

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

In the Matter of:

CLAIMANT,

VS.

KERN REGIONAL CENTER

OAH No. 2019050684

DECISION

Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on July 2, 2019, in Bakersfield, California.

Claimant was represented by her adoptive parent (Parent). (Claimant and her family members are identified by titles to protect their privacy.)

Kern Regional Center (Service Agency or KRC) was represented by Kristine Khuu, Assistant Director of Client Services.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on July 2, 2019.

ISSUE

Is claimant eligible to receive services and supports from Service Agency under the Lanterman Developmental Disabilities Services Act (Lanterman Act)?

EVIDENCE

Documentary: Service Agency's exhibits A-I; Claimant's exhibits 1 and 2.

Testimonial: Fidel B. Huerta, M.D.; Kristine Khuu; and Parent.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant is an 11-year-old girl. Parent is claimant's maternal grandmother and adoptive parent. Claimant's biological mother is deceased.
2. In November 2018, Parent applied to Service Agency for regional center services for claimant on the basis of autism.
3. On April 29, 2019, Service Agency sent a letter and Notice of Proposed Action to Parent informing her that it proposed to close claimant's case on the basis that she is not eligible for services. The KRC clinical team determined that claimant is not eligible for services as there was no evidence of claimant having three substantial handicapping conditions related to a qualifying developmental disability, as defined in the Lanterman Act and Title 17 of the California Code of Regulations.

4. On May 13, 2019, Parent filed a fair hearing request, on claimant's behalf, to appeal Service Agency's decision and to request a hearing. In the fair hearing request, Parent indicated the reason for the appeal was that "all of [claimant's] information wasn't in when they made the decision on her claims." (Exh. A, p. 4.)

5. On May 28, 2019, Kristine Khuu, KRC Assistant Director of Client Services, held an informal meeting with Parent and claimant to discuss Service Agency's determination that claimant is not eligible for services. An informal resolution was not reached. On June 19, 2019, Ms. Khuu sent Parent a letter which summarized the discussion at the meeting and reiterated Service Agency's position that claimant was not eligible for services. This hearing ensued.

6. During the one-hour informal meeting, Ms. Khuu had observed that claimant was "polite, pleasant and demonstrated appropriate eye contact," and she saw "no evidence of repetitive behavior, odd mannerism or unusual behavior" by claimant. (Exh. C.)

Claimant's Background

7. Claimant and her three siblings (ages 12, 8, and 6) reside with Parent. Parent adopted claimant and her siblings on March 25, 2008, and has raised them from infancy. Claimant's biological mother passed away on June 11, 2018. Claimant's biological mother had a history of seizures, mental health problems, and drug and alcohol abuse. During pregnancy, she smoked, and used cocaine, marijuana, and alcohol. Claimant reportedly tested positive for cocaine at birth. Prior to age three, claimant received Early Start services from Service Agency based on cognitive and receptive-expressive communication delays.

8. Claimant is an elementary school student and currently attends a regular fifth grade classroom. Claimant's quarterly report card for the period January to March 2018, when she was in fourth grade, shows that claimant was failing four of her six classes, but was earning an "A" in math and an "A-" in social studies. For the classes she was failing, the report card includes comments that claimant had "Missing/Late Assignments," "Excessive Tardies/Absences" and/or "Neglects School/Home Work." (Exh. I, p. 51.) According to Parent, claimant was a "straight-A" student at her previous school before moving to a different neighborhood and changing to her current school.

9. Claimant receives weekly counseling services from Kern Behavioral Health and Recovery Services (Kern Behavioral Health).¹ A Children's Services Team Evaluation Report dated June 25, 2018, from Kern Behavioral Health, indicates that claimant's case was opened on March 20, 2018, and she had one individual therapy session on June 20, 2018. The report includes the following additional comments:

[Claimant] was diagnosed with Unspecified disruptive, impulse control, and conduct disorder on 3/20/2018.

[Claimant] is currently receiving individual therapy one time a week, ongoing collateral with family and case management.

Individual therapy will include behavior modification therapy. These sessions emphasize skills to manage

¹ Kern Behavioral Health and Recovery Services was formerly Kern County Mental Health.

outbursts and erratic emotionality. Emotion regulation and behavior and social skills training.

(Exh. H.)

Initial Intake Interview

10. On November 20, 2018, Martha Smith, KRC Assessment Coordinator, conducted an initial intake interview with claimant and Parent. Smith summarized the interview in a written report dated January 11, 2019. (Exh. D.)

