BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: CLAIMANT, and SAN GABRIEL/POMONA REGIONAL CENTER, Service Agency.	OAH No. 2016040933

DECISION

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Pomona, California, on August 25, 2016.

G. Daniela Santana, Fair Hearing Manager, represented San Gabriel/Pomona Regional Center (SGPRC).

Claimant's mother appeared on behalf of claimant, who was not present at the hearing.

The record was held open for claimant to submit a written closing statement and for SGPRC to submit a 2005 mental health assessment. SGPRC filed the mental health assessment on August 30, 2016, which was received into evidence. Claimant filed a closing statement on September 1, 2016; SGPRC filed a response on September 7, 2016. The record was closed and the matter submitted on September 8, 2016.

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ISSUE

Is claimant eligible for regional center services under the Lanterman Developmental Disabilities Services Act as a result of an intellectual disability or a disabling condition closely related to an intellectual disability that requires similar treatment needs as an individual with an intellectual disability which constitutes a substantial handicap?

FACTUAL FINDINGS

BACKGROUND

1. Claimant is a 26-year-old female. Claimant's adoptive mother applied to SGPRC to obtain services under the Lanterman Act alleging claimant had an intellectual disability. On March 17, 2016, SGPRC notified claimant of its determination that she was not eligible for regional center services because the information it reviewed did not establish that claimant had a substantial disability as a result of an intellectual disability, autism, cerebral palsy, epilepsy, or a disabling condition closely related to an intellectual disability that required similar treatment needs as an individual with an intellectual disability, also referred to as the "fifth category."

2. On April 8, 2016, claimant submitted a Fair Hearing Request appealing SGPRC's determination. In the request, claimant's mother stated that claimant's birth and educational history qualified her for eligibility under the fifth category in that she has a disabling condition closely related to an intellectual disability.[1] This hearing ensued.

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[1] Although the Fair Hearing Request only referenced the fifth category, the request appealed SGPRC's determination that claimant did not have a qualifying

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DIAGNOSTIC CRITERIA FOR INTELLECTUAL DISABILITY

3. The American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition,* (DSM-5) contains the diagnostic criteria used to diagnose intellectual disability. Intellectual disability is a disorder with onset during the developmental period that includes both intellectual and adaptive functioning deficits in conceptual, social, and practical domains. The essential features of intellectual disability are deficits in general mental abilities and impairment in everyday adaptive functioning, as compared to an individual's age, gender, and socioculturally matched peers.

Three diagnostic criteria must be met in order to receive a diagnosis of intellectual disability. The first, deficits in intellectual functions[2], include deficits in reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience. The second, deficits in adaptive functioning, includes deficits resulting in the failure to meet developmental and socio-cultural standards for personal independence and social responsibility. The third and final criterion that must be met in order for a DSM-5 diagnosis of intellectual disability to be made is that the onset of the deficits in intellectual and adaptive functioning must have occurred during the developmental period.

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developmental disability. At hearing, claimant's mother also claimed eligibility under the category of intellectual disability.

[2] Intellectual functioning is typically measured using intelligence tests. A score of approximately two standard deviations below average represents a significant cognitive deficit. These scores would occur in about 2.5 percent of the population. Or stated differently, 97.5 percent of people of the same age and culture would score higher. This is typically reflected by an IQ score of 70 or below.

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EVALUATION BY JENNIE MATHESS, PSY.D.

4. SGPRC referred claimant to Jennie Mathess, Psy.D., for testing and to assess her current level of functioning. Dr. Mathess administered tests; reviewed school records; and interviewed claimant and claimant's mother. Dr. Mathess prepared a report that was received into evidence. The following summarizes her findings.

CLAIMANT'S BACKGROUND

5. Claimant was born prematurely at 30 weeks. Claimant's biological mother used cocaine while pregnant, and claimant remained in the neonatal intensive care unit for approximately one month. She was discharged into foster care with claimant's mother, who later adopted her. Claimant was hospitalized on two occasions prior to her first birthday due to respiratory illness. Claimant received early start services through SGPRC from birth to age three.

During her school years, claimant received special education services under the criteria of Emotional Disturbance and Specific Learning Disability. She received services within a special day class setting. For the past year she has been working at a fast food restaurant up to 25 hours per week. Her primary duties include cleaning, and she more recently started taking orders and working as a cashier. Claimant reported that at times she gives people the wrong change and needs customers to repeat their orders.

Claimant's mother reported her concern that claimant gets angry and agitated quickly. She had concern that claimant's social judgment and daily life skills are not appropriate. Claimant has a history of short attention span, distractibility, and labile mood during her school years. She entered a residential treatment program during her high school years due to escalating behavioral issues. She also has a history of receiving mental health services.

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Claimant's mother expressed concern that claimant has difficulty judging people and tends to be too trustworthy of strangers, resulting in her being taken advantage of by others. She purportedly has a history of negative peer influences including substance abuse, theft, and property damage.

REVIEW OF RECORDS

6. Dr. Mathess reviewed the following records, each of which was received as evidence at the hearing unless otherwise noted:

a) A psychological evaluation was completed by Frank Trankina, Ph.D., on August 23, 1993. Dr. Trankina conducted a psychological evaluation for SGPRC when claimant was three years old to determine eligibility for regional center services. Dr. Trankina determined claimant's intellectual functioning to be in the above average range, with adaptive functioning in the average range, and, thus, she was not eligible for regional center services.

b) A Multi-Disciplinary Evaluation was completed by claimant's school district on November 27, 2002, when claimant was age 12 and in the 7th grade. The evaluation stated that claimant was placed in special education in the fourth grade, when it was observed she had significant behavioral symptoms that were attributed to emotional causes. This had an adverse effect on her academic performance. Academic testing in 2002 showed that claimant's overall performance indicated that she approached grade level in most areas, except for math. The evaluation stated that claimant continued to demonstrate emotional and behavioral problems which appeared to be related to emotional causes. The report concluded that attention, concentration, memory and interpersonal issues limited claimant's academic functioning, but she had made good progress since her last evaluation.

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c) An Individualized Education Program (IEP) was completed on January 27, 2005, indicating eligibility for special education services under the criteria of Emotional Disturbance.[3] The IEP indicated claimant had difficulties paying attention, sitting still, and impulsivity; challenged authority at time; was easily angered; and sometimes threw things. At that time she was receiving mental health services, but was noncompliant with medication. The IEP noted she was capable of performing successfully in the classroom, but struggled due to attention, concentration, memory, and interpersonal issues. Claimant was in 9th grade, but was performing at grade 4.6 in math, grade 11.4 in language arts/writing, and grade 6.8 in reading. Claimant had a diagnosis of Attention-Deficit/Hyperactivity Disorder (ADHD) and she also had mental health diagnoses including Bipolar Disorder, Oppositional Defiant Disorder, and Mood Disorder.

d) An AB 3632[4] Mental Health Assessment was completed in March 2005. According to the assessment, claimant was initially assessed by Eugene Bauman, MSW, Ph.D., in 2000 because she was having difficulty with attention and concentration. Dr. Bauman found claimant eligible for outpatient mental health services under the AB3632 program. Although claimant received mental health services, in 2005, she continued to struggle in school, had

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[3] This document was not contained in SGPRC's submissions.

[4] AB 3632 refers to Assembly Bill 3632, which provided that mental health services required for special education students would be delivered by community health agencies. These were commonly referred to as AB 3632 evaluations and services, until 2011, when the Legislature drastically amended these provisions.

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emotional outbursts, had difficulty sitting still, and challenged authority. Prior to the 2005 assessment, claimant had been diagnosed with a number of different psychiatric issues and received outpatient services, day treatment, therapeutic behavior services, and medication. None of these treatments were apparently effective. The evaluation recommended claimant be placed in a 24-hour residential treatment program

e) A Multi-Disciplinary Evaluation was completed on May 2, 2006, when claimant was in tenth grade. Claimant was living in a residential placement facility. She was being served in a special day class at a special education school. The report indicated claimant was functioning within the average range of intellectual ability, with deficits in the area of attention, including concentration and memory. She continued to perform below expectancy in math skill areas demonstrating an ability/achievement discrepancy.

f) IEPs from December 2006 and 2007 indicated ongoing eligibility for special education services under the criteria of Emotional Disturbance and Specific Learning Disability. The 2007 IEP indicated claimant had difficulty building and maintaining peer and staff relationships, and displayed inappropriate behavior under normal circumstances.

g) An IEP from December 2008 stated that claimant displayed a severe discrepancy between intellectual ability and achievement in the areas of math calculation and math reasoning. The evaluation noted claimant's mental health treatment was inconsistent and impacting her progress. It noted claimant was not taking prescribed medication. The multi-disciplinary team was concerned that claimant was not progressing in the current setting. The team recommended a shortened day to help claimant focus for a shorter period of time and recommended claimant take the prescribed medication.

