eligible under the category of autism. When the diagnosis of Autistic Disorder was included in the DSM 3 and 4, no professional ever diagnosed claimant with that condition. While Dr. DeAntonio and Dr. Sanchez subsequently diagnosed claimant with Asperger’s Disorder, the team concluded that diagnosis was not substantiated. The team concluded the same concerning claimant’s more recent diagnosis of ASD under the current version of the DSM.

C2. A diagnosis of autism usually requires reliable developmental history because symptoms must be present by a certain age. The team viewed claimant’s historical developmental records as contradicting such a diagnosis.

C3. Finally, the team concluded there were documented actions and statements by claimant showing he knew and understood what to do in order to make individuals afraid of him. For example, he directed actions toward many people over the years with the purpose of “making their lives a living hell.” He had also warned other people that he would not stop the behavior until he got what he wanted. The team believed such behavior was sophisticated on some level and showed insight into the feelings of others, which they concluded was contrary to an autism diagnosis.

CLAIMANT’S EVIDENCE

90. A. Claimant’s primary evidence came from the testimony, letters and reports from Dr. DeAntonio. His letters and reports were discussed above. His testimony on other issues was also discussed above. Dr. DeAntonio’s testimony pertinent to claimant being autistic is discussed here.

B. Dr. DeAntonio generally described claimant as follows. He is a unique autistic

person, who has severe deficits in some areas but not others. Claimant cannot relate to others reciprocally and has a restricted range of interests. He is most notable for perseverating on trivial issues and escalating conflicts to extremes. He is "remarkably obnoxious." Claimant is "higher functioning, because his verbal skills are higher than most autistic people." However, while he "appears loquacious," that is in a shallow sense because claimant does not understand meaning fully and he cannot negotiate the differences in language. Claimant is presently fixated with electronic gadgets, such as his smart phone and computer. While he may appear well-versed with those gadgets, his knowledge of how to use them and how they work is superficial. Dr. DeAntonio does not believe claimant has ever malingered with regard to any autistic tendencies he has demonstrated. Claimant can maintain adequate eye contact with some people, which Dr. DeAntonio testified is common for those with "mild autism." The hallmark manifestations of claimant's autism is that he gets "stuck" on "trivial issues," "overreacts, bizarrely," gets extremely anxious about changes and is so intensely rigid that he becomes desperate to avoid change, even with the threat of arrest and incarceration.

C. As discussed above, Dr. DeAntonio has been treating claimant since 1990. Dr. DeAntonio diagnosed claimant with PDD-NOS under the DSM 3R. When the DSM 4 came out and introduced Asperger's Disorder, Dr. DeAntonio changed his diagnosis of claimant to that. With the advent of the DSM 5 reclassifying those prior disorders and others (including Autistic Disorder) into one category, Dr. DeAntonio again changed his diagnosis of claimant to ASD, though he was clear to describe claimant as being "mildly autistic."

D1. With regard to category A of the DSM 5 diagnosis of ASD, concerning social communication and interaction deficits, Dr. DeAntonio opined claimant meets criteria A-1 (significant deficits in reciprocity) and A-3 (because he constantly misunderstood social cues from regional center staff, vendors, and the police; he does not understand

how his acts harm people; and he does not have the capacity to make meaningful relationships). Dr. DeAntonio was not specifically questioned regarding criterion A-2 (deficits in nonverbal communication). However, it is clear from his testimony that Dr. DeAntonio believes claimant has deficits in nonverbal communication, in that he testified claimant does not use hand gestures and he has a "constricted affect, unless he's angry."

D2. With regard to category B, concerning restricted, repetitive behavior, interests and/or activities (in which only two or more of the criteria must be present), Dr. DeAntonio opined claimant meets criteria B-2 (rigid insistence on sameness to an extreme degree, e.g., insisting on private transportation and not taking the bus; wearing the same shoes or eating at the same time; use of his electronic gadgets); B-3 (highly fixated interests, which have changed over time, but now relate to electronic gadgets); and B-4 (hypersensitivity to pain in his feet, in which he expresses pain "way out of proportion," especially related to several foot surgeries for bunions).

D3. Dr. DeAntonio was not specifically questioned about category C, concerning symptoms being present in the early developmental period. However, it is clear from his testimony he believes claimant meets this category. Dr. DeAntonio testified claimant's issues have been present since birth, as reported by his parents. Dr. DeAntonio testified claimant has had a life-long history of poor social relations, rigidity and restricted range of interests. Although he agreed information from a person's early developmental years is more important than when that person is 15 years-old (when he first treated claimant), Dr. DeAntonio believes claimant probably did not receive a developmental disorder diagnosis earlier because he did not have a profound language impairment. Dr. DeAntonio's testimony in this regard is consistent with the note to category C that symptoms "may not become fully manifest until social demands exceed limited capacities, or may be masked by learned strategies in later life." (Ex. 51, p. 624.)

D4. Dr. DeAntonio was not specifically questioned about category D, concerning symptoms causing clinically significant impairment in social, occupational, or other important areas of current functioning. However, Dr. DeAntonio generally testified claimant's rigid, intense insistence of sameness and getting what he wants has caused him major impairments in his life, in terms of social relationships and living on his own. An example he noted was claimant going to extremes in responding to no longer being provided private transportation by NLACRC, which led to "his own self-destruction which caused him to end up in jail."

D5. Anecdotally, Dr. DeAntonio reviewed Dr. Agamyan's report, and testified that he agreed with her findings regarding how and why claimant meets categories A through D of the DSM 5 diagnostic criteria for ASD.

E. In terms of an intellectual disability, Dr. DeAntonio testified that he could not say whether claimant has a fifth category condition. He could only opine that claimant has borderline intellectual capabilities.

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F. Finally, Dr. DeAntonio testified claimant "needs services to treat his autism." But Dr. DeAntonio was vague about what services are needed. This is a significant point because, as discussed above, Dr. DeAntonio admitted that in 1995 he was concerned whether the regional center system could offer services to help a high-functioning person like claimant. Although he was involved with IABA when it provided services to claimant, Dr. DeAntonio did not clarify the goals or objectives those services were designed to address, other than claimant being provided private transportation to take him into his local community.

91. Claimant points out that in the two prior Fair Hearings held in 2010 and 2012, respectively, the involved ALJs made factual findings that claimant was "a consumer of the [NLACRC/WRC] based on a qualifying condition of autism." (Exs. A &

B.) Claimant contends this evidence demonstrates NLACRC and/or WRC actually concluded claimant had autism or, contemporaneous to the DSM 4 TR, Autistic Disorder. However, there is nothing in either decision containing any specific discussion about claimant's eligibility status, other than the reference that, of the five conditions of eligibility, claimant had been accepted under the condition of "autism." Stated another way, there is nothing in either decision indicating either or both regional center had changed their thinking that a diagnosis of Asperger's Disorder was tantamount to autism for purposes of the Lanterman Act.

