

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of Claimant

vs.

San Diego Regional Center,

Service Agency.

OAH No. 2014120100

DECISION

Beth Faber Jacobs, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on March 3, 2015.

Ronald House, Attorney at Law, represented the San Diego Regional Center (SDRC).

Claimant's mother represented claimant, who was present during the hearing.

An interpreter was at the hearing. She translated the proceedings for claimant's mother and translated claimant's mother's testimony from Spanish to English.

During a portion of the hearing, claimant was also represented by Canela M. Cavada, Attorney at Law, who was appointed by the Superior Court to represent claimant in a conservatorship matter.

The matter was submitted on March 3, 2015.

ISSUES

Is claimant eligible for regional center services on the basis of autism?

Is claimant eligible under the fifth category on the basis that he has a condition closely related to an intellectual disability or that requires treatment similar to that required for individuals with an intellectual disability?

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is a 21 year-old unconserved adult. He requested that his mother represent him in this proceeding. On May 8, 2014, SDRC notified claimant's mother that claimant was not eligible for regional center services.

2. Claimant's mother made a timely request for a fair hearing. She claimed that claimant has autism. The matter proceeded to hearing.

3. During the hearing, claimant's court-appointed attorney in the conservatorship matter suggested that claimant is eligible for services either on the basis of autism or on the basis of what is commonly referred to as "the fifth category," a category of eligibility for individuals who have a condition that is closely related to intellectual disability¹ or that requires treatment similar to that required for individuals with an intellectual disability. As a result, both grounds for eligibility were addressed in the hearing.

Evidence Presented at the Hearing

4. Claimant lives with his parents. He has two siblings who had normal developments. There was some evidence that when claimant was three years old, he witnessed domestic violence. Spanish was spoken at home.

5. When claimant entered kindergarten, he was diagnosed with selective mutism. Selective mutism exists when a person has the ability to speak but chooses not to. Claimant attended a biliteracy program; his instruction was in English and Spanish.

6. Over 400 pages of claimant's records, including school reports, were received. Based on those records, it is found that claimant spoke at home with his family but not at school. According to school reports, when he was very young, he would come home from school, speak, and sing songs he learned while at school. With some exceptions, he stopped speaking in school at age five. He was prescribed medications for extreme anxiety, but he refused to take the medications.

7. Claimant began receiving special education in 2002, when he was nine years old and in the third grade. His assessment report indicated that he had few friends, rarely

¹ Effective January 1, 2005, the Lanterman Developmental Disabilities Services Act (the Lanterman Act), Welfare and Institutions Code section 4500, et seq., was amended to eliminate the term "mental retardation" and replace it with "intellectual disability." The Diagnostic and Statistical Manual of Mental Disorders, fifth edition (DSM-5), which mental health care professions use to diagnose mental disorders, also uses the terms "intellectual disability" or "intellectual developmental disorder" in place of the formerly used term "mental retardation."

participated in class, scored higher in English than in Spanish testing, and had poor comprehension. It reported that his selective mutism and social anxiety hindered the assessment. It noted that claimant “tracks almost everything that the teacher is doing,” and that his “strengths are that he follows directions, starts his work right away, and is attentive to the task at hand.” His Individualized Education Program (IEP) identified eligibility for special education under the category of “other health impaired” due to diagnoses of selective mutism and social anxiety. The IEP did not mention any suspicion of autism.

8. Claimant repeated third grade. Because of his academic delays, claimant was placed in a special day program. He would not verbalize but communicated with others through gestures or in writing. According to the school records, by the time he was in middle school, he communicated with his teachers “extensively” on the internet, and his communications were “quite expressive, thoughtful, humorous, with emotional responses suggesting a larger internal life than would be expected through observation.” He presented as a shy loner who did not initiate contact with adults or students. Because of his unwillingness to speak, it was difficult to fully assess his capabilities. However, he would play computer games for hours. Once, when requested to help clean up the psychologist’s computer, he began to adjust the controls and add a firewall.