11. Claimant's daily life skills were discussed during the interview. Claimant does not have any difficulties walking, running, or jumping, or using her hands to manipulate objects. Claimant enjoys drawing, and she showed Smith a binder containing some of her drawings. Claimant uses utensils without spillage, and she can prepare microwavable foods and sandwiches for herself. Claimant can focus on preferred tasks, but has difficulty maintaining focus on non-preferred tasks. Claimant speaks in complete sentences. During the interview, claimant was able to answer questions, share information, and carry on a conversation. However, claimant would refuse to answer when Parent intervened, and told Parent, "You answer since you know everything[.] I am not going to answer anymore." (Exh. D, p. 20.)

12. (A) During the interview, Parent reported concerns about claimant's challenging behaviors. Claimant refuses to complete personal hygiene tasks. She becomes angry and resistant when told to brush her teeth, change her clothes, or take a shower. Claimant can toilet independently but she does not take care of her menstrual needs. Claimant refuses to complete household chores. She trashes her room with food and paper and refuses to clean it.

(B) According to Parent, claimant is “very defiant and controlling,” she “refuses to listen to others,” and she “becomes upset when people tell her what to do.” (Exh. D. p. 21.) Claimant gets easily frustrated, tends to fight frequently, and is very argumentative. Claimant is “constantly fighting and arguing” with her siblings and “tends to blame her siblings for everything.” (*Ibid.*) Smith observed this behavior between claimant and her siblings during the interview, because her siblings were present per Parent’s request. Claimant has emotional outbursts and tantrums, consisting of yelling, kicking, and throwing objects. Parent expressed concern that claimant may have schizophrenia like her biological mother. (*Id.* at p. 21.)

(C) Parent reported that claimant does poorly in school and refuses to complete her school work. She engages in disruptive behavior at school. On March 2, 2018, claimant received a Discipline Referral for disruptive behavior and inappropriate language when she said, on the playground, “I hope everyone dies.” (Exh. I, p. 52.) During the intake interview, claimant stated she does not like school or her teacher and she is not passing her classes because they are too hard for her, but she also stated that she has friends at school.

Psychological Evaluations

EVALUATION BY BARBARA HARVILLE, MS, MA

13. Approximately one month prior to the initial intake interview at KRC, on October 31, 2018, Barbara Harville, MS, MA, under the supervision of licensed psychologist Nick Garcia, Ph.D., completed a psychological evaluation of claimant. Ms. Harville prepared a written report dated November 19, 2018, which summarized her findings and conclusions. (Exh. F.) Ms. Harville conducted clinical interviews of claimant and Parent, performed a mental status evaluation of claimant, reviewed records, and

administered the testing procedures listed in her report, which included the Autism Diagnostic Observation Schedule, Second Edition, Module 3 (ADOS-2), the Wechsler Intelligence Scale for Children, Fifth Edition (WISC-5), and the Adaptive Behavior Assessment System, Third Edition, Parent Report (ABAS-III).

14. In her written report, Ms. Harville noted that the reason for the evaluation was Parent's concern that claimant might have Autism Spectrum Disorder. At the time of the evaluation on October 31, 2018, claimant had not received any clinical diagnosis and she had not been taking any medications presently or in the past. During the evaluation, Ms. Harville observed that claimant's body language, posture and gait were unremarkable, and that claimant did not demonstrate any psychomotor agitation. Claimant's speech content appeared to be age appropriate.

15. (A) Claimant was administered the ADOS-2 by Ms. Harville. Claimant obtained a Social Affect score of 14, and a Restricted and Repetitive Behavior Score of 4, for an "overall score of 14,"² which indicated that claimant demonstrated many autism spectrum related behaviors. (Exh. F, p. 6.) Ms. Harville evaluated claimant's adaptive behavior with the ABAS-III, using Parent as the informant. Claimant's overall adaptive skills were measured in the "extremely low" range.

(B) Additionally, Ms. Harville administered the WISC-5 to claimant. Claimant's scores indicated her verbal comprehension and processing speed were in the "average" range, her visual-spatial and fluid reasoning were in the "low average" range, and her working memory was in the "borderline" range. Claimant obtained a full-scale IQ score of 94, which was in the "average" range.

² The "overall score of 14" appears to be an error. Based on the scores reported by Ms. Harville, claimant's overall score on the ADOS-2 was 18.