CREDIBILITY FINDINGS REGARDING THE EXPERT OPINIONS ON AUTISM SPECTRUM DISORDER

92. Dr. DeAntonio's opinion that claimant has ASD was more persuasive than the opinions of the service agency's expert witnesses, Drs. Plotkin and Moradi, that claimant does not have ASD. The following reasons are primary in this determination:

A. As between Dr. DeAntonio and Dr. Plotkin, the two psychiatrists who have evaluated claimant, Dr. DeAntonio has superior education, training and experience working with the developmentally disabled in general and autistics in particular. While Dr. Plotkin has some experience working with those individuals, a review of his resume (ex. 45) and his testimony indicates his primary expertise is in mental health and psychiatric disorders, and his forensic work is primarily in criminal court competency matters. While Dr. Moradi's training and experience with developmental disorders is more substantial than Dr. Plotkin's, it cannot be concluded it is greater than Dr. DeAntonio's.

B. The most important factor is Dr. DeAntonio's 26 years' experience working with claimant. Dr. DeAntonio first met claimant when he was 15 years old and treated claimant intensively during his 10-week placement at UCLA NPI. Dr. DeAntonio has treated claimant continuously since then. His depth and breadth of experience working

with claimant, before and after he was a regional center client, is obviously more substantial than the few minutes or hours that Drs. Plotkin and Moradi may have spent with claimant. Moreover, Dr. Moradi has never evaluated claimant and cannot diagnose him. Her opinions are tethered almost exclusively to review of the cold record of this case. As claimant's longest treating professional, Dr. DeAntonio's opinions deserve deference. Thus, Dr. DeAntonio's opinions are given greater weight than Dr. Plotkin and Dr. Moradi.

C. The service agency contends Dr. DeAntonio is not entitled to such deference because his judgment has been clouded by his long-time care of claimant. Just as it cannot be assumed that a long-time regional center employee or vendor is an advocate for a given regional center, the same should be true of professionals treating a patient. Dr. DeAntonio's diagnoses of claimant have remained consistent for the past 26 years. He did not succumb to temptation to diagnose claimant with Autistic Disorder when such was the only available autism diagnosis in the DSM 3R, DSM 4 and DSM 4 TR. Instead, Dr. DeAntonio held to diagnoses of PDD-NOS and Asperger's Disorders due to his observations that claimant was too high-functioning in the area of communication to warrant an autism diagnosis. Dr. DeAntonio was at times brutally honest in his testimony concerning claimant, referring to him as "remarkably obnoxious" and describing his penchant for overreacting to "trivial issues bizarrely." Dr. DeAntonio also demonstrated candor by testifying he was concerned in 1995 whether the regional center system could offer services helpful to a high-functioning person like claimant. The primary evidence offered by the service agency supporting Dr. DeAntonio's purported advocacy was the telephone conversation between he and Dr. Plotkin. Yet, it is clear from the evidence that Dr. DeAntonio offered a more plausible, credible version of the conversation, and that his assessment of claimant's abilities as stated during that conversation was more nuanced and less rigid than Dr. Plotkin's.

D. Dr. DeAntonio's diagnosis that claimant has ASD has been bolstered and corroborated by other experts who have recently evaluated claimant and reached the same conclusion, i.e., Dr. Scarf and Dr. Agamyan. It is important to note that Dr. Scarf is a former regional center employee with known expertise in the area of autism. Dr. Agamyan was a service agency vendor trusted to participate in claimant's comprehensive reassessment. With the exception of Dr. Bellamy in 1992, all the other professionals affiliated with the regional center system who evaluated claimant either diagnosed him with Asperger's Disorder (prior to the advent of the DSM 5) or ASD. While it is true that claimant had not been given any diagnosis of a developmental disorder before he was 15, it is not clear those who evaluated him in his early years had expertise in such disorders. Given that all those who have diagnosed claimant with ASD indicate his condition is mild, it is likely his symptoms when he was younger were masked by his communication skills or were not as demonstrative as when he became older.

93. A. The service agency's primary argument is that claimant does not have ASD because he does not meet the diagnostic criteria specified in the DSM 5. This argument is based primarily on the testimony of Drs. Plotkin and Moradi, as well as notes found in some of claimant's records.

B. For example, the service agency argues the evidence does not show claimant had social and/or communication deficits in his early developmental period as required by category C of the diagnostic criteria. However, a note to category C indicates symptoms may not manifest until later. (Ex. 51, p. 625.) In addition, the DSM 5 states "some adults come for first diagnosis in adulthood. . . . Where clinical observation suggests criteria are currently met, [ASD] may be diagnosed, provided there is no evidence of good social and communication skills in childhood. For example, the report (by parents or another relative) that the individual had ordinary and sustained reciprocal

friendships and good nonverbal communication skills throughout childhood would rule out a diagnosis of [ASD]; however, the absence of developmental information in itself should not do so.” (Ex. 51, p. 630.)

C. In this case, claimant was first diagnosed with PDD-NOS in 1990 and then Asperger’s Disorder in 1995, when he was a teenager. He thus had some track-record of social and communication deficits at some point during his development to warrant those diagnoses. In 1989, claimant’s mother told Thaliens staff her son did poorly relating to peers and told UCLA NPI staff her son had few friends. In 1995, she told NLACRC staff that although her son had good oral communication, his ability was misleading. In 1990, Dr. Munoz noted in her report claimant had delayed language development. Dr. DeAntonio noted claimant’s longstanding social problems in 1990. One goal of his IEP in 1993 was increasing his verbalization. In 1995, claimant’s parents told Dr. Sanchez their son had little interest in cooperative play with other children when he was younger. Much later, claimant’s father told Dr. Agamyan his son had limited nonverbal communication, did not comfort others and did not share toys with other children at a young age. The totality of the evidence indicates claimant has had social and communication delays since early childhood. On the other hand, there is no evidence that claimant’s parents, relatives, friends or others have commented that claimant had sustained, good social and nonverbal communication skills when he was young.

D. Several professionals, i.e., Drs. DeAntonio, Sanchez, Scarf and Agamyan, have all diagnosed claimant with either Asperger’s Disorder or ASD (or both) despite the fact claimant had no such diagnosis before the age of 15 and with limited evidence of profound social and communication delays manifested in early childhood. The fact that so many qualified professionals have no qualms with diagnosing claimant with such a developmental disorder despite claimant’s advanced age, in combination with the

above-described DSM 5 notes, supports the ASD diagnosis made by Dr. DeAntonio.

94. A. The service agency also argues claimant does not meet the requisite ASD diagnostic criteria set forth in category A. Admittedly, Dr. Plotkin and Dr. Moradi raise valid concerns about whether those criteria have been met. But their concerns more point to the fact that claimant is high-functioning and has a mild level of disability.