9. In 2008, claimant still showed limited eye contact with others and communicated with gestures (thumbs up or down) in school. At school, he often hid his emotions by covering his face with his arm to prevent others from seeing him laugh or smile. He conveyed verbally and in writing that he did not want to speak to adults or peers. In writing, however, he showed sarcasm and a sense of humor. He reportedly wrote stories that were organized and showed creativity.² An assessment conducted by school psychologist Jack Sharpe mentioned autism but emphasized the overriding impact of claimant’s social anxiety. He concluded, in part:

[Claimant] presents himself as a very anxious student who as [sic] selected to be mute in order to avoid contact with part of his environment that he finds aversive. He has strong language skills but he is very selective whom he uses them. The more he remains to himself and doesn’t speak he avoids the anxiety which will continue to qualify him for special education under Other Health Impaired. Although he has may [sic] symptoms of autism associated with limited speech, restricted social interactions and repetitive actions, these behaviors are also associated with selective mutism due to anxiety. His language is present yet he chooses to use it selectively when he feels safe.

10. By the time claimant was 17 years old, the district’s IEP continued to list claimant’s primary disability as “other Health Impairment,” and it referenced his social anxiety disorder and selective mutism.

² Examples of his written stories or videos were not produced during the hearing.

11. In 2013, the school district referred claimant to the SDRC for an evaluation. On March 12, 2013, Deborah Zambianco, Ph.D., reviewed all records forwarded about claimant and evaluated him. She concluded that claimant had average intellectual functioning and did not meet the criteria for autism under the Diagnostic and Statistical Manual, Fourth Edition, TR (DSM-IV-TR), the diagnostic manual then used by professionals for diagnosing autism. Claimant's mother offered to obtain additional information from the school district regarding claimant. The information was received and reviewed by Harry Eisner, Ph.D., and the regional center's developmental disabilities screening team. SDRC again concluded that claimant did not have a developmental disability under the Lanterman Act and that he was not eligible for services.

12. In March and May 2014, claimant, then age 20, was evaluated by Michaela Ene, Ph.D., a psychologist at Novata Cares, an organization dedicated to providing autism evaluation and services. Dr. Ene did not testify. She reported that claimant had a developmental history "consistent with classical autism spectrum disorder" by presenting with a language delay, hand and finger mannerisms, toe walking, and rigidity. According to her report, claimant was previously diagnosed with autism.

She diagnosed claimant as having autism spectrum disorder and unspecified catatonia. She observed that past assessments placed claimant at higher functioning levels, and he appeared to have "regressed." She found his "lack of affect, significant stupor and his state of non-responsiveness . . . consistent with possibility of psychosis" and stated that he "clearly appears to be in a catatonic state." She concluded that he has "significant impairments in daily functioning" and that he "functions in a manner that is similar to that of a person with mental retardation and he requires a significant amount of support, similar to that required by individuals with mental retardation." She recommended that SDRC reconsider eligibility under the Lanterman Act.

13. The most recent IEP, December 11, 2014, indicated that claimant "uses a computer to convey his ideas, comments and messages." It states that he presents with "autism." It reported that claimant prefers not to communicate with people other than in writing. He does not view himself as having a problem with communication; he "believes it to be the problem of the listener," and he is not interested in changing the way he communicates. According to the IEP, claimant does not take care of himself, and he needs reminders to shower. He lives with his parents, and his mother provides for all his needs.

14. On a date that was not specified but appears to be within the past year or two, claimant completed a six-page Transition Plan Worksheet for a special education program at Platt College. He hand-wrote his answers to questions on the worksheet, using printed letters (as opposed to cursive writing.) His answers were spelled correctly and were communicated clearly. In response to the question "What are some great things about you?" claimant wrote, "I can write as much as I can and I can design graphics by using special programs. I am able to create drawings and posters by using special drawing tools." In response to the question "What things do you like to do . . . around town? At home? For fun?" claimant wrote, "At home I'd like to play on the computer and explore everywhere around my backyard." When

asked about new things he would like to do, claimant wrote: "I'd like to explore other places I have not been before such as LA." In response to a question about what makes him happy, claimant wrote "videogames and creating them." As to what makes him mad or sad, claimant wrote "not getting what I want." His worries included "not being sure how I'll get through at college." His wrote that his biggest challenges are "taking care of things and cooking." When asked, "All things possible, what do you see yourself doing 3-5 years from now?" claimant wrote, "Producing film and getting a better job." In response to the question, "All things possible, where would you like to live and with whom?" claimant wrote "At a house and by myself."

15. Claimant was present during the hearing. He kept his eyes and head down during most of it. He did not speak. He kept his hands in his lap. After the hearing, when Dr. Eisner reached out to shake claimant's hand, claimant's parents prompted him to join in the handshake with Dr. Eisner. Claimant (seemingly shyly and reluctantly) did so. Other than that, claimant did not interact with anyone at the hearing.

REGIONAL CENTER'S EXPERT, HARRY EISNER, PH.D.

16. Harry Eisner, Ph.D., has a master's degree and a doctorate in clinical psychology. He became licensed as a clinical psychologist in 1984. Dr. Eisner has served as a clinical psychologist at the San Diego regional center for 26 years, and he currently coordinates the regional center's provision of psychological services. Dr. Eisner supervises psychologists, reviews reports, and is regularly involved in evaluating eligibility for services and supports under the Lanterman Act. Dr. Eisner sits on the regional center's eligibility screening team. He has extensive experience diagnosing autism and eligibility under the fifth category, and he has conducted thousands of evaluations for regional center eligibility.

17. Dr. Eisner emphasized that it was important to review all the records available to get the best picture. Dr. Eisner called claimant's request for eligibility a "complicated case." He noted that, unlike many situations where children are not evaluated at an early age, claimant was evaluated early and often. Dr. Eisner reviewed over 400 pages of records regarding claimant. In his opinion, they painted a picture of a young man with significant challenges but not with autism or conditions that would make him eligible for services under the fifth category.

18. In reviewing the documents, Dr. Eisner observed that, from an early age, claimant was diagnosed with selective mutism and social anxiety. According to Dr. Eisner, nothing in the literature identifies selective mutism as a characteristic of autism. Mutism is associated with social anxiety – being self-conscious. Being self-conscious is not a symptom or characteristic of autism; on the contrary, autistic individuals are disinterested in what other people think of them. All of the early reports through grade school indicated that claimant spoke at home but not at school. This would not be indicative of autism. Although claimant's reading comprehension was significantly better than his oral language, it did not indicate autism. Atypical language use is a hallmark of autism. While claimant had issues with communication, there was nothing "atypical" about his use of language.

Dr. Eisner observed that claimant's parents requested that he be evaluated for special education when claimant was in the first grade. The records show that the district evaluated claimant but did not recommend special education. Autism shows itself at an early age. Dr. Eisner explained that by 1995, it was common for school districts to assign the category of "autism" or "autism-like" to a child the district thought might have autism. In his opinion, the district had suspected claimant was autistic, the district would have identified autism early on, but it did not.

19. The district did not conclude that claimant required special education until 2002, when claimant was nine years old and in the third grade. Dr. Eisner reviewed that first IEP. The district determined that claimant was qualified for special education under the category of "other health impairment" and mentioned his "medical diagnosis." The district's IEP did not mention a suspicion of autism. Dr. Eisner interpreted the "medical diagnosis" as a reference to selective mutism and social anxiety. The IEP did not discuss any atypical language development, any restrictive or repetitive actions, or strong emotional reactions, which can be indicative of autism. It stated that claimant tape recorded stories aloud when at home and that standardized testing was "incomplete" because claimant was "unwilling to orally respond in the classroom and on the standardized tests that require oral responses." The IEP confirmed Dr. Eisner's opinion that claimant did not (and does not) have autism or an intellectual disability.

20. Dr. Eisner reviewed the psychological report prepared by the district in 2008, when claimant was 15 years old and in the eighth grade. The report stated that claimant was a "selective mute" and that he had also been identified "as autistic by San Diego Mental Health Services," but emphasized claimant's social anxiety as the root issue. (See paragraph 9, above.) It noted that he had "strong expressive language" when he wrote and that he demonstrated behaviors associated with "high anxiety, avoidance of peer interaction and loneliness." The district still placed claimant's special education under "other health impairment" and not under autism.

21. Dr. Eisner reviewed the reports recently submitted by claimant. A three page report prepared by Gordon Zilberman, Ph.D., dated January 28, 2013, for the Department of Social Services, Disability Evaluation Department, when claimant was 19 years old, stated that claimant had been diagnosed with selective mutism, was "recently was diagnosed with autism," and "exhibits severe autistic symptoms." In Dr. Eisner's opinion, Dr. Zilberman did not conduct a diagnostic evaluation and did not review any documents from claimant's childhood. Dr. Eisner disagreed with this conclusion; in his opinion, Dr. Zilberman had insufficient information upon which to make a diagnosis of autism.

22. He reviewed the June 2014 evaluation from Dr. Ene (paragraph 12.) He noted there were factual flaws in the report. It incorrectly stated that claimant had previously been a regional center client, and that in kindergarten an IEP identified him as having autism. He noted that Dr. Ene, who prepared the report, reviewed only four of the many records in claimant's file.

23. During the hearing claimant's mother provided a one-page, December 2014 "first office visit" note and a February 2015 electroencephalogram report from A.S. Mohammad, M.D., a neurologist. The office visit indicated that claimant's mother had requested "some type of document for the daycare describing his neuropsychological condition." Under diagnosis, the physician wrote "other form of epilepsy" and "autistic disorder." The "Plan" included referring claimant to Children's Hospital for an evaluation of Landau-Kleffner and giving the "first office visit" sheet to the mother "for the daycare." The EEG report indicated that the office attempted to conduct an EEG to determine if claimant was having seizures but claimant was uncooperative; he would not keep his eyes shut and he removed the EEG leads. Under "impression," the report stated that it was "technically limited" due to claimant's lack of cooperation. "Available data did not show active seizure discharges."

Dr. Eisner reviewed the two pages. He explained that Landau-Kleffner syndrome is a seizure disorder of the brain that causes an individual to lose language. Neither of these pages altered Dr. Eisner's opinion. With respect to Landau-Kleffner, the report showed that it had not yet been definitively diagnosed, and even if it had been, a diagnosis of Landau-Kleffner is not a developmental disability or grounds for eligibility. In addition, Dr. Eisner observed that the diagnosis of autism was not supported by any diagnostic evaluation.

24. Dr. Eisner testified that claimant does have "something wrong." In his opinion, however, people are jumping on the "autism bandwagon" but it is not a correct diagnosis for claimant. With autism, one would expect "odd" use of language or atypical language development, not selective mutism. Claimant had delayed language development, but his use of language, as shown in his written words, is neither odd nor atypical. Dr. Eisner emphasized that when claimant was between the ages of six and 17, the district continued to provide special education under the primary diagnosis of other health impairment. Autism was not listed, not even as a secondary qualifying condition. If claimant were as severely disabled by autism as his family claims, one would not expect reports that he writes creative stories. When claimant was 19, the district continued to use a primary diagnosis of "other health impairment." People began to diagnosis autism after age 19, but there was no new information that would support the changed diagnosis. In Dr. Eisner's opinion, the new diagnoses were made by individuals who did not review all of the records.³

25. Dr. Eisner agreed that claimant requires some type of services and that it is difficult not to have sympathy for claimant, who has significant challenges. To Dr. Eisner, however, those challenges are best explained under the mental health diagnoses that claimant has consistently received throughout his life. In his opinion, claimant does not have a qualifying diagnosis that supports eligibility for regional center services.

26. Claimant's legal counsel in the superior court conservatorship matter, Ms. Cavada, raised certain concerns and asked Dr. Eisner to address them. She noted that recent school reports and a neurologist's letter now included a diagnosis of autism, and she

³ Dr. Eisner was the only health care professional who testified.

questioned why this was not dispositive and why the regional center continued to deny eligibility in the face of those diagnoses. Dr. Eisner explained that the diagnoses appeared to change without a corresponding diagnostic assessment and without consideration of the hundreds of pages of records from claimant's childhood. To Dr. Eisner, the changes in diagnoses appeared to be more of an author's "impression" upon meeting claimant than an assessment based on a diagnostic workup.

27. Ms. Cavada also inquired about eligibility under the fifth category. Dr. Eisner considered the fifth category and concluded that claimant was not eligible under it. If claimant had a total lack of language, the absence of language might be indicative of ID, but selective mutism is a psychiatric diagnosis, not a developmental disability. He observed that the school district's 2008 assessment, when claimant was 15 years old, showed claimant's non-verbal, intellectual functioning to be in the average range and that the "content of his written work suggests much more advanced thinking." He also noted that the school psychologist who conducted the assessment emphasized the overriding effect of claimant's anxiety disorder and concluded that "[t]he deficits noted herein do not appear to be a result of any intellectual difficulty."

In Dr. Eisner's opinion, claimant is not eligible under the fifth category because he does not have cognitive deficiencies similar to that of individuals with ID, and he would not benefit from "training" or habilitation required for those with ID. According to Dr. Eisner, claimant's issue is a lack of motivation. He has the ability but not the motive. As a result, his issues are psychiatric in nature and not based on an intellectual deficiency.

28. During her cross examination of Dr. Eisner, claimant's mother stated that she believed the early reports of claimant speaking or singing at home to be a misunderstanding because of the language barrier between her and claimant's teachers. She stated that claimant never spoke at home or verbally interacted with members of the family, and the way he was during the hearing was how he was (and is) at home. Dr. Eisner explained that even if the school reports were incorrect and claimant had not spoken at home, it would not alter his opinion that claimant is not eligible for services.

CLAIMANT'S MOTHER

29. Claimant's mother testified about claimant, who was her first child. When he was less than one year old, she noticed that he would look away when people were near him. He did not share a smile. He walked on his tip toes. He was afraid of other children. At age three he could say his colors but his language skills were not good. He did not seem normal to her. He did not speak at school. At home, she used a tape recorder to help him learn to read. He would repeat back what she said. Claimant's mother heard that this was called "echolalia." He did not communicate normally at home.

30. When claimant was young, a social worker came to their home and suggested that claimant's problems were the result of abuse by her or her family. It was hard to be falsely accused of this, especially when claimant's mother was trying so hard to get help for

him because he was so different. She feels the school district was negligent for misdiagnosing him at an early age and not giving him the care, attention, and services he needed.

31. Claimant's mother did not understand why all the reports stated that he spoke at home. Perhaps it was because she did not speak English and they misunderstood her. He did not speak at home. She recalls when he was young that others told her that he was autistic. In the years following, she has checked on the internet and educated herself about autism. She believes he has many characteristic of autism. She stated that he moves his hands like an autistic child.⁴ He shows no affection. He spends his free time on the computer, watching and making videos, and watching movies. He likes comedies. She has watched the videos claimant has made; he does not speak in them.

32. Claimant's mother wants the best for her son. She helps him as best she can, but she worries about what will happen to him when she and her husband are no longer here to care for him. He needs help, and in her opinion, he has autism. She feels he will be better served by the developmental disability community through the services provided by a regional center than through mental health services. In her opinion, the regional center is a better fit for her son.

THE SCHOOL DISTRICT REPRESENTATIVE

33. Cynthia Mah is a special education teacher with the San Diego Unified School District and one of claimant's teachers. During the three years she has known and worked with claimant, he has never spoken to her. She has never seen him interact with another person. He will write words in response to an inquiry she may make, but that is all. In her opinion, he will never be independent. She reported that the school district changed claimant's basis for special education services to "autism" after the school psychologist and other health care professionals diagnosed him with autism.

ADDITIONAL TESTIMONY FROM DR. EISNER

34. Dr. Eisner was present when claimant's mother and Ms. Mah testified. After they testified, Dr. Eisner was asked if any of the information provided altered his opinion. He stated that it did not alter his opinion that claimant does not have autism.

⁴ Claimant sat still during the hearing, which lasted most of the day. He did not appear to move his body or his hands during the hearing.

LEGAL CONCLUSIONS

The Burden and Standard of Proof

1. In a proceeding to determine whether an individual is eligible for services, the burden of proof is on the claimant to establish that he or she has a qualifying diagnosis. The standard of proof required is preponderance of the evidence. (Evid. Code, § 115.)

2. A preponderance of the evidence means that the evidence on one side outweighs or is more than the evidence on the other side, not necessarily in number of witnesses or quantity, but in its persuasive effect on those to whom it is addressed. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

The Lanterman Act

3. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4500, et seq.) The purpose of the Lanterman Act is to rectify the problem of inadequate treatment and services for the developmentally disabled, and to enable developmentally disabled individuals to lead independent and productive lives in the least restrictive setting possible. (Welf. & Inst. Code, §§ 4501, 4502; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.) The Act is a remedial statute; as such it must be interpreted broadly. (*California State Restaurant Association v. Whitlow* (1976) 58 Cal.App.3d 340, 347.)

4. An applicant is eligible for services under the Lanterman Act if he or she can establish that he or she is suffering from a substantial disability that is attributable to an intellectual disability, cerebral palsy, epilepsy, autism, or what is referred to as the fifth category – a disabling condition closely related to an intellectual disability or requiring treatment similar to that required for individuals with an intellectual disability. (Welf. & Inst. Code, § 4512, subd. (a).) A qualifying condition must also start before the eligible person's 18th birthday and be expected to continue indefinitely. (Welf. & Inst. Code, § 4512.)

