

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

In the Matter of:

CLAIMANT,

vs.

SOUTH CENTRAL LOS ANGELES REGIONAL CENTER,

Service Agency.

DDS No. CS0005833

OAH No. 2023050584

DECISION

Administrative Law Judge (ALJ) Chantal M. Sampogna, Office of Administrative Hearings, State of California, heard this matter by videoconference on September 15, 2023.

Claimant appeared and represented herself.

Tami Summerville, Appeals Manager for the South Central Los Angeles Regional Center (Service Agency), appeared on behalf of Service Agency.

Testimony and documents were received in evidence. The record closed and the matter was submitted for decision on September 15, 2023.

ISSUE

Whether Claimant has a developmental disability as defined by the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.). (Statutory references are to the Welfare and Institutions Code unless otherwise designated.)

EVIDENCE RELIED UPON

Documents: Service Agency's Exhibits 1 through 9.

Testimony: Sandra Watson, Psy.D.; Claimant.

SUMMARY

Claimant is 21 years old. She suffered hypoxia (low levels of oxygen in body tissues) multiple times during her infancy and required special education services to address difficulties retaining information relating to her reading comprehension and writing. After completing high school, she attended two years of college at East Los Angeles College (ELAC) where she also attended therapy. Claimant dropped out of college because the course work and stress were too challenging. Before dropping out, Claimant's therapist referred Claimant for psychological testing based on his concerns about Claimant's cognition including Claimant's memory loss and poor

judgment. The cognitive assessments resulted in referrals to Service Agency for an eligibility assessment.

Among other test results, on the Wechsler Abbreviated Scale of Intelligence, Second Edition (WASI-II), Claimant obtained a Full-Scale Intelligence Quotient (FSIQ) composite score of 71, which placed her in the Low Range (third percentile) and within the Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition’s (DSM-5) definition of Intellectual Disability (ID). Similarly, on the Adaptive Behavior Assessment System, Third Edition (ABAS-3), Claimant obtained a General Adaptive Composite score of 66, which places her in the Extremely Low Range (1st percentile).

Service Agency determined Claimant’s test results were not reliable, speculating her low-test scores were based on mental health challenges, including mild depressive disorder, anxiety, and Attention Deficit Hyperactivity Disorder (ADHD). Service Agency also determined Claimant’s ability to for example, maintain a part-time job and drive, demonstrated Claimant does not have significant functional limitations in three or more areas of major life activities. Service Agency concluded Claimant was not eligible for services under the Lanterman Act because she does not have a qualifying disability, any potentially qualifying disability was not present during Claimant’s developmental period (before she reached 18 years of age), and because Claimant does not have a substantial disability.

Service Agency’s conclusions are not supported by the evidence, are based on speculation, fail to consider Claimant’s medical and educational challenges as an infant and child, and fail to assess Claimant’s functional limitations in a manner appropriate to Claimant’s age. The evidence established Claimant is eligible for services under the Lanterman Act under the category of ID and is substantially disabled in three areas of

major life activities, learning, self-direction, and her capacity for independent living. Claimant's appeal is granted.

FACTUAL FINDINGS

Jurisdiction

1. Claimant is 21 years old and resides with her mother and father. She has two older siblings, a 31-year-old sister and 24-year-old brother who live independently.

2. In early 2022, Claimant's psychologist, Ikram Hassan, Psy.D., referred Claimant to the University of California, Riverside, SEARCH (Support Education Advocacy Resources Community Hope) Autism Center and to the University of California, Los Angeles (UCLA), Harbor-UCLA Neuropsychology Laboratory (Harbor-UCLA) for cognitive assessments. Based on the respective assessments, both SEARCH and UCLA-Harbor referred Claimant to Service Agency for an assessment for eligibility for Lanterman Act services.

3. On November 21, 2022, on behalf of Service Agency Maritza M. Cortes Melendez conducted a Psycho-Social Assessment of Claimant. Ms. Cortez Melendez recommended Service Agency conduct a psychological evaluation of Claimant.

4. On March 18 and 25, 2023, Sung Shim Kim-Robinson, M.A., a registered psychological assistant, conducted a psychological evaluation of Claimant. The evaluation was reviewed by Robert Koranda, Ph.D. Ms. Kim-Robinson concluded Claimant does not have a qualifying disability and therefor is not eligible for services under the Lanterman Act.

5. On May 2, 2023, Service Agency issued a Notice of Action (NOA) to Claimant informing Claimant it had determined she was not eligible for services under the Lanterman Act.

6. On May 11, 2023, Claimant submitted an Appeal Request Form.

7. Jurisdictional requirements have been met.

Claimant's Assessments and Records

INDIVIDUALIZED EDUCATION PLAN

8. Claimant's Individualized Education Plan (IEP) from January 2020 (2020 IEP), when Claimant was 17 years old, was admitted as Exhibit 6. Claimant's original IEP was established in 2014, when Claimant was 12 years old. Claimant qualified for special education services under "Other Health Impairment" and was provided special education services for her struggles with retaining information relating to her reading comprehension and writing. (Exh. 6, pp. A44 & A46.)

9. The 2020 IEP provided the following assessment of Claimant's educational struggles. (Some of the content of the 2020 IEP is blurred or cut off as indicated in the following quote as "[illegible]".)

[Claimant] is a soft spoken young lady. She gets along well with her familiar peers and with adults. [Claimant] is a hard worker, she turns in all assignments and does all her homework to the best of her ability. In her English class she is able to accurately answer text dependent questions [illegible] write evidence based responses on the in class novel being read.

[Claimant] struggles with retaining information and she struggles with grammar, punctuation and the use of complex sentences. She needs to be [illegible] write reading-based arguments to support claims in her analysis of substantive topics or texts, using valid reasoning and relevant and [illegible] evidence. She has difficulties finding proper quotes for evidence in her writing. While she is able to provide some support for her [illegible], she needs constant reminders to stay focused in her writing. She uses short sentences and has some grammatical issues in writing. She has to learn how to incorporate quotes and use evidence to support her claims when writing. She has to re-read several times to understand main ideas and in order to dissect the information.

[Illegible] impact of disability: [Claimant's] other health impairment impairs her ability to write reading based arguments with valid and relevant support, as well write focused, detailed and grade level passages which impacts her involvement and progress in the general education curriculum.

(Exh. 6, p. A44.)

SEARCH ASSESSMENT

10. At the referral of Dr. