

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

In the Matter of:

CLAIMANT,

vs.

NORTH LOS ANGELES COUNTY REGIONAL CENTER,

Service Agency.

OAH No. 2019110432

DECISION

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter via telephonic/videoconference on August 12, 2020. Stella Dorian, Contract Officer, represented North Los Angeles County Regional Center (NLACRC or service agency). Claimant's foster mother (Mother), with the assistance of a Spanish language interpreter, represented Claimant.¹

¹ To preserve confidentiality, neither Claimant nor Mother is identified by name.

Testimony and documents were received in evidence, the record closed, and the matter was submitted for decision at the conclusion of the hearing.

ISSUE

Whether Claimant is eligible for regional center services and supports under the qualifying category of autism as provided for in the Lanterman Developmental Disabilities Services Act (Lanterman Act).²

FACTUAL FINDINGS

Jurisdictional Matters

1. On April 25, 2019, the Department of Child and Family Services (DCFS) referred claimant to NLACRC to determine his eligibility for Lanterman Act services and support.³

2. By letter and Notice of Proposed Action dated October 10, 2019, NLACRC informed Mother its Interdisciplinary Eligibility Committee determined Claimant does not meet criteria for developmental disability and therefore ineligible for services under the Lanterman Act.⁴

² Welf. & Inst. Code, § 47500, et seq.

³ See Factual Finding 13.

⁴ Exhibit 1 at p. 008; Exhibit 10.

3. On October 20, 2019, Mother, acting on Claimant's behalf, filed a Fair Hearing Request.

4. On November 14, 2019, OAH served Claimant, Mother, and NLACRC with a Notice of Hearing scheduling the fair hearing for January 6, 2020, which was subsequently continued for good cause to August 12, 2020.

5. All jurisdictional requirements are satisfied.

Claimant's Background

6. Claimant is a 14-year-old male whose biological mother consumed drugs and alcohol during his gestation. DCFS removed Claimant as a nine-year-old from his biological parents due to neglect, physical abuse, and drug and alcohol exposure. Claimant experienced several temporary foster home placements prior to his March 2018 placement as a 12-year-old with his current foster family consisting of Mother, his foster father, and his biological and foster siblings.

7. At home Claimant exhibits aggressive behaviors, including hitting walls, cursing, and yelling. He isolates himself in his room several hours daily. He has difficulty sleeping and he awakes tired and lacking energy. He shows no interests in games or interaction with his family. Claimant was hospitalized in January 2019 when he exhibited suicide ideation.

8. Claimant resists regular attendance at school and when in attendance he is aggressive and irritable with his peers and teachers. He has failing grades. On November 15, 2017, his school district referred him for Special Education Services, and, on March 13, 2018, he was deemed eligible under the classification of Specific Learning Disability.

9. Claimant's most recent Individualized Education Program (IEP) dated March 6, 2019 and amended October 10, 2019, documents Claimant's deficits in visual processing and attention, which affect his academic achievement in reading and reading comprehension. The IEP additionally documents Claimant's cavalier attitude towards his work product, his multiple disciplinary referrals, and his 0.86 grade point average. Claimant's IEP states Claimant presents with difficulty communicating, making eye contact, and answering questions when asked. Claimant's IEP includes characterizations of his behaviors as belligerent and defiant. Claimant has difficulty socializing with his peers and he struggles comporting himself with school rules.