B. Moreover, and as discussed above, Dr. DeAntonio opined all requisite criteria have been met, including category A, and he testified about the applicability of some of the criteria. While Dr. Scarf's report is vague and does not list what criteria are met, Dr. Agamyan's report is detailed. She opined claimant meets A-1 because he has limited shared attention and interest or understanding of others' emotions and his conversations are self-directed on topics only of his interest; he meets A-2 because records indicate his eye contact in the past was inconsistent or poor and he presented with limited body language and facial expressions; and he meets A-3 because although claimant would like to make friends, he is unable to make meaningful friendships due to his restricted interests, in part, and his significant developmental history for deficits in peer interactions.

C. The service agency argues the records presented either lack mention of such deficits or show the opposite. For example, the testimony of Mr. De Haven is cited as showing claimant had reciprocal interests. But Mr. De Haven clearly testified claimant was only interested in topics of his choosing and had no interest in others. Detective Viramontes testified claimant always wanted to discuss only issues important to him during their conversations. Dr. Plotkin testified he did not see anything in the record supporting many of the category A criteria, but his testimony was outweighed by Dr. DeAntonio's for the reasons discussed above. Dr. Moradi's opinions are given less weight than Dr. Agamyan's, because Dr. Moradi did not evaluate claimant. Moreover, Dr. Agamyan's report was detailed, well supported and persuasive. Her status as an

independent regional center vendor also bolsters her credibility, especially where her opinions are contrary to the party that retained her. It is true Dr. Sanchez noted in his report that claimant's parents commented about their son being aware of others' feelings, being affectionate with family members, etc. But Dr. Sanchez still diagnosed claimant with Asperger's Disorder in light of those comments. Moreover, those observations do not necessarily rule out an ASD diagnosis. Those lone comments are substantially outweighed by the rest of the evidence presented.

95. A. The service agency also argues claimant does not meet the requisite ASD diagnostic criteria set forth in category B. Here too, Dr. Plotkin and Dr. Moradi raise valid concerns about whether those criteria have been met. But the same observation about claimant's high-functioning status and mild level of disability is also warranted here.

B. Moreover, as discussed above, Dr. DeAntonio opined all requisite criteria have been met, including category B, and he testified concerning the applicability of some of the criteria. Dr. Scarf's report is vague and does not list what criteria are met. But Dr. Agamyan's report is detailed. Whereas claimant only needs to meet two of the criteria specified in category B, Dr. Agamyan opined he meets all four. For example, Dr. Agamyan believes claimant meets B-1 because he tends to repeat sentences and perseverates on certain themes or topics; as a child he engaged in repetitive light switching. He meets B-2 because he becomes extremely distressed when his routine changes or over trivial changes; he was that way as a child. He meets B-3 because as a young child, he was fascinated with locks and keys. Dr. DeAntonio noted claimant is currently obsessed with electronic gadgets, and went to extremes to get his computer back from the LAPD. Dr. Agamyan believes claimant meets B-4 because as a young child he demonstrated sensory seeking, such as sniffing things; he also had a defensive reaction to his hands getting dirty. Dr. DeAntonio opined claimant currently is

hypersensitive to pain, as demonstrated by his overreaction to pain and obsession with minor foot problems.

C. The service agency similarly argues the records presented either lack mention of such deficits or show the opposite. However, that argument is not persuasive for the same reasons discussed above concerning category A. Moreover, this issue boils down to the dynamic of different professionals reviewing the same information and reaching opposite conclusions. The various experts have viewed the activities attributable to claimant as a young child and now as an adult, but offered different views on whether the activities meet the diagnostic criteria. It is a matter of opinion. For the reasons described above, Dr. Plotkin's opinions regarding claimant are given less weight than those expressed by Dr. DeAntonio. For the reasons described above, Dr. Moradi's limited observation of claimant and review of the records is similarly given less weight than Dr. DeAntonio, as well as Dr. Agamyan's report.

96. Finally, the evidence is clear that claimant has been diagnosed with developmental disorders (including ASD), psychiatric disorders and learning disorders. Dr. DeAntonio persuasively opined that, in considering all of claimant's disorders, it is his developmental disorder which is the primary cause of his deficits and limitations. While Drs. Agamyan and Scarf similarly diagnosed claimant with those types of co-morbid features, they did not indicate in their reports that any of his psychiatric or learning disorders are the sole or even primary cause of his social, communication and adaptive limitations. Although Drs. Plotkin and Moradi have concluded claimant's disabilities are solely caused by his psychiatric disorders, that testimony was overshadowed by their conclusions that claimant is not autistic. Therefore, those opinions were not persuasive, for the reasons discussed above.

LEGAL CONCLUSIONS

JURISDICTION AND BURDEN OF PROOF

1. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 et seq.)² An administrative hearing to determine the rights and obligations of the parties is available under the Lanterman Act to appeal a contrary regional center decision. (§§ 4700-4716.) Here, the service agency sent claimant notice it was proposing to deem him ineligible for regional center services and explained the reasons for that proposal. Claimant requested a hearing to contest that proposal and therefore jurisdiction for this appeal was established. (Factual Findings 1-9.)

2. One is eligible for services under the Lanterman Act if it is established that he is suffering from a substantial disability that is attributable to intellectual disability, cerebral palsy, epilepsy, autism or what is referred to as the fifth category. (§ 4512, subd. (a).) The fifth category condition is specifically defined as “disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability.” (§ 4512, subd. (a).) A qualifying condition must originate before one’s 18th birthday and continue indefinitely. (§ 4512.)

3. Once a consumer has been determined to be eligible for services by a regional center, he shall also be considered eligible by any other regional if he has moved to another location within the state. (§ 4643.5, subd. (a).) That individual shall remain eligible for services unless a regional center, “following a comprehensive reassessment, concludes that the original determination that the individual has a developmental disability is clearly erroneous.” (§ 4643.5, subd. (b).)

² Further unspecified statutory references are to the Welfare and Institutions Code.

4. A. Where an applicant seeks to establish eligibility for government benefits or services, the burden of proof is on him. (See, e.g., *Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits].)

B. Regarding eligibility for regional center services, "the Lanterman Act and implementing regulations clearly defer to the expertise of the DDS (Department of Developmental Services) and RC (regional center) professionals' determination as to whether an individual is developmentally disabled." (*Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, 1127.) In *Mason*, the court focused on whether the applicant's expert witnesses' opinions on eligibility "sufficiently refuted" those expressed by the regional center's experts that the applicant was not eligible. (*Id.* at p. 1137.)

C. However, a regional center seeking to terminate funding provided to a consumer has the burden to demonstrate its decision is correct, because the party asserting a claim or making changes generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.).

D. In this case, the service agency has the burden of establishing claimant is no longer eligible for services because NLACRC's original determination in 1995 that he had a qualifying developmental disorder was clearly erroneous. Should the service agency prevail on that issue, the burden of proof shifts to claimant in establishing he is currently eligible for regional center services because he has a qualifying condition that is substantially disabling. In that regard, claimant's evidence regarding eligibility must be more persuasive than the service agency's evidence in opposition.