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The team noted when claimant was not on medication, she was reportedly fidgety, irritable, anxious, agitated, had difficulty staying on task, and had significant conflict in peer and staff relationships. Mental health challenges were a significant barrier to achieving her transition goals. The IEP reflected that claimant passed the English Language Arts portion of the California High School Exit Examination, but failed the math portion.

h) A Multi-Disciplinary review from December 2008 noted claimant was in the average range of intelligence with a deficit in attention. Claimant has passed all her classes but struggled to pass the math portion of the exit exam. According to the report, her off-task behavior prevented her from accomplishing the study needed to pass the test and graduate.

COGNITIVE AND ADAPTIVE FUNCTIONING

7. Dr. Mathess evaluated claimant at SGPRC on February 16, 2016. Dr. Mathess noted claimant was cooperative and displayed fair attention and concentration. However, she responded impulsively at times, and Dr. Mathess believed that the results of the cognitive testing "likely underestimated her true abilities." Dr. Mathess administered the Wechsler Adult Intelligence Scale –Fourth Editions (WAIS-IV) to assess her cognitive functioning.[5] On the Verbal Comprehension Index and the Perpetual Reasoning Index, she performed in the below average range. Her performance on the Working Memory Index was in the borderline range. Her overall Processing Speed Index

[5] An addendum titled "Psychological Testing Data Sheet" was attached to Dr. Mathess's report. The sheet provided scaled scores for each category of the tests Dr. Mathess administered. However, no explanation of the meaning of these scores was offered at hearing.

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score could not validly be computed due to significant variability in her performance. Thus, her Full Scale IQ could not validly be computed. However, claimant's General Ability Index was computed and was within the below average range. Again, Dr. Mathess opined that claimant's "performance on cognitive testing should be interpreted with caution as it is likely an underestimate of her true abilities due to impulse responding at times and little to no additional thought and effort when responses were queried."

Claimant's mother was administered the Vineland Adaptive Behavior Scales, 2nd Edition (VABS-II) to assess claimant's adaptive functioning. Claimant scored in the low range for communications, daily living skills, and socialization.

DR. MATHESS'S ASSESSMENT

8. Dr. Mathess concluded that claimant fell within the below average range for cognitive functioning and her adaptive functioning was rated in the low range in all areas. However, Dr. Mathess believed claimant's cognitive testing scores were "likely an underestimate of her abilities due to impulse responding at time and reduced effort when asked to expound upon her answers." In addition, claimant's scores were inconsistent with her average cognitive abilities and her performance on academic achievement testing that was reported during her school years. Dr. Mathess found no evidence of significant deficits in intellectual and adaptive functioning during the developmental period, and opined that a diagnosis of intellectual disability was not warranted. Dr. Mathess concluded that claimant would benefit from an updated mental health evaluation to determine the impact of attention deficits and emotional factors on her current life functioning.

TESTIMONY OF CLAIMANT'S MOTHER

9. Claimant's mother, who was a neonatal intensive care nurse, began fostering claimant when claimant was released from the intensive care unit. Claimant

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was born prematurely after having been exposed to crack cocaine during pregnancy. During her first year, claimant suffered occurrences of respiratory distress that led to cardiac arrest. Claimant's mother later adopted claimant.

Claimant's mother is seeking regional center services because she believes claimant was never properly diagnosed during her school years. Claimant's mother explained that at age 25, claimant does not function like her peers, she struggles in her job, and she behaves likes someone with a low IQ. When claimant was in school, claimant's mother brought in additional supports, such as tutoring, that were not provided by the district. Even when claimant was receiving these supports, and was in a residential program, she was still well below average. Claimant's mother believes now that claimant no longer has any academic demands, the behavior components identified when she was in school have decreased. She explained there is no longer pressure for claimant to perform or achieve academically. Claimant does not take any medication and no longer has the emotional problems that occurred in the stressful school environment. Claimant graduated from high school, but it took her six years to pass the exit exam. However, claimant still does not fit in, has had trouble holding a job, and does not have friends.

Claimant was fired from working at a fast food pizza establishment because she could not learn how to use the cash register. Claimant has not exhibited the mental health symptoms that the school district attributed to her delay; she no longer has emotional outbursts or behavioral issues. Claimant's mother believes that a developmental disability is the better explanation for claimant's delays. Claimant's mother believes claimant satisfies the definition of intellectual disability in DSM-5. She said claimant has limitations in home living, social skills, use of community resources, self-direction, functional academic skills, and health and safety. She noted that claimant's IQ scores were well below average.

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Claimant's mother noted certain mental health diagnoses appeared throughout the school records, and would often be repeated year to year, without an actual verification of their existence. For example, she said claimant never suffered from bipolar disorder as indicated in the reports. She noted that claimant could not receive IQ tests while in school because claimant is African-American. Claimant's mother noted that ADHD and other learning disabilities do not rule out an underlying intellectual disability.

Claimant's mother said claimant is very naïve about the world and is extremely trusting. She will make a new friend who will immediately steal from claimant because claimant was unable to evaluate the person's motives or character. Claimant does not seem to learn from her mistakes, which are frequently repeated. Claimant's mother does not believe these behavioral characteristics fit with a diagnosis of ADHD. Claimant has worked at a fast food restaurant for almost two years. However, her job skills are limited to cleaning because she was unable to successfully work the cash register. Claimant has qualified for Department of Rehabilitation services. However, the supports have not been effective in helping claimant adapt.

EVALUATION BY CINDY LACOST, PSY.D.

10. Claimant submitted an evaluation by Cindy LaCost, Psy.D, dated August 12, 2016. Dr. LaCost reviewed the same records that Dr. Mathess reviewed. Dr. LaCost noted that the psychological evaluation conducted when claimant was three years old found her IQ and adaptive functioning were in the average range. Dr. LaCost then reviewed the results of the cognitive testing conducted by Dr. Mathess. She noted that on the WAIS-IV, all four indices were in the Extremely Low and Very Low ranges, and her overall General Ability Index was in the Extremely Low range. Similarly, measurements of her adaptive functioning were all in the Extremely Low range. Dr. LaCost wrote, "Clearly, [claimant] now meets criteria for Intellectual Disability, but the question remains . . . did she meet criteria prior to age 18?" [Ellipses in original]. In addressing this question, Dr.

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LaCost noted that the definition of Intellectual Disability has changed with subsequent editions of the DSM. She said the emphasis in the DSM-5 is now more on the level of support required as the result of adaptive functioning deficits and less on IQ measures. Dr. LaCost also noted that public schools do not perform IQ testing; thus, claimant had not been tested since she was three years of age. Dr. LaCost, citing DSM-5, stated that mild levels of intellectual disability may not be identifiable until school age when difficulty with academic learning becomes apparent. Dr. LaCost said it was possible that claimant's IQ testing at age three may have been performed when she was too young to make a definitive decision.

Dr. LaCost interviewed claimant for two hours. Dr. LaCost said claimant recited several events that led Dr. LaCost to believe claimant's cognitive ability and adaptive functioning were impaired. For example, while at her job at a fast food restaurant, claimant observed four men go into the bathroom and lock the door. When claimant smelled the odor of marijuana, instead of telling her supervisor, she confronted the men by knocking on the restroom door until they opened it. She confronted the men and told them they were not able to smoke. When Dr. LaCost explained this was potentially dangerous (apparently because claimant could have been "gang-raped") claimant could not understand the reasoning and said Dr. LaCost was siding with claimant's supervisor, who had reprimanded claimant.

In another instance, claimant expressed interest in becoming a cheerleader at a junior college, but she was unable to enroll in any of the classes because of their difficulty. She did not seem to understand that one must be a successful student to be a member of the cheerleading team. Claimant also said she wanted to be promoted at the fast food restaurant where she worked for the past 18 months, but she could not obtain this goal because she was unable to learn to use the cash register.

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Claimant told Dr. LaCost that she does not have any friends and does not get along with her coworkers. Dr. LaCost believed claimant struggles to accept constructive criticism and lacks many of the "soft skills" necessary for work (e.g., following directions, being respectful, and controlling her anger).

Dr. LaCost concluded that claimant has, and always had, a diagnosis of Intellectual Disability, Mild, with IQ in the extremely low range, Adaptive Functioning in the Extremely Low range, and with onset prior to age 18. Dr. LaCost noted common associated conditions of ADHD, Specific Learning Disability, and emotional and behavioral dysregulation problems – all of which claimant experienced.

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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.)

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

2. 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 Act is to rectify the problem of inadequate treatment and services

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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 Lanterman 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.)