10. Based on Claimant's behaviors at home and school, he was referred to the Los Angeles County Department of Mental Health for evaluation. Diana Barcenas-Reyes, Associate Marriage and Family Therapist at Penny Lane Center, conducted an intake assessment of Claimant and memorialized her findings in a February 26, 2019 *Child/Adolescent Full Assessment*. Barcenas-Reyes found Claimant presents with symptoms and behaviors that impair his functioning at home. Claimant isolates and does not engage in family activities. He expresses irritability and verbal aggressive multiple times daily. He does not make eye contact stating it is uncomfortable to do so. (See Exh. 3.) Barcenas-Reyes diagnosed Claimant with Major Depressive Disorder, Single Episode, Moderate based on her clinical formulation reporting Claimant presented with depressed mood, irritability, feelings of worthlessness, and a history of suicidal ideation and recent hospitalization. She attributed Claimant's behavior to his removal from his biological parents, which she opined intensified after Claimant and his girlfriend broke up. Barcenas-Reyes recommended weekly individual therapy sessions and intensive training in safe coping skills at home and school to address Claimant's depressive symptoms and suicidal ideation. She additionally referred Claimant to "medication support." (Exh. 3 at p. 015.)

11. On March 19, 2019, Candyce DeLoatch, M. D., a child psychiatrist treating Claimant, completed a Form JV-220(A) application making an initial request to administer psychotropic medication to Claimant. DeLoatch identified the emergency circumstances requiring temporary administration of the psychotropic medication pending a court's decision on the application as follows: "Recently hospitalized for suicidal thoughts ICO low mood. Daily tantrums-punching walls, kicking. Likely Autistic—awaiting regional or referral." (Exh. 5 at p. 013.) The basis for DeLoatch's suspicion Claimant was "likely Autistic" was not disclosed at the administrative hearing.

12. Alan J. Golian, Psy.D., followed up Barcenas-Reyes' intake assessment with psychological evaluations of Claimant on April 8 and 22, 2019. Golian observed Claimant displayed appropriate attire and hygiene. Claimant made eye contact with and reciprocated Golian's greetings. During the evaluations Claimant was attentive, responsive to questions, and offered spontaneous commentary. Claimant spoke in full sentences without any apparent speech abnormalities or articulation difficulties. Claimant's receptive language appeared intact and Claimant's nonverbal behaviors—facial expressions and gestures—were within normal limits.

13. Golian assessed Claimant's cognitive abilities with the Wechsler Intelligence Scale for Children, Fifth Edition (WISC-V). Golian found Claimant's Full Scale Intelligence Quotient (FSIQ) score of 81 was within the 10 percentile, which is classified within the low average range for Claimant's age. Golian measured Claimant's academic functioning with the Woodcock-Johnson Tests for Achievement, Fourth Edition (WJ-IV). Golian determined a comprehensive measurement of Claimant's reading, mathematics, and writing achievement, including broad reading skills, reading comprehension, math calculation skills, math problem-solving, spelling, and production of written sentences, placed Claimant well below average level when

compared to peers at a national level. Golian assessed Claimant's social and emotional functioning and well-being using the Behavior Assessment System for Children, Third Edition (BASC-3) and the Beck Youth Inventories, Second Edition (BYI-2). On the BASC-3, Golian obtained scores in the clinically significant range that were consistent with the presence of impulsive, defiant, aggressive, and socially deviant behaviors affecting Claimant's functioning. Claimant's performance on the BYI-2 yielded moderately elevated levels of depression, which relate to Claimant's negative thoughts about himself and his life and future, and moderately elevated levels of self-concept, which relates to Claimant's feelings of self-worth. Golian diagnosed Claimant with Major Depressive Disorder, Recurrent Episode, Moderate, Specific Reading Disorder, Mathematics Disorder, and Rule out Attention-Deficit/Hyperactivity Disorder.

14. Based on information in the Form JV-220(A) DeLoatch prepared, on April 25, 2019, DCFS referred Claimant to NLACRC to determine Claimant's eligibility for Lanterman Act services and support.

NLACRC's Assessment of Claimant

15. Heike Ballmaier, Psy.D., supervises NLACRC'S staff psychologists and intake case managers, associates, and staff. She serves on NLACRC's interdisciplinary team conducting eligibility assessments. At the administrative hearing, Ballmaier explained the eligibility categories and substantial disability requirement set forth in the Lanterman Act and its regulations. She explained the interdisciplinary team consults diagnostic criteria and identifying characteristics of Autism Spectrum Disorder (ASD) and Intellectual Disability (ID) in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) to determine eligibility for services and supports under the Lanterman Act's qualifying categories of "autism" and "intellectual disability."