5. A. The standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) "'Preponderance of the evidence means evidence that has more convincing force than that opposed to it.' (Citations.) . . . [T]he sole focus of the legal definition of

'preponderance' in the phrase 'preponderance of the evidence' is the quality of the evidence. The quantity of the evidence presented by each side is irrelevant." (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 324-325.)

B. In his closing brief, claimant seems to argue the clear and convincing evidence standard is applicable. (See, e.g., ex. J, p. 4, lines 18-20.) Claimant cites no authority for that proposition, nor is the ALJ aware of any authority making that standard applicable to Lanterman Act hearings. It is assumed claimant's use of that phrase is related to the issue of whether NLACRC's determination in 1995 was clearly erroneous. Nonetheless, the service agency here must only prove, by a preponderance of the evidence, that NLACRC's determination in 1995 of claimant having a developmental disability was clearly erroneous. This is because the clear and convincing standard is only used in administrative matters involving the proposed suspension or revocation of a professional license or permit. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853; *San Benito Foods v. Veneman* (1996) 50 Cal.App.4th 1889.) By contrast, the proposed suspension or revocation of a nonprofessional or occupational license requires only the preponderance of the evidence standard. (*Imports Performance v. Dept. of Consumer Affairs, Bur. of Automotive Repair* (2011) 201 Cal.App.4th 911, 917.)

WAS NLACRC'S DETERMINATION IN 1995 CLEARLY ERRONEOUS?

6. A. When enacting section 4512 and describing "autism" as one of the five qualifying developmental disorders, there is no indication that the Legislature intended to include other disorders, such as Asperger's Disorder or PDD-NOS. At the time of the DSM 3R and DSM 4, there was Autistic Disorder and then those other disorders. The Legislature subsequently amended the Lanterman Act, including section 4512, but still did not change the list of qualifying conditions, including "autism." The Legislature was apparently aware of the difference between autism and autistic spectrum disorders, as

demonstrated by its enactment in 2001 of section 4643.3, subdivision (a)(1), which provides, in pertinent part, "the department [DDS] shall develop evaluation and diagnostic procedures for the diagnosis of autism disorder and other autistic spectrum disorders."

B. If the Legislature wished to add other autistic spectrum disorders to the list of qualifying conditions under section 4512, it could have done so. It is a cardinal rule of statutory construction that, where the Legislature has utilized a term of art or phrase in one place and excluded it in another, it should not be implied where excluded.

(Pasadena Police Officers Assn. v. City of Pasadena (1990) 51 Cal.3d 564, 576.)

C. Therefore, in 1995 and before, the word "autism" used in section 4512 should have been seen as referring to the Autistic Disorder diagnosis of the DSM 3R, DSM 4 and DSM 4 TR, which is the disorder classically considered to be "autism," and not to other diagnoses such as Asperger's Disorder or PDD-NOS. In fact, when section 4512 was initially enacted, prior to the DSM 4, there was no condition known as Asperger's Disorder. There was Autistic Disorder and everything else was labelled a PDD.

7. A. In this case, NLACRC made a clearly erroneous determination in 1995 that claimant had a developmental disability and was eligible for regional center services under the condition of autism.

B. By 1995, no professional had diagnosed claimant with Autistic Disorder. By Dr. DeAntonio's admission, claimant was not eligible for such a diagnosis in 1995 because his communication problems were not significant enough to meet the diagnostic criteria. While NLACRC employee Carol Hernandez may possibly have told Dr. DeAntonio she believed claimant "had more than Asperger's," she is not a psychologist or psychiatrist qualified or competent to make such a diagnosis. The evidence is clear that both NLACRC and then WRC assumed Asperger's Disorder was an autistic spectrum disorder and for that reason determined claimant had a qualifying developmental

disorder. They were clearly in error. (Factual Findings 1-46.)

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C. The error made by NLACRC is further demonstrated by the “provisional” status of claimant’s initial eligibility. There has never been a valid status of provisional eligibility for Lanterman Act services. The fact NLACRC gave such a label to claimant shows its staff was unsure about his situation. It is easy to conclude the determination of an individual’s eligibility based on a non-existent legal status was clearly erroneous. NLACRC’s error was compounded by the fact it never reassessed claimant in 1997, as it had indicated would be done when he initially was given provisional eligibility status. Instead, claimant transferred to WRC before the two-year period was over. Based on the record presented, it is more likely than not that the question of claimant’s eligibility simply slipped through the cracks of his case transfer. Such a dynamic is further indication that the entire determination process used by NLACRC was clearly erroneous. (Factual Findings 1-46.)

8. A. Claimant argues the evidence does not establish NLACRC made a clear error and/or that the evidence does not clearly show NLACRC or WRC did not decide he had autism.

B. But the evidence presented simply does not support that conclusion. The preponderance of the evidence shows both regional centers erroneously assumed Asperger’s Disorder was the same as “autism” for purposes of the Lanterman Act. Such was borne out by a few notes and reports from both regional centers specifically noting that conclusion. It is hard to believe that in the six volumes of claimant’s case file, there would not be at least one document showing some competent professional of NLACRC or WRC determined claimant actually had Autistic Disorder, if that in fact had actually occurred. Claimant and his authorized representatives always had access to his case file. (§ 4725 et seq.) Claimant presented no such evidence.

C. Claimant points out that the two Fair Hearing Decisions involving past service disputes mention his being eligible for services based on the category of autism. But there is nothing in either Decision inconsistent with the above conclusions. Neither Decision indicates the involved regional center had determined anything other than Asperger's Disorder qualified claimant for services under the category of autism. (Factual Finding 91.)

D. Claimant argues that the "clearly erroneous" standard used in appellate review should apply to reviewing NLACRC's determination in 1995. Specifically, claimant cites to the maxim that a reviewing court must not simply decide it would have reached a different conclusion, but instead ask whether, "on the entire evidence," it is "left with the definite and firm conviction that a mistake has been committed." (*Easley v. Cromartie* (2001) 532 U.S. 234, 242.) As discussed above, the preponderance of the evidence is the only standard that applies in this case. Nonetheless, it is clear to the ALJ that NLACRC's determination in 1995 that claimant was eligible for services was clearly erroneous, as a matter of fact and law, and therefore the ALJ is left with the definite and firm conviction that NLACRC made a mistake in that regard.

E1. Claimant also argues the service agency failed to conduct a valid, comprehensive reassessment of claimant leading to its proposal to terminate his services. First, he argues there was insufficient evidence of the NLACRC eligibility team's determination in 1995 reviewed by the service agency or presented in this case. However, the documents one would expect to exist were reviewed and presented, namely, an intake report, psychological evaluation report, notes from the eligibility team's meeting, eligibility report, and case transfer summaries. If there is any type of document that should exist but was not presented, claimant did not identify it. An example would be one of claimant's many IPPs. It would be expected such a determination or change in thinking would be depicted in such a document if it had

occurred. None were presented. In any event, it is clear from the evidence presented that NLACRC and WRC deemed claimant eligible for services because of the mistaken belief that Asperger's Disorder was a qualifying condition. Claimant's only evidence on this point was the hearsay testimony of Dr. DeAntonio, that an intake counselor told him she felt claimant "had more than Asperger's." But that evidence is insufficient to show NLACRC concluded claimant had autism or Autistic Disorder, as explained above. And none of the evidence presented indicates NLACRC or WRC ever decided claimant in fact "had more than Asperger's."

E2. Claimant next argues that because the service agency critiqued the work and opinions of Dr. Agamyan, her part of the reassessment must be invalid; if so, the entire reassessment must be invalid. However, that argument was rejected as a matter of fact. If anything, Dr. Agamyan's report and opinions were found to be credible and supportive of an ASD diagnosis for claimant. Claimant's argument concerning the deference that should be paid to the NLACRC eligibility team's determination that he was substantially disabled would only be necessary to decide if he had an eligible condition in 1995, which he did not.

APPLICATION OF WAIVER, ESTOPPEL AND A LIMITATIONS PERIOD

9. Claimant argues because NLACRC and WRC provided services to claimant for approximately 20 years after determining he was eligible on the basis of autism, those regional centers waived the service agency's ability to terminate his services because the initial eligibility determination was clearly erroneous. Claimant also argues the service agency should be estopped from asserting he is no longer eligible because the 20 year delay in asserting that position has substantially prejudiced him, "as he has lost out on other services from all of his adult life, and has relied on the services of the [regional center] for the past approximate [20] years." (Ex. J, pp. 7-8.) In addition, claimant argues the "regional center" should be bound by "the statute of limitations on

bringing a Fair Hearing claim in the same way a consumer is prevented from bringing a late claim." While claimant fails to cite any particular limitations period set by law, he does refer to his two-year provisional eligibility status which was scheduled to end in October 1997. He then argues NLACRC should have had only 30 days thereafter to decide to terminate his provisional status, apparently relying on section 4710.5, subdivision (a), which requires an individual to submit a request for a Fair Hearing no later than 30 days after receiving notice of a regional center's proposal to change, reduce or terminate services.

10. Waiver is the intentional relinquishment of a known right after knowledge of the facts. The burden is on the party claiming waiver. Waiver may occur by intentional relinquishment or by conduct so inconsistent with an intent to enforce the right as to induce a reasonable belief that such right has been relinquished. (*Harper v. Kaiser Cement Corp.* (1983) 144 Cal.App.3d 616, 619-620.)

11. The elements of estoppel are that (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel has a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury. (*County of Los Angeles v. City of Alhambra* (1980) 27 Cal.3d 184, 196 (citing *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 488-89).

12. A. Although claimant's argument is premised on the notion that the various regional centers are the same entity or party for these purposes, the Lanterman Act does not support such a construct.

B. Under the Lanterman Act, the DDS "shall contract with appropriate agencies to provide fixed points of contact in the community for persons with developmental disabilities and their families. . . ." (§ 4620, subd. (a).) The intent of the Legislature was and is for "the network of regional centers" to be accessible to every family in need of

services. (*Ibid.*)

C. The 21 regional centers in the state are operated by private non-profit community agencies. (§ 4620, subd. (b).) DDS has a separate contract with each regional center to provide assessment, and specified services and supports within a certain geographical area of the state known as a “service catchment area.” (§ 4640, subd. (a); Cal. Code Regs., tit. 17, § 54302, subd. (a)(58).) In order to contract with DDS, a regional center must have a governing board that conforms to a list of criteria, including that the board reflect “the geographical and ethnic characteristics of the area to be served by the regional center;” 50 percent of the board members must have developmental disabilities or be parents or legal guardians to an individual with a developmental disability; but no less than 25 percent of the board members must have a developmental disability. (§ 4622, subds. (d) & (e).)

D. Section 4643.5, subdivision (a), provides that a consumer deemed eligible by one regional center shall be eligible for services from all regional centers located in the state. However, when a consumer moves from one regional center catchment area into another, the services specified in the consumer’s IPP continue until the consumer and the new regional center meet and develop a new IPP. (§ 4643.5, subd. (c).) It is doubtful such safeguards would have been written into the Lanterman Act if the 21 different regional centers were viewed as one and the same entity.

13. Based on the above, claimant’s waiver argument must fail. The “regional center” referred to by claimant cannot be the service agency. Each regional center is a separate legal entity, by design of the Lanterman Act. The past events concerning claimant’s eligibility have nothing to do with the service agency. In fact, the service agency had no contact with claimant until well after the relevant events. In sum, the service agency has waived nothing. The actions of NLACRC and WRC cannot fairly be attributed to the service agency and there is no evidence that the service agency itself

has done anything to waive its right to propose to terminate claimant's service funding.

14. For the same reason, claimant's estoppel argument must fail. None of the elements of estoppel have been established against the service agency, because none of the actions taken by NLACRC and WRC in the past can be attributed, factually or legally, to the service agency. In addition, it was not established that claimant has been, or will be, injured by the actions taken by the service agency. First, since the service agency proved the eligibility determination in 1995 was clearly erroneous, it means claimant has actually benefitted from over 20 years of services to which he was not entitled. Second, by the time claimant moved into the service agency's catchment area, his services had been "inactivated" by NLACRC, as a result of restraining orders and convictions against him. The service agency is not to blame for claimant's current lack of funding.

15. Claimant's final argument that the service agency is bound by an unspecified limitations period must also fail. First, and as discussed above, the service agency is a separate legal entity not bound by the actions of NLACRC or WRC. Second, claimant cited no limitations period applicable here. The indirect reference to section 4710.5 is unavailing because that statute, on its face, applies only to the time period a consumer or eligibility applicant has to submit an appeal from a proposal made by a regional center, not vice versa. Finally, it is implied in section 4643.5 that any regional center, at any time, can conduct a comprehensive reassessment of a consumer to determine whether he/she had been erroneously deemed eligible. No limitations period is mentioned in that statute. In this case, within a matter of a few weeks of being contacted by claimant for the first time, the service agency advised claimant's attorney it was dubious about claimant's eligibility for services and that a reassessment was necessary. It cannot be concluded the service agency delayed or violated any time period contained in the Lanterman Act.

DOES CLAIMANT HAVE AUTISM?

16. The Lanterman Act and its implementing regulations contain no specific definition of the neurodevelopmental condition of "autism." As discussed above, the customary practice was to import into the Lanterman Act the definition of Autistic Disorder from the DSM 3R, DSM 4 and DSM 4 TR. However, the current version is the DSM 5, which came into effect in May 2013. The DSM 5 provides ASD as the single diagnostic category for the various disorders previously placed in the PDD category, i.e., PDD-NOS, Asperger's Disorder and Autistic Disorder.

