

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH No. 2014030495

DECISION

Carla L. Garrett, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on July 31, 2014, in Santa Barbara, California.

Lisa Basiri, Fair Hearing Coordinator, represented the Westside Regional Center (WRC or Service Agency). Claimant appeared at the hearing and represented herself.¹

Oral and documentary evidence was received. The record remained open for Claimant to submit declarations in response to the Service Agency's Exhibit 8. On August 18, 2014, OAH received from Claimant the following: (1) "Declaration in Response to Psychological Evaluation Report (#2) by Dr. Du Verglas Provided to Claimant on 7/31/2014," marked as Claimant's Exhibit A; (2) "Declaration for Response to Report by Dr. Du Verglas from 3/3/2014 for 7/31/2014 Hearing (Report #1)," marked as Claimant's Exhibit B; and (3) Declaration for Submission of Evidence to Meet the State of California for Claimant as Meeting Criteria for Autism Spectrum Disorder Pending Submission of Expert Reports in October – November 2014," marked as Claimant's Exhibit C.

On August 29, 2014, OAH received from the Service Agency the following: (1) "Objections to Claimant's Response to Service Agency's Exhibit Number 8, Psychological Evaluation by Dr. Du Verglas," marked as Service Agency's Exhibit 11; and (2) "Service Agency's Closing Brief," marked as Service Agency's Exhibit 12. Claimant's declarations and the Service Agency's written objections were received into evidence. On September 2, 2014, OAH received Claimant's closing brief, marked as Claimant's Exhibit D. After

¹ Claimant is referred to by party title to preserve Claimant's privacy.

OAH's receipt of Claimant's closing brief, the record was closed, and the matter was submitted for decision on September 2, 2014.²

ISSUE

Does Claimant have a developmental disability (i.e., autism) that would make her eligible for regional center services?

FINDINGS OF FACT

Jurisdiction and Procedural Background

1. Claimant is a 39-year-old African-American woman, who is incarcerated presently at the Santa Barbara County Sheriff's Department, but resided prior in Los Angeles, within the Service Agency's catchment area. (Service Agency's Exhibit (SAE) 3.)

2. On February 12, 2014, the Service Agency determined that Claimant had no developmental disability as defined by Welfare and Institutions Code section 4512 and California Code of Regulations, title 17, section 54000, rendering her ineligible for regional center services, and stated the same in a Notice of Proposed Action issued on February 27, 2014. (SAE 2.) Claimant filed a request for hearing on March 4, 2014, alleging that she had autism. (SAE 2.)

Intake Process

3. On July 29, 2013, Claimant drafted a handwritten letter and submitted it to the Service Agency to initiate the intake process for procuring regional center services. Claimant stated, among other things, that her major issues revolved around self-care, receptive and expressive language, self-direction, independent living, and economic self-sufficiency. (SAE 3.)

4. Claimant also listed a number of symptoms she experienced: (1) feelings of disorientation or fatigue; (2) hyperactivity or irrationality caused by consuming sugar or processed foods; (3) feelings of "overload" caused by loud or unintelligible sounds; (4) the need for prompts, patterns, or a specialized routine with visual cues and/or posted instructions to eat, sleep, bathe, or brush her teeth; (5) the inability to do anything without a pattern developed around the activity; (6) crowd avoidance to keep from becoming overstimulated; (7) the necessity to calm herself one to three times a day with yoga or

² At hearing, the ALJ gave the parties until August 29, 2014 to submit their closing briefs and advised the parties she would close the record on that date. However, OAH did not receive Claimant's closing brief until September 2, 2014. Given Claimant's incarcerated status, and the potential delay inmates could encounter when mailing correspondence from the jail, this ALJ held the record open until September 2, 2014. The parties closing briefs were deemed lodged.

meditation; (8) “blackouts” lasting 24 to 48 hours when becoming overloaded; (9) problems empathizing with others’ emotions, and often requiring someone to explain others’ emotions; (10) often feeling so overloaded that she must create two or three written drafts of lists to organize thoughts or activities; (11) the loss of her ability to speak and write coherently when she becomes stressed, overstimulated, surprised, or overwhelmed emotionally; (12) anger or irritation caused by an unwanted or unexpected touch, or by a verbal familiarity of certain tones; (13) irritation at certain types of light bulbs, unless she receives sufficient natural light or direct sunlight; (14) the desire to pass out or blackout to stop her nerves from being “fried” when becoming stressed or when feeling strong emotions; (15) difficulty following or setting rules unless she is specifically guided or in a group setting; (16) becomes overloaded when she hears two or more conversations occurring simultaneously; (17) irritation caused by rough or coarse textures; (18) use of words or phrases to help her empathize with others; (19) difficulty keeping up with bills or tasks that are not synched up on the same days of the week or month; (20) inability to understand verbal cues; (21) difficulty speaking spontaneously about emotional or important issues; (22) difficulty noticing when food has spoiled or when items are dirty, without prompting; (23) blurting out nonsensical words during conversations with others; and (24) difficulty driving because it over stimulates and overwhelms her, particularly when sitting in traffic. (SAE 3.)