16. The DMS-5 diagnostic criteria for ASD are as follows:

A. Persistent deficits in social communication and social interaction across multiple contexts, as manifested by the following, currently or by history:

1. Deficits in social-emotional reciprocity, ranging, for example, from abnormal social approach and failure of normal back-and-forth conversation; to reduced sharing of interests, emotions, or affect; to failure to initiate or respond to social interactions.

2. Deficits in nonverbal communicative behaviors used for social interaction, ranging, for example, from poorly integrated verbal and nonverbal communication; to abnormalities in eye contact and body language or deficits in understanding and use of gestures; to a total lack of facial expressions and nonverbal communication.

3. Deficits in developing, maintaining, and understanding relationships, ranging, for example, from difficulties adjusting behavior to suit various social contexts; to difficulties in sharing imaginative play or in making friends; to absence of interest in peers.

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

1. Stereotyped or repetitive motor movements, use of objects, or speech (e.g., simple motor stereotypies, lining up toys or flipping objects, echolalia, idiosyncratic phrases).

2. Insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior (e.g., extreme distress at small changes, difficulties with transitions, rigid thinking patterns, greeting rituals, need to take same route or eat same food every day).

3. Highly restricted, fixated interests that are abnormal in intensity or focus (e.g., strong attachment to or preoccupation with unusual objects, excessively circumscribed or perseverative interests).

4. Hyper- or hyporeactivity to sensory input or unusual interest in sensory aspects of the environment (e.g., apparent indifference to pain/temperature, adverse response to specific sound or textures, excessive smelling or touching of objects, visual fascination with lights or movement).

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

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

(Exh. 18.)

17. These essential diagnostic features of ASD—deficits in social communication and social interaction (Criterion A) and restricted repetitive patterns of behavior, interests and activities (Criterion B)—must be present from early childhood and limit or impair everyday functioning (Criteria C and D).

18. The DSM-5 defines ID as “a disorder with onset during the developmental period that includes both intellectual and adaptive functioning deficits in conceptual, social, and practical domains.” (Exh. 19) The following three criteria must be met:

A. Deficits in intellectual functions, such as reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience, confirmed by both clinical assessment and individualized, standardized intelligence testing.

B. Deficits in adaptive functioning that result in failure to meet developmental and socio-cultural standards for personal independence and social responsibility. Without ongoing support, the adaptive deficits limit functioning in one or more activities of daily life, such as communication, social participation, and independent living, across multiple environments, such as home, school, work, and community.

C. Onset of intellectual and adaptive deficits during the developmental period.

(Exh. 19.)

19. Thus, the definitive characteristics of ID include deficits in general mental abilities (Criterion A) and impairment in everyday adaptive functioning, in comparison to an individual's age, gender, and socio-culturally matched peers (Criterion B). To meet the diagnostic criteria for ID, the deficits in adaptive functioning must be directly related to the intellectual impairments described in Criterion A. Onset is during the developmental period (Criterion C). A diagnosis of ID should not be assumed because of a particular genetic or medical condition. Any genetic or medical diagnosis is a concurrent diagnosis when ID is present. The DSM-5 emphasis on the need for an assessment of both cognitive capacity and adaptive functioning. The severity of ID is determined by adaptive functioning rather than IQ score. (See Exh. 19.)

20. The DSM-5 has no diagnostic criteria for the Lanterman Act's "fifth category," which is intended to capture disabling conditions closely related to intellectual disability or conditions requiring treatment similar to that required for individuals with intellectual disability. Ballmaier explained the interdisciplinary team employs the *Association of Regional Center Agencies Guidelines for Determining "5th Category" Eligibility for the California Regional Centers* (Approved by the ARCA Board of Directors on March 16, 202) (*5th Category Guidelines*) to determine whether an individual functions in a manner that is similar to that of a person with intellectual disability or requires treatment similar to that required by individuals with intellectual disability and is substantially handicapped with major impairment in several domains, including communication, learning, self-care, mobility, self-direction, independent living, and economic self-sufficiency.

21. Ballmaier was a member of the interdisciplinary team assessing Claimant's eligibility. The interdisciplinary team reviewed Claimant's IEP, Barcenas-Reyes' intake assessment, DeLoatch's Form JV-220 (A), and Golian's psychological evaluations. The interdisciplinary team additionally conducted fresh assessments of Claimant.

WRITTEN EVALUATIONS

Norma Aragon

22. Norma Aragon is an intake coordinator at NLACRC who conducted a social assessment of Claimant. In a July 1, 2019 report Aragon documents, in the self-care domain, Claimant can care for his hygiene but requires directions and reminders about frequent showering and standards of cleanliness. He is sensitive to clothing tags and food smells. Claimant requires prompt for daily routines. He wanders off when in public. He is stranger aware. He knows to dial 911 in the event of an emergency.

23. In the social/behavioral domain, Claimant initiates interactions with others half the time. He responds appropriately when approached by others. He has friends; he shares. His eye contact is poor; he is not affectionate. He recognizes emotions of happiness and sadness. He recognizes tone of voice and body language. He attends the Boys and Girls Club and church two to three times weekly. His behavior is challenging at both locales. He has emotional outbursts. He talks back. He curses. He has repetitive behaviors pacing back and forth.

24. In the cognitive domain, Claimant knows his personal identifying information. He can count to 100 and he recognizes colors and shapes. He is oriented to the time, day, month, year, and season. He knows currency and he can make purchases. He can name the current and two immediate past presidents of the United

States. He lacks understanding of a book or movie's main idea. He is easily distracted. He cannot remember instructions or demonstrations.

25. In the communication domain, Claimant speaks in complete sentences with a lisp. He engages in short reciprocal conversations. He asks lots of questions. He can relate current and past experiences but does not provide much details.

Carlo DeAntonio, M.D.

26. Carlo DeAntonio, M.D., who serves as Clinical Services Director at NLACRC, conducted a chart review of Claimant's medical records on July 23, 2019. In a Medical Summary he reports, "Available information in the chart does not suggest the presence of a substantially handicapping cerebral palsy or epilepsy." (Exh. 7.)

DeAntonio recommended a psychological evaluation to assist in the determination of eligibility for regional center services.

Amalia Siroli, Ph.D.

27. Amalia Siroli, Ph.D., is the psychologist who, on September 20 and 24, 2019, evaluated Claimant's eligibility for Lanterman Act services and supports. In addition to a records review and clinical interview, Siroli assessed Claimant's cognitive functioning employing the Wechsler Abbreviated Scale of Intelligence-Second Edition (WASI-II), whether Claimant presents with characteristics of ASD employing the Autism Diagnostic Observation Schedule (ADOS-2), Module 3 and the Autism Spectrum Rating Scale (ASRS), and Claimant's adaptive function employing the Vineland Scales of Adaptive Functioning -III-Rater.

28. Siroli's findings are summarized as follows:

[Claimant] was referred for a psychological assessment to rule out intellectual disability and autism. He had mostly avoidant eye contact, was unable to engage in back and forth interactions at a level expected for his age, and had a limited number of facial expressions. He displays rigidity in thinking. He did not read social cues during the session and he engaged in repetitive talk in session. He was awkward in conversation and had very limited insight about relationships and feelings. He engaged in repetitive rocking, moved his hands and arms back and forth, and used repetitive speech. His foster mother reports social difficulties, perseverative interests and talk over different topics that stay for a while and then subside, like American football at present. She also describes insistence on doing things the same way every day, and lining up objects. For example, he has to leave his dirty clothes on his night table every night and is very upset if she moves them. However, he has a history of trauma and this could be causing some of his symptoms. Assessor, therefore, will assign him a rule out for Autism Spectrum Disorder at this time. His IQ was in the borderline range. He struggles with verbal tasks the most. His adaptive skills were in the low range of functioning. Based on this evaluation, on the measures completed, clinical interviews, and observations, [Claimant's] diagnosis is the following

DSM-5 DIAGNOSES

Rule Out Autism Spectrum Disorder

(Exh. 8 at Page 8 – Page 9.)