5. California Code of Regulations, title 17, section 54000, also defines “developmental disability” and the nature of the disability that must be present before an individual is found eligible for regional center services. It states:

(a) Developmental Disability means a disability that is attributable to mental retardation,⁵ cerebral palsy, epilepsy,

⁵ Although the Lanterman Act has been amended to eliminate the term “mental retardation” and replace it with “intellectual disability,” the California Code of Regulations has not been amended to reflect the currently used terms.

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 as defined in the article.

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

(1) Solely psychiatric disorders

(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 a need for treatment similar to that required for mental retardation.

6. Welfare and Institutions Code section 4512, subdivision (l), defines “substantial disability” as the existence of significant functional limitations in three or more of the following areas of major life activity:

- (1) Self-care;
- (2) Receptive and expressive language;
- (3) Learning;
- (4) Mobility;
- (5) Self-direction;
- (6) Capacity for independent living;
- (7) Economic self-sufficiency.

7. California Code of Regulations, title 17, section 54001, subdivision (a) defines “substantial disability” as a condition that 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.” It must constitute a significant functional limitation in three or more of the areas of major life activity, identical to the seven listed above in Welfare and Institutions Code section 4512, subdivision (1).

8. Two appellate decisions have addressed the issue of fifth category. In *Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, 1129, the court of appeal found that “[t]he fifth category condition must be very similar to mental retardation, with many of the same, or close to the same, factors required in classifying a person as mentally retarded.” (*Id.*, at 1129.) The *Mason* court also emphasized that “it was the intent of those enacting the Lanterman Act and its implementing regulations not to provide a detailed definition of ‘developmental disability’ so as to allow greater deference to the [regional center] professionals in determining who should qualify as developmentally disabled and allow some flexibility in determining eligibility so as not to rule out eligibility of individuals with unanticipated conditions, who might need services.” (*Id.* at p. 1129.)

Samantha C. v. Department of Developmental Services (2010) 185 Cal.App.4th 1462 also addressed fifth category eligibility. It affirmed that fifth category eligibility exists for those individuals who have a disabling condition that is not solely psychiatric in nature or solely a learning disability, but nonetheless requires treatment similar to that required by individuals who [have an intellectual disability].

9. When an individual is found to have a substantial disability based on one of the five categories for eligibility under the Lanterman Act, the State of California, through a regional center, accepts responsibility for providing supports and services to that person. (Welf. & Inst. Code, § 4501.)

Evaluation

10. Claimant has substantial disabilities that present significant challenges in his daily life. But unless these disabilities are the result of a developmental disability specifically identified in the Lanterman Act, claimant is not entitled to regional center services. Dr. Eisner, a highly qualified expert, reviewed all of claimant’s records and reasonably concluded that claimant’s difficulties are primarily caused by his selective mutism and social anxiety, which are psychiatric in nature and not developmental disabilities under the Act.

11. The fact that claimant’s school district has identified claimant as needing special education under the category of “other health impaired” or, as it recently identified, “autism,” does not establish regional center eligibility. Both “autism” and “other health impaired” are administrative categories used by the local school district under the California Code of Regulations, title 5. Regional center eligibility, however, is addressed in the Lanterman Act and in California Code of Regulations, title 17. Because the regional center is statutorily required to use different criteria of eligibility than a school district, the basis for

claimant's special education eligibility does not determine whether claimant is eligible for regional center services.

12. Claimant had the burden of establishing that he is eligible for regional center services based on autism or the fifth category. Claimant did not meet this burden. The facts considered as a whole did not establish that claimant has autism or that he is qualified for services under the fifth category on the basis that he has a disabling condition closely related to intellectual disability or a condition that requires treatment similar to that required for individuals with intellectual disability.

13. Claimant's parent's love for their son and their desire to obtain the help he needs was apparent and heartfelt. Claimant has challenges and disabilities, and he may need assistance to function as an independent adult. There are other agencies and programs for which claimant may be eligible. But the evidence did not establish that claimant is entitled to regional center services under the Lanterman Act.

ORDER

Claimant is not eligible for regional center services and supports under the Lanterman Developmental Disabilities Services Act.

Claimant's appeal from San Diego Regional Center's determination that he is not eligible for regional center services and supports is denied.

DATED: March 17, 2015

_____/s/_____
BETH FABER JACOBS
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 ninety days.