17. In this case, claimant has been diagnosed by at least three credible sources as having ASD, i.e., Drs. DeAntonio, Scarf and Agamyran. Those three professionals all have extensive experience with the regional center system and autism. As a matter of fact, the experts who opined claimant has ASD were found to be more credible than those who have concluded he is not. The ALJ is mindful of the critiques made by the service agency's experts, Drs. Plotkin and Moradi. In no way did the ALJ find them not to be credible. This is simply a case where the experts finding claimant has ASD, especially Dr. DeAntonio, are viewed as more persuasive. The particular critiques made by the service agency's experts concerning the lack of evidence supporting some of the diagnostic criteria were not without substance. While those critiques were ultimately rejected in terms of deciding whether claimant has ASD, they are more persuasive when viewed as highlighting the fact claimant is a high-functioning autistic person who is mildly on the spectrum. In fact, many of the experts who have evaluated claimant have described him that way. Since claimant has been found to have autism within the meaning of the Lanterman Act, he would be eligible for services, if all other requirements are met. (Factual Findings 1-96.)

DOES THE PENAL CODE EXPAND ELIGIBILITY FOR REGIONAL CENTER SERVICES?

18. The Penal Code allows a criminal court to divert a defendant at any stage of a criminal proceeding, provided the defendant "has been evaluated by a regional center for the developmentally disabled and who is determined to be a person with a cognitive developmental disability by the regional center, and who therefore is eligible for its services." (Pen. Code, § 1001.21, subd. (a).)

19. Penal Code section 1001.20, subdivision (a), defines "cognitive developmental disability" as any the following:

- (1) "Intellectual disability" means a condition of significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.
- (2) "Autism" means a diagnosed condition of markedly abnormal or impaired development in social interaction, in communication, or in both, with a markedly restricted repertoire of activity and interests.
- (3) Disabling conditions found to be closely related to intellectual disability or autism, or that require treatment similar to that required for individuals with intellectual disability or autism, and that would qualify an individual for services provided under the Lanterman Developmental Disabilities Services Act.

20. Penal Code section 1001.21, subdivision (c), clarifies that diversion shall apply to "persons who have a condition described in paragraph (2) or (3) of subdivision (a) of Section 1001.20 *only* if that person was a client of a regional center at the time of the offense for which he or she is charged." (Emphasis added.) Based on the interplay of the aforementioned two statutes, diversion is available for a person found to have an intellectual disability at any time, whether or not that person was a regional center client at the time the offense was committed. However, for autism, as described in section

1001.21, subdivision (a)(2), or for conditions found to be closely related to intellectual disability or autism, as described in section 1001.21, subdivision (a)(3), diversion is only available if the defendant was a regional center client at the time the offense was committed.

21. Based on the Penal Code provisions discussed above, claimant contends the eligibility criteria for regional center services under the Lanterman Act have been expanded to include “disabling conditions found to be closely related to autism or that require treatment similar to that required for individuals with autism.” Claimant argues whether or not he is properly diagnosed with ASD under the DSM 5, he should be considered a person who has a condition closely related to autism and/or requires treatment similar to that required by an autistic person.

22. Claimant’s argument runs afoul of the Lanterman Act. As cited above, section 4512, subdivision (a), clarifies that the so-called fifth category condition only includes “disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability.” A condition closely related to autism is not an eligible condition in the Lanterman Act. “The fifth category condition must be very similar to mental retardation [the prior diagnostic term for intellectual disability], with many of the same, or close to the same, factors required in classifying a person as mentally retarded.” (*Mason v. Office of Administrative Hearings, supra*, 89 Cal.App.4th at p. 1129.)

23. A. An argument similar to claimant’s was made and rejected by the court in *Samantha C. v. State Dept. of Developmental Services* (2010) 185 Cal.App.4th 1462. In that case, the claimant cited the same Penal Code provisions, but contended she had a condition closely related to intellectual disability instead of autism. The court specifically rejected her argument, indicating there was no express language or legislative history in either section 4512, subdivision (a), or Penal Code section 1001.20, evidencing an intent

to augment the definition of “developmental disability” under the Lanterman Act with the provisions of Penal Code section 1001.20. (*Id.* at pp. 1447-1448.)

B. Further, because Penal Code section 1001.20 deals with criminal punishment of defendants with developmental disabilities, the court observed the claimant there was required to, but did not, establish that the purposes of the penal statutes are the same as the purposes of the Lanterman Act. “Therefore, even if the definitions of certain terms under the Lanterman Act are different from the definitions in the Penal Code, no provision would be rendered nugatory if a person qualified under one statute but not another.” (*Samantha C. v. State Dept. of Developmental Services, supra*, 185 Cal.App.4th at 1447-1448.) Thus, there was no basis to apply the rule of statutory construction requiring that statutes relating to the same subject be harmonized to the extent possible. (*Ibid.*)

C. Finally, the court concluded section 4512, subdivision (a), was the more specific statute, and would therefore prevail over the Penal Code provisions cited under the rule of construction by which the specific statute prevails over a more general one. (*Samantha C. v. State Dept. of Developmental Services, supra*, 185 Cal.App.4th at 1447-1448.)

24. A. In this case, the fact claimant points to a condition closely related to autism, rather than the condition closely related to intellectual disability discussed in *Samantha C.*, actually makes his argument more untenable. That is because of the limitation provided in Penal Code section 1001.21, subdivision (c), which expressly excludes diversion from someone claiming to be autistic or having a condition closely related to autism, unless “that person was a client of a regional center at the time of the offense for which he or she is charged.” Since the fifth category condition of the Lanterman Act only references conditions closely related to intellectual disability, and not autism, there is no reason a regional center would deem someone eligible for

services based on a condition closely related to autism, but not autism.

B. The same is true concerning the language contained in Penal Code section 1001.20, subdivision (a)(3), which makes clear that the “closely related condition to autism” must also “qualify an individual for services provided under” the Lanterman Act. Again, the fifth category condition in the Lanterman Act contains no reference to autism. A person with a condition closely related to autism, but not autism, would not qualify for services under the Lanterman Act. It is hard to imagine the Legislature intended to expand the scope of eligibility under the Lanterman Act by a statute (Pen. Code, § 1001.20, subd. (a)(3)) that expressly limits such application.