3. 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 intellectual disability, cerebral palsy, epilepsy, autism, or what is referred to as the fifth category – a disabling condition closely related to intellectual disability or requiring treatment similar to that required for intellectually disabled individuals. (Welf. & Inst. Code, § 4512, subd. (a).) A qualifying condition must also start before the age 18 and be expected to continue indefinitely. (Welf. & Inst. Code, § 4512.)

4. 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[6], cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation.

(b) The Developmental Disability shall:

(1) Originate before age eighteen;

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[6] 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.

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

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

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

5. California Code of Regulations, title 17, section 54001 provides:

(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

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(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.

(b) The assessment of substantial disability shall be made by a group of Regional Center professionals of differing disciplines and shall include consideration of similar qualification appraisals performed by other interdisciplinary bodies of the Department serving the potential client. The group shall include as a minimum a program coordinator, a physician, and a psychologist.

(c) The Regional Center professional group shall consult the potential client, parents, guardians/conservators, educators, advocates, and other client representatives to the extent that they are willing and available to participate in its deliberations and to the extent that the appropriate consent is obtained.

. . .

6. A regional center is required to perform initial intake and assessment services for "any person believed to have a developmental disability." (Welf. & Inst. Code, § 4642.) "Assessment may include collection and review of available historical diagnostic data, provision or procurement of necessary tests and evaluations, and summarization of developmental levels and service needs . . . ." (Welf. & Inst. Code, § 4643, subd. (a).) To determine if an individual has a qualifying developmental disability,

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"the regional center may consider evaluations and tests . . . that have been performed by, and are available from, other sources." (Welf. & Inst. Code, § 4643, subd. (b).) "When an individual is found to have a developmental disability as defined under the Lanterman Act, the State of California, through a regional center, accepts responsibility for providing services to that person to support his or her integration into the mainstream life of the community. (Welf. & Inst. Code, § 4501.)

EVALUATION

7. The Lanterman Act and the applicable regulations set forth criteria that a claimant must meet in order to qualify for regional center services. The burden is on claimant to establish eligibility. Claimant's mother believed claimant was eligible for regional center services because of an intellectual disability or a condition closely related to an intellectual disability that requires treatment similar to that required for individuals with an intellectual disability.

Dr. Mathess reviewed claimant's records, interviewed claimant and her mother, and conducted standardized intelligence testing. Dr. Mathess concluded that although claimant's cognitive functioning was below average, she believed the scores on cognitive testing "likely underestimated claimant's abilities because of impulse responding and reduced effort when asked to expound on her answers." Dr. Mathess noted that claimant's scores were inconsistent with her average cognitive abilities and her performance on academic achievement testing that was reported during her school years. Dr. Mathess concluded that because there was no evidence that such deficits occurred during the developmental period, a diagnosis of intellectual disability was not warranted. Instead, the academic records over the years indicated a mathematics learning disorder and a long history of attention and emotional difficulties.

Claimant's mother disagreed with Dr. Mathess's conclusions. Specifically, claimant's mother believed there was insufficient evidence for Dr. Mathess to have

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dismissed the validity of claimant's low scores due to "impulsive and shallow responses." She further noted that claimant no longer exhibits any mental health symptoms. Instead, claimant's mother believed Dr. LaCost's evaluation was more persuasive.

Dr. LaCost disagreed with Dr. Mathess's conclusion. Instead, Dr. LaCost noted that on the WAIS-IV, claimant scored in the extremely low to very low range on all four indices and her overall general ability index was in the extremely low range. Measurements of her adaptive functioning were also in the extremely low range. Dr. LaCost believed that claimant now meets the criteria for intellectual disability. In addressing whether claimant satisfied the criteria prior to age 18, Dr. LaCost stated that barring an acquired brain injury or degenerative neurological condition, intellectual disability does not suddenly appear after age 18. Dr. LaCost further noted that the definition of intellectual disability has changed over time and public schools do not conduct IQ testing, such that there was no definitive evidence for or against a "qualifying" IQ as no testing was conducted during claimant's developmental years. Finally, Dr. LaCost noted that ADHD, specific learning disability, and emotional and behavior problems are commonly associated with intellectual disability.

In order to satisfy the DSM-5 definition of intellectual disability, claimant must establish that during the developmental period, she had deficits in intellectual functioning. Dr. LaCost reviewed claimant's scores and found them to be in the extremely low to very low range. Dr. Mathess also concluded that claimant fell within the below average range for intellectual functioning. This was demonstrated by the composite test scores, including a general ability index score of 63. However, Dr. Mathess believed that because claimant "responded impulsively at times" during her interview, and failed to expound upon her answers, the results of cognitive testing were "likely an underestimate of her abilities." Thus, Dr. Mathess essentially dismissed the results of the cognitive testing, believing they "likely" underestimated claimant's abilities.