5. Claimant also provided the Service Agency with an October 24, 2011 report prepared by Family, Adults and Child Therapies (FACT) setting forth assessment findings concerning Claimant. Specifically, the assessment, conducted by a certified social worker,³ administered the Autism Diagnostic Observation Schedule (ADOS), Module 4, which is an observational instrument designed to assess social and communicative behaviors in a variety of different communicative situations. (SAE 4.)

6. The report included the results of the ADOS. In the area of communication, Claimant presented with relatively complex speech, was not observed to engage in any echolalia or use stereotyped phrases, and did not require any prompting to offer information about her thoughts and experiences. Claimant did not use any emphatic or emotional gestures. Socially, Claimant seemed to enjoy her interactions with the examiner. She modulated her eye contact to initiate and maintain social interaction. However, she infrequently used gestures, gazes, or facial expressions, and appeared limited in the effectiveness of understanding feelings in others. (SAE 4.)

7. The report stated Claimant was her high school’s valedictorian. Following high school, Claimant attended film school at the University of Southern California (USC), where she studied digital film and software design. She became a software developer at Time Warner and AOL. She also developed a software company, and was identified as a magnificent overachiever. Claimant often became fixated on work, to the exclusion of many other things, such as eating, and discarding rotting food. (SAE 4.)

³ The examiner’s name was redacted during Claimant’s course of her criminal matter, and not for reasons associated with the instant hearing in this matter.

8. The report indicated that Claimant demonstrated limited creative or make-believe actions, and only in response to contrived situations. The examiner did not observe Claimant engage in any unusual sensory interests, such as hand, finger, or other complex mannerisms, and did not engage in any self-injurious behavior during the interview. Claimant also did not excessively discuss or show any signs of an excessive interest in a specific or restricted topic. Additionally, Claimant was not disruptive, destructive, negative, or aggressive during the assessment. (SAE 4.)

9. The report stated that Claimant's communication and social interaction scores of six and five, respectively, met the criteria for autism, and that her total score of eleven met the criteria for autism spectrum. Consequently, the examiner noted Claimant's ADOS classification as autism. (SAE 4.)

10. The report included comments and recommendations from the examiner. Specifically, the report stated the following:

An ADOS classification of Autism Spectrum as a single assessment is not sufficient enough to diagnose either Asperger's Syndrome or Pervasive Development Disorder-Not Otherwise Specified (PDD-NOS). Further testing would be required for a more specific diagnosis, including assessing information about [Claimant's] communication patterns as a toddler. Medical records from this time would also be of assistance in providing a more specific diagnosis. Further testing, if possible, should include an Autism Diagnostic Interview-Revised (ADI-R) if a caregiver from [Claimant's] toddler years is available.

(SAE 4.)

11. The report stated that specific goals for Claimant should include identifying and recognizing emotions in herself and others, verbalizing her thoughts in social situations, and responding to others socially. Additionally, the report indicated that Claimant could benefit from attending a support group for adults with high functioning autism and Asperger's Disorder. (SAE 4.)

12. Claimant completed an intake application for the Service Agency stating she had received private life-skills support until 2012, when she was incarcerated. She stated that the need for services became evident after losing life-long support from her father, who died in 2005, and from her ex-husband when they divorced in 2007. Since 2007, she had struggled to find support from a variety of private sources, which have all failed. (SAE 4.)

13. On September 5, 2013, Dr. Thompson Kelly of the WRC sent Claimant a letter stating that the multidisciplinary team reviewed her application and supporting documentation, and determined the material was not supportive of an eligible regional center diagnosis, such as mental retardation, autistic disorder, epilepsy, cerebral palsy, or a condition similar to mental retardation. (SAE 5.)

14. Dr. Kelly, who testified at hearing, is a licensed clinical psychologist, and the chief psychologist at the WRC. Dr. Kelly has been working with individuals with developmental disabilities since he was 12 years old, as his father was a principal at a special education school. He has spent half of his career with individuals with mental health problems and the other half with individuals with developmental disabilities. As the chief psychologist at WRC, Dr. Kelly oversees the psychology department and the psychologists therein. Dr. Kelly also participates as a member of the eligibility team, which makes determinations whether individuals meet the requirements necessary to procure regional center services. Dr. Kelly acknowledged that while some of the material Claimant provided suggested an autism spectrum diagnosis, namely the ADOS report prepared by the certified social worker, he explained that the ADOS is not a stand-alone instrument, and must be used in conjunction with other instruments to make an autism or autism spectrum diagnosis. Dr. Kelly agreed with the examiner when she stated that an ADOS classification of Autism Spectrum as a single assessment was not sufficient enough to diagnose Asperger's Syndrome and that further testing would be required for a more specific diagnosis. (Testimony of Dr. Kelly.)

15. Dr. Kelly also noted that Claimant had a history of being high functioning, evidenced by her high school valedictorian status, her attendance at USC's film school, and her employment as a software developer. Dr. Kelly stated that although individuals with autism spectrum disorder can be considered for regional center services, they must also demonstrate substantial disabilities in three or more areas of living, such as communication or learning. Dr. Kelly explained that Claimant failed to demonstrate that she was an individual with substantial deficits in three or more areas as a result of a developmental disability, and appeared that she would test quite high intellectually and on learning measures. In addition, when discussing Claimant's application with the multidisciplinary team, he noted that Claimant mainly provided anecdotal information as opposed to supporting information from psychologists, school records, and medical records. (Testimony of Dr. Kelly; SAE 5.)

16. On September 6, 2013, the Service Agency issued a Notice of Proposed Action stating that Claimant did not meet the criteria set forth in the Lanterman Act, and therefore, was found ineligible for regional center services. (SAE 5.)

17. On September 10, 2013, Claimant filed a Fair Hearing Request appealing the Service Agency's finding of ineligibility. Claimant stated in her request that the Service Agency should verify whether she has autism or not by administering a cognitive screening tool, a test of nonverbal intelligence, a general ability measure for adults, a Wechsler Adult Intelligence Scale, Revised (WAIS-R), a Wechsler Adult Intelligence Scale-III (WAIS-III), and/or a Wechsler Abbreviated Scale of Intelligence. Claimant also requested to present a psycho-social educational profile from the ages of 8 to 37, which could be verified independently by friends, family members, and coworkers. (SAE 6.)

18. After reviewing Claimant's Fair Hearing Request, the Service Agency decided to make arrangements for Claimant to receive psychological and psycho-social evaluations. Consequently, the WRC cooperated with the regional center in Santa Barbara, Tri-Counties Regional Center (TCRC). (Testimony of Dr. Kelly.)

Psycho-Social Evaluation

19. Nancy Boroy, M.A., TCRC's Intake Coordinator, conducted an intake assessment (psycho-social evaluation) of Claimant on October 28, 2013, at the Santa Barbara County Sheriff's Department, where Claimant was incarcerated. Ms. Boroy prepared a written report. (SAE 7.)

20. Claimant reported to Ms. Boroy that she attended classes for the "gifted and talented" while in the education system in Kansas City, Kansas, where she was born and raised. She graduated from high school at the age of 17, and reported that her IQ score was in the genius range. While her academic performance was excellent, she experienced difficulty with social skills, emotional development, organization, self-care skills and sensory integration. Claimant reported always having problems with time constraints and schedules, and in order to organize her thoughts and present ideas, she needed to synthesize, in writing, various words and paragraphs. Additionally, Claimant expressed difficulty communicating, as she was often confused by what someone said, yet she would not ask questions. Moreover, Claimant reported that her judgment could be poor, which sometimes resulted in disputes. (SAE 7; Testimony of Claimant.)

21. Ms. Boroy's report stated that she observed Claimant as alert, cooperative, and responsive, and did not display any unusual body movements. In addition, Ms. Boroy considered "well-coordinated" Claimant's use of eye contact, hand gestures, facial gestures, including smiling, and general body language. In addition, Claimant's speech was clear, appearing appropriate in volume, rate, prosody, and intonation. Claimant appeared to understand all of the questions presented. From time to time, Claimant wiped tears from her eyes when discussing her effort with organizing her thoughts, organizing self-care activities, communicating her ideas coherently, and her struggle with taking care of herself when becoming "overstimulated" and "overwhelmed," by such things as loud noises, crowds, lighting, textures, as well as generalized anxiety and stress resulting from issues with work and self-direction. (SAE 7.)

22. In regard to her motor skills, Claimant reported that she was very clumsy growing up and often bumped into things. With respect to her self-care and independent living skills, Claimant reported that although she was capable of completing all self-care activities, she did not think about performing personal hygiene tasks on her own. She often needed to be reminded. Claimant stated that when she was all by herself, she didn't know quite how to take care of herself, or how to organize a basic routine. Additionally, she required reminders to eat, often not thinking about eating until she was starving. Claimant found cleaning her home or going grocery shopping to be overwhelming experiences, as she

had difficulty organizing and focusing. Claimant also found driving too overwhelming. (SAE 7.)