29. At the administrative hearing, Ballmaier explained Siroli's "Rule Out Autism Spectrum Disorder" diagnosis stating, Siroli "observed autism characteristics but due to trauma history the reported symptoms ruled out ASD."

30. On October 19, 2019, NLACRC's interdisciplinary team reached an initial determination Claimant was "Not Eligible." (Exh. 9.) The interdisciplinary team recognized, however, "additional work" was needed because they "noticed some inconsistencies" in the assessments and evaluative findings presented for consideration. The interdisciplinary team therefore obtained permission from Claimant's school to gather additional data for diagnostic formulation by observation.

OBSERVATION

Heike Ballmaier, Psy.D.

31. On February 5, 2020, Ballmaier arrived at Claimant's school at 12:00 p.m. where she observed Claimant at a desk in a hallway in the vicinity of an administrative office looking at a laptop. Ballmaier observed Claimant seated until lunch time when got up and obtained his lunch after brief conversation with a school administrator. Ballmaier was not a party to and did not overhear what was said during the conversation.

32. Ballmaier remained at Claimant's school until approximately 1:00 p.m. During her visit she interviewed the school psychologist who provided her with an overview of Claimant's history and academic challenges. Ballmaier prepared a report titled School Observation, which is substantially comprised of summaries of Claimant's

IEP, Barcenas-Reyes' intake assessment, DeLoatch's Form JV-220 (A), Golian's psychological evaluations, Aragon's social assessment, DeAntonio's chart review, and Sirolì's psychological evaluation. Ballmaier documentation of what she actually observed while at Claimant's school provides the following:

{Claimant} was observed on February 5, 2020 at [at his school]. The observation took place from 12 to 1 pm. The school psychologist Ms. [M.], Ed.S. greeted this psychologist and informed her that [Claimant] had walked out of his regularly class because the work was too hard and students were picking on him. [Claimant] was sitting on a chair with a desk in front of him in the hallway of the administration office area and he was looking at a computer screen in front of him. The following information was obtained from Ms. [M.]: Class refusals are very common for [Claimant] and he actually used to refuse going to school. On this day, [Claimant] had attended two periods, 1 and 3, then refused to stay in class. He left class during Language Arts. Ms. [M.] noted that the week prior, [Claimant] had been suspended for two days due to cursing in Spanish followed by hitting other students. He reportedly has friends at school and engages in rough housing with them, in fact, if one were to observe him early in the morning at 7:45 am before the start of school, he usually mingles with students before class and seems to enjoy himself. During the first quarter of this year, [Claimant] received passing grades, in the second quarter he stopped going to classes and failed all of them,

and he had just started attending the third quarter. . . . [Claimant] still attends general education classes. He has two support classes, Math and Reading. He is in general education for all other classes. [Claimant] likes PE and usually attends this class for 8th period. . . . He is currently failing all classes.

During this observation, [Claimant] was observed to remain seated until lunch time. He got up at 12:23 pm and looked for an adult in the administrative office. This psychologist stood too far away to hear what [Claimant] or others were saying to each other but apparently [Claimant] is allowed to get his lunch at the cafeteria at the scheduled time for his class, however he is not allowed to have lunch with his friends in the cafeteria as long as he refuses to remain in class throughout the day. This psychologist did not observe any odd communication, social, or repetitive behaviors. This psychologist asked Ms. [M.] whether the school was aware of such concerns or behaviors and she denied having observed them directly or having other report to her such concerns about [Claimant].

(Exh. 14 at Page 4 – Page 5.)