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However, this conclusory statement is insufficient to establish the tests were not an accurate representation of claimant's intellectual functioning. There was no expert testimony at the hearing[7] and no explanation *why* "impulsive responses" during an interview would lead to the conclusion that cognitive testing would be unrepresentative of actual intellectual functioning. Moreover, Dr. Mathess's statement that the test results "likely" underestimated intellectual functioning was hardly a definitive conclusion. Finally, Dr. Mathess's report noted that the low scores were inconsistent with claimant's school records, which reported average cognitive abilities and academic performance. Although true, claimant's mother contended that claimant received numerous supports during her school years that enabled her to perform at a generally average level. There was no testimony or other evidence to refute this contention. Given that claimant never received cognitive testing during her school years, low intellectual functioning during this period cannot be ruled out. In conclusion, there was insufficient evidence to justify dismissal of the cognitive testing results, which clearly indicated significant deficits in intellectual functioning. As such, claimant established she has deficits in intellectual functioning.

As for adaptive functioning, both Drs. Mathess and LaCost agreed claimant has significant deficits. Claimant's mother's testimony further indicated claimant's failure to meet developmental and sociocultural standards for communication/language functioning, personal independence/self-care, and social functioning. Claimant scored in the significantly low range in communications, the low range for daily living skills, and the low range for socialization. Therefore, claimant established deficits in adaptive functioning sufficient to meet eligibility criteria.

[7] Dr. Mathess did not testify in this hearing.

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Finally, claimant established that the onset of the deficits in intellectual and adaptive functioning occurred during the developmental period. Dr. Mathess concluded that because there was no evidence that the deficits occurred during the developmental period, a diagnosis of intellectual disability was not warranted. Dr. Mathess cited claimant's school records, which indicated a long history of attention and emotional difficulties. However, even if claimant had an extensive history of mental health and behavioral issues, this did not exclude the existence of intellectual disability during her school years. Based on claimant's mother's testimony and the school records, there was sufficient evidence to establish that the deficits in intellectual and adaptive functioning occurred during claimant's developmental period. Although the school records indicated these deficits were a result of mental health issues, claimant never received IQ testing after the age of three. Additionally, the mental health and behavioral issues exhibited by claimant during her school years could have coexisted with an intellectual disability. Finally, claimant's mother credibly testified that claimant no longer exhibits any of the mental health and behavioral issues, which she attributed to the stress of trying to perform in a school environment. As such, claimant satisfied the third prong of the DSM-5 criteria for intellectual disability.

CLAIMANT IS ELIGIBLE FOR REGIONAL CENTER SERVICES BASED ON INTELLECTUAL DISABILITY

8. A preponderance of the evidence established claimant has an intellectual disability, which is a developmental disability under the Lanterman Act. (Welf. & Inst. Code, § 4512, subd. (a).) Claimant established this condition results in major impairment of cognitive and/or social functioning, and is a "substantial disability." (Cal. Code Regs., tit. 17, § 54001.) Specifically, claimant has significant functional limitations in receptive and expressive language, learning, self-direction, capacity for independent living, and economic self-sufficiency. (*Id.*, at subd. (a)(2).) Claimant's developmental disability

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originated before the age of 18, is likely to continue indefinitely, and constitutes a "substantial disability." (Cal. Code Regs., tit. 17, § 54000, subd. (b).) Having established these criteria, claimant is eligible for regional center services under the category of intellectual disability. (Welf. & Inst. Code, § 4512, subd. (a).)

CLAIMANT FAILED TO ESTABLISH ELIGIBILITY UNDER THE FIFTH CATEGORY

9. Claimant failed to establish she was entitled to regional center services on the basis of the fifth category, a disabling condition closely related to an intellectual disability that requires similar treatment needs as an individual with an intellectual disability. There was no evidence presented as to claimant's treatment needs, or whether those needs are similar to those required by an individual with an intellectual disability. As such, claimant failed to establish she qualifies for Lanterman Act services under this category.

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ORDER

Claimant's appeal from SGPRC's determination that she is not eligible for regional center services and supports is granted. Claimant is eligible for regional center services under the category of intellectual disability.

DATED: September 22, 2016

_____/s/_____

ADAM L. BERG

Administrative Law Judge

Office of Administrative Hearings

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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.

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