16. Based on the evaluation, Ms. Harville diagnosed claimant with Autism Spectrum Disorder, Level 1, Mild in Degree. However, Ms. Harville did not provide claimant a diagnosis of intellectual disability because of her full-scale IQ score, which was in the “average” range. Ms. Harville explained the basis for her diagnosis as follows:

According to the current assessment results, [claimant’s] intellectual ability fell in the Average range. Her adaptive behavior fell in the Extremely Low range. [Claimant] demonstrated many behaviors consistent with Autism Spectrum Disorder using the ADOS-2. She demonstrated difficulties with social reciprocity, maintaining eye contact, reporting events, sustaining a conversation, reciprocal social communication, using gestures, and directing facial expressions to others. She demonstrated some repetitive language and had excessive interest in problems with other children annoying her. She also arranged and rearranged objects to perfectly align with one another and in color patterns. Through [Parent’s] evaluations of [claimant’s] behavior, [Parent] indicated that [claimant] demonstrated many behaviors consistent with Autism Spectrum Disorder.

(Exh. F, p. 32.)

EVALUATION BY DR. MICHAEL MUSACCO

17. Approximately five months after Ms. Harville’s evaluation, on March 14, 2019, Michael Musacco, Ph.D., a licensed psychologist, completed a psychological

evaluation of claimant. The purpose of the evaluation was to clarify claimant's diagnosis and provide information to assist Service Agency in determining claimant's eligibility for services. Dr. Musacco interviewed Parent and claimant, performed a mental status examination of claimant, reviewed records, including the Ms. Harville's written report, and administered psychological testing, specifically, the ADOS-2 and the Wide Range Achievement Test-4 (WRAT-4). Dr. Musacco prepared a written report which summarized his findings and conclusions. (Exh. F.)

18. In his written report, Dr. Musacco noted that claimant enjoys playing video games and watching television, and she reported that she has multiple friends and enjoys playing with other children. Dr. Musacco further noted that claimant was receiving weekly counseling services through Kern Behavioral Health, and records indicated that claimant "has been diagnosed with disruptive impulse control disorder and a conduct disorder." (Exh. F.) Dr. Musacco also noted that claimant's medical health was "unremarkable," and she does not have a history of significant accidents or chronic medical conditions. (*Id.*)

19. Dr. Musacco performed a mental status examination of claimant, which is summarized in his written report, in pertinent part, as follows:

The client's [i.e., claimant's] appearance revealed intact hygiene and grooming. She was able to identify her birth date and the current date. She correctly identified her grade level, but could not identify the name of her school.

The client demonstrated inconsistent eye contact. However, her affect was bright, and her speech was normal in terms of rate, tone, and inflection.

[¶] . . . [¶]

The client does not show repetitive motor mannerisms, but she was somewhat preoccupied with specific topics related to animation and art. [Parent] reported that the client tends to overeat to the point where she becomes physically ill. [Parent] indicated that [claimant] has difficulty completing multistep tasks, and [Parent] is convinced that [claimant] possesses high functioning Autism Spectrum Disorder; I cannot say that I saw sufficient symptoms in order to reach a similar conclusion. As previously indicated, the client was able to engage in reciprocal speech. She has friends, and social interests. I did not see evidence of repetitive motor mannerisms or hypersensory sensitivity.

(Exh. F, p. 35.)

20. Dr. Musacco administered the ADOS-2 to claimant. Claimant obtained a Social Affect score of 5 and a Restricted and Repetitive Behavior score of zero, yielding an overall total score of 5. Dr. Musacco concluded that claimant's overall score of 5 on the ADOS-2 did not support a diagnosis of Autism Spectrum Disorder, which requires of score of 7, or of Autism, which requires a score of 9 and above. Dr. Musacco made additional observations as follows:

I note that the client [i.e., claimant] shows a preoccupation with animation and art, and her eye contact was not consistent. However, her speech was reciprocal, she always responded to questions, and I saw no evidence of repetitive

motor mannerisms or hypersensory functioning. Overall, there was some peculiarities in the client's emotional and social functioning. However, I did not see sufficient symptoms supporting the diagnosis of Autism Spectrum Disorder.

(Exh. F, p. 35.)

21. Dr. Musacco administered the WRAT-4 to claimant, who was in fifth grade. Claimant's scores on the WRAT-4 indicated her word reading skills were at the 4.4 grade level, her spelling skills were at the 7.7 grade level, and her math computation skills were at the 4.0 grade level.