33. At the administrative hearing, Ballmaier testified during her school observation visit she “didn’t directly observe any autism characteristics.” Ballmaier is aware “some behaviors were reported—poor eye contact, poor peer relationships, repetitive behaviors—but those are better explained by mental health issues, not

developmental.” Ballmaier testified she agrees with Golian’s diagnosis Claimant presents with Major Depressive Disorder, Recurrent Episode, Moderate, Specific Reading Disorder, Mathematics Disorder, and Rule out Attention-Deficit/Hyperactivity Disorder.

NLACRC DETERMINATION OF INELIGIBILITY

34. On February 24, 2020, the interdisciplinary team redetermined Claimant was not eligible for Lanterman Act services and supports noting “school observation results reviewed” and “[a]vailable evaluations do not support the presence of a developmental disability.” (Exh. 15.) The interdisciplinary team recommended “Follow up with mental health services.” (*Ibid.*)

35. Ballmaier explained the interdisciplinary team’s determination Claimant does not meet the DSM-5 diagnostic criteria for ID is premised on his cognitive test results showing “low average functioning with some scores in the low average and borderline ranges” and his adaptive functioning results consistently placing him “in the low average range.” Ballmaier explained the interdisciplinary team concluded Claimant is “afflicted by mental health issues—depression, irritability—not cognitive deficiencies.”

36. Ballmaier additionally explained the interdisciplinary team’s determination Claimant does not meet the DSM-5 criteria for ASD. Ballmaier invoked Claimant’s mental health, educational record, psychological evaluations, and her school observation during testimony asserting Claimant suffers from depression, is challenged by learning disorders, and exhibits some ADHD symptoms. Ballmaier asserted “some depression symptoms may be similar to autism characteristics but are better explained by depression and learning disability.” Ballmaier asserted Claimant’s

“multiple foster placements and history of exposure to abuse and violence” better explain his behaviors.

Claimant’s Evidence in Support of Eligibility

TESTIMONY AND SUPPORTING DOCUMENTATION

Mother

37. Mother challenges the NLACRC interdisciplinary team determination Claimant does not present with the DSM-5 diagnostic characteristics for ASD.⁵ At the administrative hearing Mother itemized Claimant’s behaviors—his lack of eye contact and tendency to look from the corners of his eyes; his refusal to let anyone hug him and inability to show affection; his back-and-forth rocking at the table—that caused her to worry. She recounted her efforts seeking help. Reports prepared in conjunction with Barcenas-Reyes’ assessment, Golian’s psychological evaluation, Aragon’s social assessment, and Siroli’s psychological evaluation, all of which incorporate Mother’s concerns, reveal Mother’s reported observations of Claimant’s behaviors have been consistent over time.

Claimant’s Sibling

38. Claimant’s sibling’s testimony further established his foster family’s concerns about his behaviors and the efforts to provide help for him.

⁵ Mother does not challenge the NLACRC interdisciplinary team determination Claimant is ineligible for Lanterman Act services and supports under qualifying categories of ID, cerebral palsy, or seizure or the “fifth category”.

Valerie Pelgreen, MSW

39. Valerie Pelgreen , MSW, is an Intensive Services Foster Care Therapist at Penny Lance Center providing Claimant with mental health therapy since July 29, 2019. Pelgreen has never assessed Claimant using psychometric tests because doing so is outside the scope of her practice. Pelgreen testified her weekly therapy sessions were focused on Claimant's processing of trauma associated with homelessness and verbal abuse, which were contributing to his behaviors. Therapy sessions occurred at Claimant's home and were also to occur at Claimant's school but the statewide COVID-19 pandemic emergency orders mandating sheltering at home precluded the therapy sessions at school from occurring.

40. Pelgreen detailed her observation of Claimant's behaviors, including his flat affect and lack of eye contact, difficulty understanding communication, lack of understanding verbal and non-verbal cues, lack of understanding of emotions, difficulty changing routines, refusal to get in the car when asked to do places, and defiance when overwhelmed by a task or anything out of the ordinary.