23. Socially and behaviorally, Claimant always preferred to be alone working on her own projects or relating to one friend only. She was never naturally affectionate. When Claimant was a teenager, she had “melt downs” or slept when she became overwhelmed, and often became too stimulated when around too many people. Claimant reported that she was easily overwhelmed and bothered by such things as crowds, traffic, smog, bright lights, loud noise, and too many conversations occurring at the same time. Additionally, she was sensitive to certain fabrics, loved soft things, and did not like to wear socks. In jail, when feeling overwhelmed, Claimant practiced yoga and meditated. (SAE 7.)

24. In reference to her communication, Ms. Boroy noted that there were times that Claimant appeared to have difficulty relaying information that she stated she was trying to convey, but generally Ms. Boroy observed her speech as complex and nuanced, with well-regulated use of eye contact, hand gestures, facial gestures, and general body language. (SAE 7.)

25. Claimant reported that she was in good, physical health, and did not take any medications. (SAE 7.)

26. In reference to Claimant’s educational history, she was not enrolled in any special education classes. When she graduated from high school, she received two diplomas: one was her high school diploma, and the other was her associate’s degree. She reported being in gifted and accelerated classes, and having a photographic memory. Claimant tested in the genius range when she was 10-years-old, and worked with social workers and psychologist from the age of 10 to the age of 17 to help her cope with social anxiety and relating to her peers. Claimant graduated from USC at the age of 19, and then took a few graduate classes there. (SAE 7.)

27. With respect to her employment history, Claimant was employed from 1995 to 2012, in various positions. Specifically, she worked as an office manager, a vice president of operations, a video game producer, and was self-employed as a consultant and producer, as well as a developer of computer software. (SAE 7.)

28. Ms. Boroy made no recommendations regarding Claimant’s eligibility, deferring to the WRC, as it had full control over Claimant’s matter. (SAE 7.)

Psychological Evaluation

29. On December 2, 2013, Dr. Gabrielle du Verglas, a clinical psychologist contracted by the Service Agency, conducted a psychological evaluation of Claimant at the

Santa Barbara County Sheriff's Department, and prepared a written report.⁴ Dr. du Verglas reviewed the information Claimant submitted to the Service Agency, Claimant's fair hearing request, the ADOS report completed by the certified social worker, and the psycho-social evaluation report prepared by Ms. Boroy. (SAE 8.)

30. Dr. du Verglas' evaluation of Claimant began at 10:00 a.m. and ended 3:30 p.m., with a 30 minute break beginning at 12:00 noon. Dr. Kelly testified that typically, psychological evaluations occur over several sessions and in multiple settings, but because of Claimant's incarceration status, Dr. du Verglas was unable to test Claimant in multiple settings. (SAE 8.)

31. Dr. du Verglas' evaluation consisted of an extensive face-to-face interview of Claimant, a telephone interview of Claimant's paternal aunt on May 2, 2014, and a telephone interview of Claimant's ex-husband in February 2014. Additionally, Dr. du Verglas administered the Wechsler Adult Intelligence Scale – Fourth Edition (WAIS-IV), the Autism Diagnostic Observation Schedule (ADOS) Module 4, the Mini Mental Status Examination (MMSE), the Wide Range Achievement Test – Fourth Edition (WRAT-4), and the Minnesota Multiphasic Personality Inventory (MMPI-2 RF). (SAE 8.)

32. Dr. du Verglas noted in her report that Claimant's eye contact was appropriate and Claimant was able to communicate in full, grammatically correct sentences. Claimant did not show any difficulty understanding questions and expressed herself well. Dr. du Verglas noted that Claimant presented no behaviors indicative of autism spectrum disorder, such as lack of integrated gestures or eye contact, difficulties with communication, or any repetitive patterns. (SAE 8.)

33. Dr. du Verglas' report included a discussion regarding her interview of Claimant's paternal aunt. Claimant had previously listed her aunt as someone who could provide some background history concerning Claimant's levels of functioning. The aunt described Claimant as "a normal child" who exhibited no difficulties with language, had friends, and did not exhibit any repetitive behaviors. She recalled that Claimant played appropriately with other children, expressed herself well, and was an outstanding student. Claimant had no discipline problems as a child. (SAE 8.)