22. Based on his evaluation, Dr. Musacco diagnosed claimant with Other Specified Neurodevelopmental Disorder (Prenatal Exposure to Drugs and Alcohol). Dr. Musacco explained the basis for the diagnosis as follows:

The client [i.e., claimant] is a 10 year old female who presents with a variety of features consistent with a child who was prenatally exposed to drugs and alcohol. She has a history of emotional and behavioral liability. [Parent] indicated that she has difficulty following instructions and caring for hygiene and grooming. The client's intelligence has been measured in the average range with weaknesses in her working memory (attention/concentration) and strengths in her verbal comprehension. It is my opinion that the client's emotional/behavioral problems are a product of

her prenatal exposure to drugs and alcohol, supporting the diagnosis of Other Specified Neurodevelopmental Disorder.

[Parent] is convinced that [claimant] has high functioning Autism. A prior evaluation also reached the same conclusion. However, I did not see these symptoms, and I do not believe that the client possesses Autism Spectrum Disorder. I do believe that she possesses a legitimate emotional/behavioral problem, but her pattern of symptoms does not fit with an Autism Spectrum Disorder.

(Exh. F, p. 36.)

Medical Evaluation

23. Fidel B. Huerta, M.D., is the KRC Director of Medical Services. Dr. Huerta conducted a medical evaluation of claimant on March 27, 2019. Dr. Huerta examined claimant, interviewed Parent and claimant, and reviewed medical records. Dr. Huerta prepared a written report of his findings and conclusions. (Exh. G.) Dr. Huerta testified at the hearing, and his testimony was credible and consistent with his written report and Service Agency's other documentary evidence.

24. During the evaluation, Dr. Huerta found that claimant appeared to be very bright and interactive, she was alert and oriented, and her speech was easy to understand. Claimant told Dr. Huerta that she hangs out with friends only at school, and she does not associate with anybody afterschool or on weekends. She also told Dr. Huerta that she likes doing art, but there are no art classes at her school.

25. During the interview with Dr. Huerta, Parent reported that claimant's grades at school were bad, and she has problems with focusing and retaining information, but Parent denied claimant was diagnosed with a learning disability. Parent also described claimant as having anger issues and reported that claimant has been seeing a counselor weekly for almost one year. Parent denied claimant having, or taking medication for, a psychiatric diagnosis.

26. Parent's concern at the time of the medical evaluation by Dr. Huerta was that claimant was having seizures. Parent reported that, around Thanksgiving of 2018, claimant appeared to exhibit abnormal breathing while asleep, and there appeared to be a white film on her lips. Parent was concerned claimant had a seizure and took her to the hospital. According to Parent, a medical evaluation, including a CT study, was done, and the test results were normal. Claimant was subsequently referred to Kern County Neurological Group, where she was evaluated by Dr. Jian C. Lin, a neurologist, in January 2019. Dr. Lin ordered an awake-and-drowsy EEG, and the test results were reported to be unremarkable. Dr. Lin diagnosed claimant with general idiopathic epilepsy, but she did not place claimant on anticonvulsant medication. Parent reported that claimant is still undergoing a neurological makeup with Dr. Lin. As noted in his written report, when Dr. Huerta asked Parent about the frequency and intensity of claimant's seizures, "[Parent] stated that she is unable to give this history." (Exh. G, p. 38.) Parent denied that claimant experienced seizures at school.

27. Based on his medical evaluation of claimant, Dr. Huerta recommended that claimant not be found medically eligible for regional center services. Although claimant was given an epilepsy diagnosis by Dr. Lin, Dr. Huerta found there was no

evidence claimant has a “substantial disability” resulting from that condition.³ In his written report, Dr. Huerta explained:

It is my recommendation that [claimant] not be found medically eligible for regional center services. At this time she has a diagnosis of idiopathic epilepsy, given by Dr. Lin. However there is no documentation of substantial handicaps from this disorder. This is the reason for my recommendation of not being eligible.

In regards to intellectual disability, she appears to be very bright and interactive. I did not suspect an intellectual disability or borderline intellectual functioning during the interview and examination. However, this is will [sic] need to be assessed by the vendored psychologist. No further recommendation.

(Exh. G, pp. 39-40.)

Service Agency Determination

28. Dr. Huerta was a member of the KRC clinical team that made the determination that claimant is not eligible for regional center services. The other members of the team were a psychologist, a nurse, and Assessment Coordinator Martha Smith. Dr. Huerta testified credibly regarding the team’s eligibility determination regarding claimant.

³ See Legal Conclusions 3 through 5, below.

29. On January 24, 2019, claimant's case was reviewed by the KRC clinical team. The team reviewed the psychological evaluation report by Ms. Harville, as well as other records that were provided for the assessment. The clinical team concluded it was "uncertain" whether or not claimant had an eligible diagnosis. (Exh. E, p. 23.) Although Ms. Harville diagnosed claimant with Autism Spectrum Disorder, the team recommended having a second psychological evaluation to confirm claimant's diagnosis, because the team felt there was insufficient evidence to substantiate autism or any other qualifying diagnosis.

30. Thereafter, as discussed above, Dr. Mussaco completed a psychological evaluation on March 14, 2019, and Dr. Huerta completed a medical evaluation on March 27, 2019.

31. On April 25, 2019, the KRC clinical team reviewed claimant's case a second time and concluded that claimant was not eligible for services, because she did not have three substantial handicapping conditions resulting from a qualifying developmental disability (e.g., autism, intellectual disability or closely related condition, cerebral palsy or epilepsy). The KRC clinical team determined that claimant did not have a "substantial disability" as defined in the Lanterman Act because she did not have significant functional limitations in three or more of the following areas of major life activity (as appropriate to her age): self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency.

Parent's Testimony

32. Parent testified at the hearing regarding claimant's background and medical history. She testified that claimant continues to be a patient of neurologist Dr.

Lin. Parent testified that claimant has been having seizures since she was a baby. Parent feels that claimant's seizures are "tearing her brain down."

33. Parent testified she would like a new team of doctors, not employed by or affiliated with KRC, to evaluate claimant. Parent contends Dr. Huerta is not qualified to make a diagnosis related to seizure disorder because he does not specialize in that area. On cross-examination, Dr. Huerta testified he attended medical school at UCLA and has a family practice medical degree. According to Ms. Khuu, Dr. Huerta has been the medical director at KRC for 15 years and is experienced evaluating and working with regional center clients with developmental disabilities.

LEGAL CONCLUSIONS

1. An administrative hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Act to appeal a contrary service agency decision. (Welf. & Inst. Code, §§ 4700-4716.) Parent requested a hearing, on claimant's behalf, to contest Service Agency's proposed denial of claimant's eligibility for services under the Lanterman Act and therefore jurisdiction for this appeal was established. (Factual Findings 1-5.)

2. Generally, when an applicant seeks to establish eligibility for government benefits or services, the burden of proof is on her to prove by a preponderance of the evidence that she meets the criteria for eligibility. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161; Evid. Code, §§ 115, 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 Co.* (1990) 226 Cal.App.3d 314, 324-325.)

3. In order to be eligible for regional center services, a claimant must have a qualifying developmental disability. Welfare and Institutions Code section 4512, subdivision (a), defines "developmental disability" as:

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

4. To prove the existence of a qualifying developmental disability within the meaning of Welfare and Institutions Code section 4512, a claimant must show that she has a "substantial disability." Pursuant to Welfare and Institutions Code section 4512, subdivision (j)(1):

"Substantial disability" means the existence of significant functional limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person:

(A) Self-care.

(B) Receptive and expressive language.

(C) Learning.

(D) Mobility.

(E) Self-direction.

(F) Capacity for independent living.

(G) Economic self-sufficiency.

5. Additionally, California Code of Regulations, title 17, section 54001 states, in pertinent part:

(a) "Substantial disability" means:

(1) A condition which results in major impairment of cognitive and/or social functioning, representing sufficient impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential; and

(2) The existence of significant functional limitations, as determined by the regional center, in three or more of the following areas of major life activity, as appropriate to the person's age:

(A) Receptive and expressive language;

(B) Learning;

- (C) Self-care;
- (D) Mobility;
- (E) Self-direction;
- (F) Capacity for independent living;
- (G) Economic self-sufficiency.

6. California Code of Regulations, title 17, section 54001, subdivision (b), provides, in pertinent part, that the "assessment of substantial disability shall be made by a group of Regional Center professionals of differing disciplines," and the "group shall include as a minimum a program coordinator, a physician, and a psychologist."