25. Claimant’s argument is unpersuasive that the *Samantha C.* court’s discussion cited above is dicta and thus of no precedential value. The *Samantha C.* court was asked by the claimant in that case to expand the eligibility criteria of section 4512 by virtue of the Penal Code provisions cited above. (*Samantha C. v. State Dept. of Developmental Services, supra*, 185 Cal.App.4th at 1487-1488.) The court rejected that argument. (*Ibid.*) While the court found the claimant in that case eligible for services under the fifth category, because she had a condition closely related to intellectual disability, the court reached that decision by first holding the Penal Code provisions in question did not expand the meaning of the Lanterman Act and that the claimant was not eligible for services under any other statutory basis. The result in that case was therefore dependent on the above-described interpretation of the Penal Code. The decision is precedent and should be followed. Even assuming, arguendo, that that part of *Samantha C.* is dicta, it still is persuasive as applied to the facts of this case and worth following. Though not bound by dicta, a reviewing court may always find the reasoning set forth in dicta persuasive as to the facts presented in its case and follow it. (*People v. Valencia* (2011) 201 Cal.App.4th 922, 929.) Finally, the fact the claimant in *Samantha C.* focused on a condition closely related to intellectual disability, but not autism, does not

matter. The *Samantha C.* court squarely rejected applying any part of Penal Code section 1001.20 to the Lanterman Act.

DOES CLAIMANT HAVE A CONDITION EXCLUDING HIM FROM ELIGIBILITY?

26. 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).)

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).)

D. 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 section 4512 discussed herein. (*Samantha C. v. State Dept. of Developmental Services, supra*, 185 Cal.App.4th at 1462.)

27. In this case, the evidence is clear that claimant has been diagnosed with developmental disorders (including ASD), psychiatric disorders and learning disorders. As the *Samantha C.* court held, an individual with a psychiatric disorder is not disqualified from eligibility by that fact alone. For a psychiatric condition to exclude one from eligibility, it must solely be the cause of the disability. The same is true for learning disorders. In this case, the evidence established that claimant's psychiatric conditions are not solely disabling, so they do not exclude him from eligibility. However, the extent that his psychiatric and/or learning disorders contribute to his disabilities is a relevant inquiry

for purposes of determining if he is substantially disabled due to autism, as discussed below in more detail.

IS CLAIMANT SUBSTANTIALLY DISABLED?

28. A qualifying condition must also cause a substantial disability. (§ 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.³

29. The ALJ is aware of the provision that states, “Any reassessment of

³ Section 4512, subdivision (j), defines “substantial disability” similar to that of California Code of Regulations, title 17, section 54001, subdivision (a)(2).

substantial disability for purposes of continuing eligibility shall utilize the same criteria under which the individual was originally made eligible.” (Cal. Code Regs., tit. 17, § 54001, subd. (d).) As applied to this case, that provision would require using the prior substantial disability criteria in effect in 1995 (a significant functional limitation in only two or more major life areas) when considering whether NLACRC’s eligibility determination was clearly erroneous. However, subdivision (d) should have no application to the issue whether claimant is presently eligible for services. Since his eligibility is based primarily on the revised diagnostic criteria for autism set forth in the DSM 5, whether claimant is substantially disabled must be based on the current version of the law, not the one existing in 1995.

30. A. The first issue to consider is whether claimant’s condition requires “interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential.” (Cal. Code Regs., tit. 17, § 54001, subd. (a)(1).)

B. Unlike almost all other eligibility cases, this is one where the claimant has a unique track record of over 20 years of receiving services from the regional center system. That track record is highly probative in determining whether his condition requires interdisciplinary planning and coordination of special or generic services. In this case, the evidence establishes claimant’s condition does not require either.

C1. A chronological review of claimant’s history in the regional center system shows the following trend. In 1992, when the family first approached NLACRC, claimant’s mother described her son as “a more advanced learning disabled person.” In 1994, claimant’s self-help skills were described by Devereux staff as being low to average range. In 1995, although Dr. Sanchez diagnosed claimant with Asperger’s Disorder, he recommended services that did not include those traditionally funded by regional centers. He found claimant had basically age appropriate abilities in adaptive

skills. As far back as 1995, Dr. DeAntonio has viewed claimant as “high functioning,” and he was “doubtful the regional center could help him.”

C2. Even after claimant was deemed eligible for services and began receiving them, by 1997 his SLS provider (IABA) noted claimant had poor motivation and attendance to participate in the SLS or vocational program; and that he was able to complete his daily living skills “when he wants to.” By 1998, IABA was primarily helping claimant find a new roommate and driving him on his chores; staff noted claimant was able to complete his daily living tasks independently. In 2006, claimant was being served by My Life. Mr. De Haven testified that staff essentially woke claimant up in the morning and drove him on his errands; they did not need to teach claimant any daily living skill he was not already able to do. By 2012, when NLACRC inactivated claimant’s case file, staff noted a service provider (PCS) terminated a service program because claimant refused to work on any of his program goals and only wanted to be driven on errands. Even though Dr. Agamyan found claimant had ASD, she described his condition as “mild,” and she did not recommend any service for him other than psychiatric therapy and medications. Dr. Plotkin agrees that claimant is able to manage his daily environment and believes he only needs psychiatric services. Dr. Moradi agrees with Dr. Plotkin.

C3. Significantly, none of the expert witnesses who testified in this case specifically referenced any particular service that claimant requires due to his condition. Not even Dr. DeAntonio. In light of the fact claimant received few services from the regional center in the past 20 years, and those he received were basically utilized only for private transportation, the silence on claimant’s current need for specialized or generic services was deafening. When the involved evaluators recommended services for claimant, they almost exclusively mentioned psychiatric services. The exception was a few references to vocational training, which are helpful to both developmentally

disabled individuals and those suffering from psychiatric disorders. Finally, it does not escape the ALJ that after claimant's regional center services were inactivated and he has received solely psychiatric services, his behavior has apparently improved to the point where there are no recent reports of catastrophic behavioral problems.

D. By requiring an eligible condition to be substantially disabling, the drafters of the Lanterman Act were stating that an individual is not eligible for services merely because he/she has an eligible condition. The person must also demonstrate a need for interdisciplinary planning and specialized or generic services. In this case, since it is clear from the evidence claimant has not required such planning or services in the past, it is more likely than not he will not in the future either. This deficiency standing alone is enough to disqualify him from services. (Factual Findings 1-96.)

31. While it is a closer question, claimant also failed to establish that he has significant functional limitations in three or more areas of major life activity. (Cal. Code Regs., tit. 17, § 54001, subd. (a)(2).)

A. Receptive and expressive language. Claimant has always been noted for communication delays. But the evidence does not establish his receptive and/or expressive language limitations are significant. Claimant is able to clearly speak and carry on conversations. He can clearly make his wants and needs known. He does not have atypical speech patterns or echolalia making it hard for him to communicate with others or be understood. None of those who evaluated claimant's regional center eligibility have concluded his language skills in this context are significantly impaired, including Dr. Bellamy, Dr. Sanchez, Dr. Plotkin or Dr. Agamyan. Dr. Scarf noted no significant language impairments and found claimant's reading skills were low average. In fact, the reason Dr. DeAntonio did not diagnose claimant with Autistic Disorder in 1990 and 1995 was because his communication was not significantly impaired. In his

1995 note, Dr. DeAntonio wrote claimant met all the criteria for Autistic Disorder "except for lack of significant delays in language." In 1994, receptive and expressive delays were noted in claimant's IEP, but not described as significant. In fact, in other respects, claimant's language in the same IEP was described as age appropriate. Under these circumstances, it cannot be concluded that claimant has a significant functional receptive and expressive language limitation.