41. A January 29, 2020 Initial-Annual Assessment Pelgreen prepared supports her testimony. In pertinent part that Annual Assessment states:

[Claimant presents] with . . . depressed mood 1 -2 days a week for the past year. [Claimant] also presents with overeating, low energy, low self-esteem, and feelings of hopelessness during depressed mood. [Claimant] also presents with a persistent pattern of inattention and hyperactivity/impulsivity in both the home and school setting since placement with foster mother in 2018.

[Claimant] often fails to give close attention to details or makes careless mistakes in school or chore activities; often has difficulty sustaining attention in task or play activities; often does not seem to listen when spoke to directly; often does not follow through on instructions and fails to complete assignments; often has difficulty organizing tasks and activities, often avoids, dislikes, or is reluctant to engage in tasks that require sustained mental effort; is often easily distracted by extraneous stimuli; and is often forgetful in daily activities. [Claimant] also presents with often leaving seat when expected to stay seated; often runs in situations where it is inappropriate; difficulty engaging in leisurely activities quietly; talks excessively; blurts out answer before question is completed; and interrupts and intrudes on others. [Claimant] also presents with persistent deficits in social communication and social interaction across multiple contexts as shown by deficits in social-emotional reciprocity, in nonverbal communication, and in developing/maintain and understanding relationships. [Claimant] presents with restricted, repetitive patters of behaviors, interests, or activities as evidenced by insistence of sameness and inflexible adherence to routines, and hyperactivity to sensory input or unusual interests in sensory aspects of the environment. [Claimant's behaviors] are causing impairments in relationships with foster mother in the home setting and with peers and staff in the school

or community. [Claimant] denies any [suicidal] thoughts, plans or intent. [Claimant] strengths include his wanting to connect to others. [Claimant's] weaknesses include poor insight in how his [behaviors] are causing feelings of sadness and discord with peers. . . .

(Exh. A.)

Credibility of Testifying Witnesses

42. In large measure, Ballmaier's testimony narrated the NLACRC interdisciplinary team's process for determining eligibility for Lanterman Act services and supports. Ballmaier's testimony directed attention to specific provisions of evaluative reports and documents she played no part in preparing but which the interdisciplinary team reviewed. Those aspects of Ballmaier's testimony are not weighted for purposes of determining her credibility.

43. Ballmaier's testimony recounted her unsuccessful one-time effort to observe Claimant's behaviors in his school setting. Ballmaier observed no interaction between Claimant and his peers. Ballmaier observed no interaction between Claimant and those regularly providing his classroom instruction. Ballmaier's observation of Claimant at school was limited to seeing him seated in a hallway at a desk with a computer and then getting lunch after a brief inaudible conversation with an administrator. The School Observation report Ballmaier prepared included no first-hand observation of Claimant's behavior to add to the information already in the possession of the NLACRC interdisciplinary team. For these reasons, Ballmaier's testimony about Claimant's observed behaviors and the School Observation report she prepared is accorded diminished weight.

44. Pelgreen observed Claimant's behaviors and her testimony recounting her actual observations, which is memorialized in the January 29, 2020 Initial-Annual Assessment report she prepared, was detailed and lucid. Pelgreen's testimony about Claimant's observed behaviors and accompanying report are accorded greater weight.

45. Mother's testimony was consistent with prior reporting of her observations about Claimant's behaviors. Mother's testimony is accorded significant weight.

LEGAL CONCLUSIONS

1. As Claimant is seeking to establish eligibility for government benefits or services, he has the burden of proving by a preponderance of the evidence that he has met the criteria for eligibility. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161[disability benefits]; *Greatorex v. Board of Admin.* (1979) 91 Cal.App.3d 54, 57 [retirement benefits]; Evid. Code, § 500.) "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 Company* (1990) 226 Cal.App.3d 314, 324-325, original italics.) In meeting the burden of proof by a preponderance of the evidence, the complainant "must produce substantial evidence, contradicted or un-contradicted, which supports the finding." (*In re Shelley J.* (1998) 68 Cal.App.4th 322, 339.)