34. Cognitively, Claimant performed very well on the WAIS-IV. Specifically, for her verbal IQ, she scored in the 93rd percentile in the superior range, with a performance IQ of 111 (77th percentile) in the high average range, resulting in a general abilities index of 120 (91st percentile) in the superior range of functioning, with no statistical difference

⁴ Dr. Du Verglas prepared a written report in March 2014, but later amended the report to discuss her interview of Claimant's aunt on May 2, 2014, among other things. The evidence included the amended report, to wit SAE 8, and not the initial report prepared by Dr. du Verglas. Claimant submitted a declaration (Claimant's Exhibit A) stating, in essence, that the amended report differed greatly from the initial report. The initial report was not proffered by either party.

between verbal and nonverbal abilities. Similarly, her scores on the WRAT-4 showed her sentence comprehension abilities and arithmetic scores above the 12.9 grade level. The profile of cognitive scores was not suggestive of any difficulties with communication, such as usage of complex sentences and ability to comprehend information. In addition, Claimant scored 30 out of 30 on the MMSE, showing that Claimant was oriented to time, place, and person, and had appropriate registration of information related to attention and calculation skills, recall skills, naming skills, skills to repeat sentences, comprehension skills, reading skills, writing skills, and drawing skills. (SAE 8.)

35. Dr. du Verglas assessed Claimant's adaptive functioning with the Vineland Adaptive Behavior Scales-II (Vineland) with Claimant serving as her own informant. The Vineland is a measure of adaptive functioning assessing four separate areas: (1) communication abilities; (2) skills of daily living; (3) socialization skills; and (4) motor skills. All of Claimant's scores were in the average or adequate range of abilities, with no identified adaptive delays. (SAE 8.)

36. Specifically, in the area of communication, Claimant's standard score was 107, in the adequate range. Claimant had the ability to concentrate and respond to Dr. du Verglas' interview questions well, lasting over an hour without difficulties. Her intonation, volume, and rhythm of speech were appropriate, and she integrated eye contact. Claimant had appropriate ability to write business letters and synthesize information she obtained from various brochures regarding regional center services. (SAE 8.)

37. In the area of daily living skills, Claimant's standard score was 93, in the adequate range. When Claimant attended USC, Claimant was able to get to her classes, make her own appointments, and follow the school curriculum independently. She selected her own clothing, was able to access public transportation, obtain her driver's license, operate a stove, and cook. However, Claimant reported that when she worked, she frequently neglected domestic obligations, and often relied on nannies and housekeepers. This report was substantiated by Claimant's ex-husband. Claimant had always done her own banking, and traveled independently throughout the United States. Claimant had her own credit cards, and was able to hold full-time jobs. (SAE 8.)

38. In the area of socialization, Claimant's standard score was 93, in the adequate range. Claimant met her husband in high school. While married, Claimant reported that she and her husband participated in social outings. After the termination of their relationship, Claimant got a boyfriend, and had an active social life. Her ex-husband reported that Claimant liked to attend "rave" parties. Claimant reported having diminished coping skills, and had difficulties managing a household without the assistance of nannies and housekeepers. Based on the interview with Claimant, Dr. du Verglas concluded Claimant did not evidence any adaptive delays by age 18. In addition, Claimant's ability to hold full-time employment, create and open companies, and hire nannies and household staff, spoke, according to Dr. du Verglas, to Claimant's appropriate adaptive levels of skills. (SAE 8.)

39. In the area of social-emotional functioning, Claimant demonstrated no difficulties in reciprocal conversations, integrated appropriate eye contact, and used several gestures, such as shaking her head, shrugging her shoulders, and cried on several occasions when reporting her difficulties related to her incarceration. Dr. du Verglas stated that there was no historical evidence of any repetitive or restricted interests or patterns of behavior or stereotyped motor movements, or any inflexibility or abnormal adherence to inflexible routines. Additionally, Claimant reported having friends while growing up. (SAE 8.)

40. The results of the ADOS Dr. du Verglas administered to Claimant showed that in the area of communication, Claimant spoke freely, spoke in full sentences, used appropriate eye contact and facial expressions, and evidenced no difficulties in comprehending information or engaging in reciprocal conversations. In addition, in reference to stereotyped behaviors and restricted interests, Dr. du Verglas observed no behavioral patterns that were indicative of any compulsive or ritualistic patterns of behavior, such as checking and rechecking. Claimant did not make any reference to any unusual or highly specific interests or topics or displayed any repetitive behaviors. (SAE 8.)

41. Dr. du Verglas reported her impressions of Claimant, and stated that she exhibited no delays in cognitive or academic functioning based on the WAIS-IV and the MMSE. Psychiatrically, the results of the MMPI-2-RF showed that the diagnostic considerations related to disorders involving excessive stress and worry, anxiety-related disorders, and depression-related disorders. (SAE 8.)

42. When determining whether Claimant warranted a diagnosis of autism spectrum disorder, Dr. du Verglas referenced the criteria set forth in the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-V), and determined Claimant had not met the criteria. Specifically, Dr. du Verglas determined Claimant had no deficits in social-emotional reciprocity, evidenced by her ability to engage in normal back-and-forth conversations, and by how Claimant displayed a range of affect with appropriate social responses to questions. Additionally, Claimant had no deficits in nonverbal communication behaviors used for social interaction, evidenced by Claimant's eye contact and ability to use gestures and facial expressions. Also, Claimant demonstrated no deficits in developing, maintaining, or understanding relationships, evidenced by Claimant's ability to engage in social behaviors with others, function appropriately in the early stages of her marriage, sustain appropriate employment, maintain friendships in school, and to get along with engineers or individuals involved with computers. (SAE 8.)