B. Learning. Claimant has a learning impairment and required special education services. However, the few IEP documents presented indicate his major obstacle was behavior problems and ADHD, as opposed to autism-related actions or behaviors. While his autism explains why he got along poorly with peers and prevented him from making friends, it does not necessarily show it prevented him from accessing his curriculum. His failure to focus and concentrate due to ADHD was the prime barrier. Learning disorders were also cited. Some cognitive delays were noted, but claimant usually was measured with low average or borderline intellectual and academic skills. The fact he graduated from Devereux is significant. Soon after that time, Dr. Sanchez tested claimant and found his cognitive skills were low average to borderline, and that his academic performance was somewhat below that, indicating claimant had a learning disorder. Dr. Scarf much later described his reading skills as low average. Dr. DeAntonio did not comment on claimant's learning or academic abilities. But Drs. Plotkin and Moradi's testimony, taken together, indicates once claimant's behavioral and learning disorders are teased out, whatever learning impairment claimant had related to his autism was not significantly limiting. Thus, it cannot be concluded claimant has a significant functional limitation in learning.

C. Self-care. The record is bereft of self-care limitations before claimant first approached NLACRC in 1992. At that time, Dr. Bellamy described his daily living skills as borderline. By 1995, an NLACRC intake representative found claimant attended to his self-care independently. Dr. Sanchez found claimant's adaptive and street skills were essentially age-appropriate. Dr. DeAntonio has never opined on this area of claimant's functioning. However, Mr. De Haven of My Life testified there were no independent living skills he could teach claimant that he did not already know. Dr. Agamyan found claimant's self-help skills were a relative strength. No evidence was presented indicating claimant has a significant impairment in dressing, grooming or feeding himself. Under these circumstances, it cannot be concluded that claimant has a significant functional limitation in self-care.

D. Mobility. No evidence presented indicates claimant cannot ambulate, walk or otherwise move his body. The "Association of Regional Center Agencies [ARCA] Clinical Recommendations for Defining 'Substantial Disability' For the California Regional Centers" notes, "Mobility does not refer to the ability to operate motor vehicles or use public transportation." (Ex. 48, p. 549.) ARCA's suggestion is not binding, but it is reasonable and persuasive and thus followed here. Moreover, claimant presented no evidence indicating whether or not he has or can get a driver license or use public transportation. Even if such modes of transportation were relevant to considering this major life area, it is not clear claimant is impaired. At Devereux, claimant was able to use the bus and train on his own. While his refusal to do so when a regional center consumer was the focus of a substantial controversy that ultimately led to inactivation of his service funding, the record does not indicate how and when claimant uses transportation currently. Put another way, while it is clear claimant does not like

to use public transportation, it is not clear he is currently unable to do so. Under these circumstances, it cannot be concluded that claimant has a significant functional limitation in mobility.

E. Self-direction. Claimant has a significant functional limitation in this major life area. As outlined by the ARCA guidelines for this area, claimant is immature and lacks the capacity for reasonable social judgment and decisions. He has significant limitations establishing and maintaining relationships with peers and non-family members. The hallmark of his autism is his significant inability to cope with frustration. When he does not get what he wants, even on trivial issues, he gets "stuck" and perseverates on that issue, going to extremes. The severity of that inability to cope was demonstrated by claimant harassing members of two different law enforcement agencies, even after being told to stop. Claimant's actions led to his being arrested and prosecuted, and even then he could not stop, until he was finally incarcerated and convicted. In addition, claimant was frustrated with NLACRC for not providing transportation funding. He took extreme measures, which also led to convictions. Even after his funding was inactivated by NLACRC for that very reason, he called the service agency 17 times in one day when he was frustrated with staff not immediately providing him with services.

F. Capacity for independent living. It was not established claimant is unable to perform age-appropriate independent living skills without the assistance of another person. As discussed above, claimant's self-help and independent skills have been described as average. He can do basic household chores, feed himself, make simple financial transactions, and open a checking account. While claimant received supportive living assistance when a regional center consumer, Mr. De Haven of My Life testified claimant did not need

independent living skills training. The record does not indicate claimant needs assistance in this area while he has lived at home with his father. The record is also silent as to whether claimant can be left at home unsupervised or whether he has significant difficulty dealing with his own health care needs. Under these circumstances, it cannot be concluded claimant has a significant functional limitation in independent living.

G. Economic self-sufficiency. This is a close question. The ARCA guidelines in this area focus on whether an individual “lacks the capacity to participate in vocational training or to obtain and maintain employment without significant support.” (Ex. 48, p. 550.) Educational progress reports in 1993 indicate claimant did well in vocational skills and could relate well to supervisors and coworkers. In 1994, Devereux staff recommended claimant for vocational training in order to find a job. In 1997, it was noted claimant was excited about his job at a bagel shop, but later lost interest in it. The evidence is unclear whether claimant has ever held a job independently. But it is unlikely claimant could maintain a job or economically support himself without significant support. That is because of his hallmark manifestation of autism: getting stuck on trivial issues and perseverating on them to extreme measures. Given claimant’s track record of disputes with his parents, regional center staff, vendors and the police, it is impossible to conclude that such would not happen if claimant encountered a trivial problem or issue at work or with a customer. Under these circumstances, claimant established he has a significant functional limitation in this major life area.

H. Claimant only established having a significant functional limitation in two major life areas, not three as required by the regulations. Without meeting the threshold number, claimant failed to establish his autism is substantially

disabling. This failure is combined with his failure to establish that he requires interdisciplinary planning and the provision of specialized or generic services. This dynamic is most likely explained by the fact claimant's autism is considered mild, as indicated by Dr. DeAntonio and Dr. Agamyan. (Factual Findings 1-96.)

IS CLAIMANT ELIGIBLE FOR SERVICES?

32. Since the service agency established the eligibility decision made in 1995 was clearly erroneous, claimant had the burden to establish by a preponderance of the evidence that he is currently eligible for services. Claimant established he has the qualifying developmental disability of autism. But he failed to establish his condition is substantially disabling, which is required by the Lanterman Act. Under these circumstances, claimant is not eligible for regional center services. In this regard, his appeal must be denied. (Factual Findings 1-96; Legal Conclusions 1-31.)

ORDER

Claimant's appeal is denied. Claimant is no longer eligible for regional center services.

DATED: May 19, 2016

ERIC SAWYER,
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.