7. In addition to proving that she suffers from a "substantial disability," a claimant must show that her disability fits into one of the five categories of eligibility set forth in Welfare and Institutions Code section 4512. The first four categories are specified as: intellectual disability, epilepsy, autism, and cerebral palsy. The fifth and last category of eligibility is listed as "Disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with intellectual disability." (Welf. & Inst. Code, § 4512.)

Discussion

8. The preponderance of the evidence does not support a finding that claimant is eligible to receive regional center services. (Factual Findings 1-31.)

No SUBSTANTIAL DISABILITY

9. The KRC clinical team determined that claimant does not have a “substantial disability” within the meaning of Welfare and Institutions Code section 4512, subdivision (j)(1), and California Code of Regulations, title 17, section 54001. Claimant does not have significant functional limitations in at least three of the following seven areas of major life activity (as appropriate to her age): self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency. The last two areas (i.e., capacity for independent living and economic self-sufficiency) are not applicable to claimant, who is 11 years old and lives at home with Parent and her siblings. Claimant has functional skills in the remaining areas of major life activity, as shown during the initial intake interview and/or subsequent evaluations.

10. Claimant has no issues with mobility. Claimant demonstrated receptive and expressive language skills, in that she answered questions, shared information, and engaged in conversation with interviewers. For example, during the initial intake interview, claimant told Assessment Coordinator Martha Smith that she enjoys drawing and showed Smith a binder of her drawings.

11. In terms of learning, claimant attends a regular education classroom; no evidence was presented she receives special education services. Claimant’s scores on psychological testing by Ms. Harville and Dr. Musacco measured her intellectual ability in the “average” range. In terms of self-care, claimant can prepare simple foods in the microwave and use utensils without spillage. She toilets independently and can perform personal hygiene tasks (i.e., brushing teeth, showering, and changing clothes) but she may refuse to complete the tasks and then becomes resistant and angry when told to do so. Parent reported that claimant refuses to complete household chores, but

did not report that claimant is unable to perform such chores. In terms of self-direction, claimant is able to focus on preferred activities or tasks, but has difficulty focusing with non-preferred activities and tasks.

NO QUALIFYING DISABILITY

12. Another basis for finding that claimant is not eligible for regional center services is that she does not have a “substantial disability” (as defined in the Lanterman Act and the Title 17 regulations) resulting from one of the five qualifying conditions specified in Welfare and Institutions Code section 4512, specifically, autism, intellectual disability, cerebral palsy, epilepsy, or a condition closely related to intellectual disability or requiring treatment similar to that required for individuals with intellectual disability.

13. No evidence was presented that claimant has diagnoses of cerebral palsy or intellectual disability or a closely related condition. Although claimant was given a diagnosis of idiopathic epilepsy by Dr. Lin, it was not established that claimant is “substantially disabled” in at least three areas of major life activity by epilepsy. Claimant has not been placed on any anticonvulsant medication, and Parent has denied that claimant experiences seizures at school.

14. Claimant underwent two psychological evaluations by Ms. Harville and Dr. Musacco, respectively. Ms. Harville’s evaluation, completed under the supervision of a licensed psychologist, resulted in a diagnosis of Autism Spectrum Disorder, Level 1, Mild in Degree. Dr. Musacco’s evaluation resulted in a diagnosis of Other Specified Neurodevelopmental Disorder (Prenatal Exposure to Drugs and Alcohol). Dr. Musacco also noted that he did not see sufficient symptoms to support a diagnosis of Autism Spectrum Disorder. Regarding claimant’s diagnosis, Dr. Musacco’s opinion was more

persuasive than Ms. Harville's opinion. Dr. Musacco's opinion is consistent with claimant's history of prenatal exposure to drugs and alcohol. Dr. Musacco's clinical observations of claimant, as documented in his report, are consistent with claimant's presentation during the initial intake interview at KRC and her medical evaluation by Dr. Huerta. It is also notable that claimant attends a regular education classroom and does not receive special education services on the basis of autism, which is one of the eligibility categories for special education. Dr. Musacco is a licensed psychologist, which Ms. Harville is not, although her evaluation was completed under the supervision of a licensed psychologist.

15. Based on the foregoing, claimant is not eligible for regional center services under the Lanterman Act. Claimant's appeal shall be denied. (Factual Findings 1-31; Legal Conclusions 1-14.)

ORDER

Claimant's appeal is denied. Service Agency's determination that claimant is not eligible for services under the Lanterman Act is upheld.

DATE:

ERLINDA G. SHRENGER
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.