43. Dr. du Verglas also did not observe, or found of history of, repetitive motor mannerisms, such as rocking or hand movements, and determined Claimant had not established an insistence on sameness, inflexible adherence to routines or ritualized patterns of verbal or nonverbal behavior. On the contrary, Claimant described herself as disorganized and neglectful of obligations and appointments. Dr. du Verglas also determined Claimant did not demonstrate highly restricted, fixated interests that were abnormal in intensity or focus. Similarly, Dr. du Verglas determined Claimant had not demonstrated hyper-or-hypo-reactivity to sensory input or unusual interest in sensory aspects of the environment. Dr. du

Verglas noted that while Claimant reported oversensitivity to noise, Claimant had attended rave parties. (SAE 8.)

44. Dr. du Verglas determined no symptoms of autism were present in Claimant's early developmental period, evidenced by her interview with Claimant's paternal aunt. In addition, she determined no symptoms caused clinically significant impairment in social, occupational, or other areas of current functioning, evidenced by Claimant's ability to secure her own employment and reported no impairment in occupation. Dr. du Verglas determined that Claimant's disturbances were not better explained by an intellectual disorder or global developmental delay, evidenced by Claimant's IQ score in the above average range. (SAE 8.)

45. Dr. du Verglas also applied substantial disability guidelines for regional centers. In the area of self-care, Dr. du Verglas found that Claimant had the requisite abilities to complete all personal hygiene skills, grooming and feeding herself without difficulties. While Claimant reported that she had sometimes neglected her grooming, the neglect was not due to a lack of ability. In the area of receptive and expressive language, Dr. du Verglas identified no difficulties with either receptive or expressive language during the evaluation, and noted Claimant appropriately integrated gestures and facial expressions, and could engage in conversations without evidence of jargon, idiosyncratic language or echolalia. (SAE 8.)

46. In the area of learning, Claimant demonstrated no difficulties, and had excelled in school. In the area of mobility, Dr. du Verglas noted Claimant could ambulate independently without any difficulties, and had traveled throughout the United States via airplane and car independently. In the area of self-direction, Dr. du Verglas noted that Claimant married and independently pursued a career. While Claimant stated she needed the support of housekeepers and babysitters, such difficulties were not the result of a lack of ability. (SAE 8.)

47. In the area of independent living, Dr. du Verglas noted Claimant has lived independently as a student, while married, and after divorcing. Claimant demonstrated no difficulties opening bank accounts, purchasing, and entering into contracts, to name just a few. In the area of economic self-sufficiency, Dr. du Verglas noted that Claimant had a college degree, had previously secured employment, and completed those tasks without support. Based on the review of the guidelines, Dr. du Verglas determined Claimant did not meet the criteria for an individual with a substantial disability. (SAE 8.)

48. Claimant provided Dr. du Verglas with information on how to obtain her school, medical, and other pertinent records to help paint a complete picture of Claimant's history. Dr. du Verglas did not obtain these records. Dr. Kelly testified that it was not the responsibility of Dr. du Verglas to obtain these documents, but rather, it was Claimant's responsibility to provide these documents. (Testimony of Claimant; SAE 8; Testimony of Dr. Kelly.)

Claimant's Response to Dr. du Verglas' Report

49. Claimant submitted a declaration challenging various aspects of Dr. du Verglas' report,⁵ and contends Dr. du Verglas made a number of substantive errors that rendered the report invalid. Consequently, Claimant has requested this ALJ to order the Service Agency to conduct another psychological evaluation administered by a psychologist with expertise testing adults with high functioning autism. Claimant's request is denied. From what this ALJ could decipher from Claimant's declarations, the "substantive errors" Claimant alleges do not invalidate the overall test results or the behavioral observations made by Dr. du Verglas. (Claimant's Exhibits A, B, and C.)

50. Claimant also contends Dr. du Verglas conducted a partial evaluation, because she did not have the benefit of Claimant's medical records or information as to Claimant's early developmental history, due to Dr. du Verglas' failure to obtain such information. Claimant cited no authority placing the onus on the Service Agency to obtain the necessary documents to support an individual's request for regional center services. (Claimant's Exhibits A, B, and C.)

51. Claimant asserts Dr. du Verglas misquoted Claimant when obtaining some historical information for the report, and claims that Dr. du Verglas had determined in advance that Claimant's evaluation was unnecessary and part of some fraudulent scheme by Claimant. Claimant produced no credible independent evidence to support her contentions. (Claimant's Exhibits A, B, and C.)