2. Claimant must establish by a preponderance of evidence he has a qualifying "developmental disability." Welfare and Institution Code section 4512, subdivision (a), defines "developmental disability" to mean the following:

[A] disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. . . . [T]his term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature.

3. California Code of Regulations, title 17 (CCR), section 54000 further defines "developmental disability" as follows:

(a) "Developmental Disability" means a disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation.

(b) The Developmental Disability shall:

(1) Originate before age eighteen;

(2) Be likely to continue indefinitely;

(3) Constitute a substantial disability for the individual . . . ;

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

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

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

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

4. Establishing the existence of a developmental disability within the meaning of section 4512, subdivision (a), requires Claimant additionally to establish by a preponderance of evidence the developmental disability is a "substantial disability," defined in section 4512, subdivision (h), to mean "the existence of significant limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person: (1) Self-care. [¶] (2) Receptive and expressive language. [¶] (3) Learning. [¶] (4) Mobility. [¶] (5) Self-direction. [¶] (6) Capacity for independent living. [¶] (7) Economic self-sufficiency."⁶

⁶ CCR section 54001, subdivision (a), similarly defines "substantial disability" as follows:

(1) A condition which results in a 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;

5. The NLACRC interdisciplinary team has acknowledged assessments and evaluations finding Claimant presents with deficits in social and communication and social interaction at home and school and with restricted, repetitive patterns of behaviors, interests, or activities that define ASD. (Factual Finding 30.) A preponderance of the evidence offered at the administrative hearing, however, did not establish Claimant's ASD as a "substantial disability" across multiple settings in at least three or more areas of major life activities.

(A) Receptive and expressive language: Claimant demonstrates no difficulty communicating his wants and needs. He uses language in a functional and communicative manner. He engages in conversation notwithstanding reported difficulties with non-verbal expression and cues.

(B) Learning: Claimant's intellectual functioning is reported as within the low average range. Claimant presents with learning disabilities. Claimant's cognitive

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living;

(G) Economic self-sufficiency.

CCR section 54002 defines "cognitive" as "the ability of an individual to solve problems with insight to adapt to new situations, to think abstractly, and to profit from experience."

functioning and learning disability pose challenges but do not preclude his acquisition of knowledge and skills with remediation his school district provides to him.

(C) Self-care: With prompts and reminders, Claimant can and does care for his personal hygiene and grooming needs.

(D) Mobility: Claimant is ambulatory; he requires no crutches, wheelchair, or walker for mobility.

(E) Self-direction: Claimant has significant difficulty with self-direction. Claimant requires oversight and monitoring while engaged in age-appropriate tasks at home and school. He has difficulty with emotional regulation, including immature skills for coping with stress and anxiety.

(F) Capacity for independent living: Claimant is presently capable of assisting with household chores. However, considering Claimant's developmental age, any assertion regarding his capacity for independent living would amount to speculation.

(G) Economic self-sufficiency: Notwithstanding Claimant's learning disability, the evidence suggests with appropriate educational remedial interventions Claimant is expected to achieve knowledge, skills, and training for employment resulting in his economic self-sufficiency.

6. By reason of Factual Findings 1 through 45 and Legal Conclusions 1 through 5, cause exists to deny Claimant's appeal. Claimant has not met his burden of establishing by a preponderance of evidence his eligibility for Lanterman Act services and supports under the qualifying category of "autism" as provided for in section 4512, subdivision (a) of the Welfare and Institutions Code.

ORDER

1. Claimant's appeal is denied.
2. North Los Angeles County Regional Center's determination Claimant is ineligible for services and supports pursuant to the Lanterman Developmental Disability Services Act under the qualifying category of "autism" is affirmed.

DATE:

JENNIFER M. RUSSELL
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.