52. Contrary to Dr. du Verglas' conclusion, Claimant believes she is substantially disabled because she has relied on others to tell her how to solve problems. Claimant testified that her ability to think abstractly has been compromised, as well as her ability to generalize information across settings, which has caused her to become overly stimulated in new situations. In addition, Claimant believed her social functioning has been compromised because she considered herself as gullible in social situations and easily led by others. (Testimony of Claimant.)

53. At hearing, Claimant asserted that she did not fit the regional center's criteria for a diagnosis of autism, but believed she met the criteria set forth in the International Statistical Diseases and Related Health Problems, 10th Edition, (ICD-10). Claimant proffered no expert testimony concerning the ICD-10, its criteria, or whether the components of the ICD-10 supported Claimant's self-diagnosis. (Testimony of Claimant.)

⁵ The declarations submitted by Claimant (i.e., Exhibits A, B, and C) were written in pencil in very small, and sometimes illegible, handwriting, making many of her words and/or sentences very difficult to decipher. Additionally, portions of Claimant's declarations appeared to follow a stream of consciousness that rendered them incomprehensible at times.

54. Claimant seeks regional center services to provide her, upon her release, help in locating an appropriate place to live, with banking, a budget, and grocery shopping. In addition, Claimant believes she requires a facilitator to help her break down tasks into more manageable chunks, to help develop a system of reminders to help keep her on track regarding her daily tasks, and to help her communicate with her family about the understanding of her symptoms. Also, Claimant believes she requires behavior modification services. (Testimony of Claimant.)

55. The Service Agency's interdisciplinary team, including Dr. Kelly, reviewed the psycho-social report, the psychological evaluation report, and all of the other information previously submitted by Claimant, and determined Claimant was not eligible for regional center services. Dr. Kelly testified that after observing Claimant during the course of the hearing, he would not change his opinion concerning Claimant's eligibility, as Claimant engaged in no behaviors indicative of someone with autism spectrum disorder. (Testimony of Dr. Kelly.)

LEGAL CONCLUSIONS

1. Claimant bore the burden of proof of establishing she was eligible for regional center services. The standard of proof was a preponderance of the evidence. As set forth in more detail below, Claimant failed to sustain her burden.

2. Welfare and Institutions Code section 4512 states:

(a) "Developmental disability" means a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this 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. Welfare and Institutions Code section 4512, subdivision (l) states:

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

- (1) Self-care.
- (2) Receptive and expressive language.
- (3) Learning.

- (4) Mobility.
- (5) Self-direction.
- (6) Capacity for independent living.
- (7) Economic self-sufficiency.

(See also Cal. Code Regs., tit. 17, § 54001.)

4. Here, the evidence showed that Claimant was not substantially disabled by reason of any developmental disability. Specifically, the psychological report, as set forth in Factual Findings 45 through 47, buttressed by the information set forth in the psycho-social report, demonstrated that Claimant was capable of completing self-care tasks, irrespective of her reported grooming negligence. Additionally, Claimant demonstrated the capacity to understand and appropriately use receptive and expressive language, write letters, and integrate gestures and facial expressions. Also, Claimant demonstrated no learning difficulties given her history of academic success, and had no mobility issues. In addition, Claimant demonstrated substantial self-direction and economic self-sufficiency, evidenced by her ability to independently pursue a college degree, and procure and sustain a career, irrespective of her professed need for support from nannies, housekeepers, and family members. Similarly, Claimant had a history of living independently, as she did as a college student, and subsequently after her divorce. Given these factors, Claimant has failed to demonstrate she is substantially disabled. (Factual Findings 1 – 48; Legal Conclusions 1 – 3.)

5. Notwithstanding this, Claimant claims that she is, in fact, substantially disabled, because her ability to think abstractly has been compromised, as well as her ability to generalize information across settings, which has caused her to become overly stimulated in new situations. In addition, Claimant believes her social functioning is compromised because she believes she is gullible in social situations and easily led by others. However, Claimant failed to support her belief with any credible corroborating evidence, and failed to show how Claimant's assertions of substantial disability fit three or more of the criteria set forth in Legal Conclusion 3.

6. Assuming *arguendo* that Claimant did, in fact, have a substantial disability, the issue would become whether Claimant's substantial disability emanated from a developmental disability within the meaning of Welfare and Institutions Code section 4512, subdivision (a). As such, and in order to establish eligibility, a claimant's substantial disability must not be solely caused by an excluded condition. The statutory and regulatory definitions of "developmental disability" (Welf. & Inst. Code, § 4512 and Cal. Code. Regs., tit. 17, § 54000) exclude conditions that are *solely* physical in nature. California Code of Regulations, title 17, section 54000, also excludes conditions that are *solely* psychiatric disorders or *solely* learning disabilities. Therefore, a person with a "dual diagnosis," that is, a developmental disability coupled with either a psychiatric disorder, a physical disorder, or a learning disability, could still be eligible for services. However, someone whose conditions originate from just the excluded categories (psychiatric disorder, physical disorder, or learning disability, alone or in some combination) and who does *not* have a developmental

disability would not be eligible. In the instant matter, the parties did not argue that Claimant had mental retardation, cerebral palsy, epilepsy, or a condition found to be closely related to mental retardation or to require treatment similar to persons with mental retardation. The question is whether Claimant has autism. Consequently, this Decision solely considered autism as the contended basis of Claimant's eligibility.

7. The DSM-V, section 299.00, discusses the diagnostic criteria which must be met to provide a specific diagnosis of Autism Spectrum Disorder, as follows:

- A. Persistent deficits in social communication and social interaction across multiple contexts, as manifested by the following, currently or by history (examples are illustrative, not exhaustive; see text):
 - 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 (examples are illustrative, not exhaustive; see text):
 - 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 hypo-reactivity to sensory input or unusual interests in sensory aspects of the environment (e.g., apparent indifference to pain/temperature, adverse response to specific sounds or textures, excessive smelling or touching objects, visual fascination with lights or movement).

[¶] . . . [¶]

- C. Symptoms must be present in the early developmental period (but may not become fully manifest until social demands exceed limited capacities, or may be masked by learned strategies in later life).
- D. Symptoms cause clinically significant impairment in social, occupational, or other important areas of current functioning.
- E. These disturbances are not better explained by intellectual disability (intellectual development disorder) or global developmental delay. Intellectual disability and autism spectrum disorder frequently co-occur; to make comorbid diagnoses of autism spectrum disorder and intellectual disability, social communication should be below that expected for general developmental level.

(DSM-V at pp. 50-51.)

8. Here, when applying the diagnostic criteria set forth in DSM-V, Claimant failed to sustain her burden of establishing that she met the criteria for autism. Specifically, Claimant did not provide evidence more persuasive than that provided by the Service Agency concerning whether Claimant had persistent deficits in social communication and social interaction across multiple contexts, as set forth in the psychological evaluation report prepared by Dr. du Verglas, and buttressed by the psycho-social report prepared by Ms. Boroy. The evidence showed that Claimant engaged in normal back-and-forth conversations, displayed a range of affect with appropriate responses to social questions,

maintained eye contact, gestured when appropriate, and displayed various facial expressions. Additionally, Claimant engaged in social behaviors with other, got married, able to procure and sustain full-time employment, and had friends in school. (Factual Findings 1 – 48; Legal Conclusions 1 – 2 and 7.)

9. In addition, the Service Agency provided persuasive evidence that Claimant did not have restricted, repetitive patterns of behavior, interests, or activities, as set forth in the psychological evaluation report prepared by Dr. du Verglas, and buttressed by the psycho-social report prepared by Ms. Boroy. The evidence showed that Claimant had no history of repetitive motor mannerisms such as rocking or hand movements, no insistence on sameness given her level of disorganization, and, aside for a love of computers and technology, reported no highly restricted, fixated interests within the meaning of the DSM-V. Additionally, according to Dr. du Verglas' report, Claimant showed no hyper-or-hypo-reactivity to sensory input, despite Claimant's reports of overstimulation concerning noise, as Claimant attended rave parties in the past. (Factual Findings 1 – 48; Legal Conclusions 1 – 2 and 7.)

10. The evidence also did not show that Claimant's symptoms were present in the early developmental period, as Claimant's paternal aunt reported no history of delays or social difficulties, and Claimant provided no documentation or records indicating any developmental delays. Claimant provided no statutory authority establishing the Service Agency was required to seek, request, and procure such information on Claimant's behalf. Moreover, Claimant did not establish that her symptoms caused clinically significant impairment in social, occupational, or other important areas of current functioning, given her ability to secure her own employment over a sustained period of time. (Factual Findings 1 – 48; Legal Conclusions 1 – 2 and 7.)

11. Finally, Claimant failed to establish her disturbances were not better explained by an intellectual disorder or global developmental delay, given her above-average IQ scores, and her history of academic achievement. (Factual Findings 1 – 48; Legal Conclusions 1 – 2 and 7.)

12. In sum, Claimant failed to demonstrate that she meets the criteria for autism, as set forth in the DSM-V, and has not shown that she is substantially disabled. As such, Claimant failed to sustain her burden of proving she has autism, or is eligible for regional center services. (Factual Findings 1 – 48; Legal Conclusions 1 – 11.)

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ORDER

Claimant's appeal is denied.

Date: September 16, 2014

_____/s/_____
CARLA L. GARRETT
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.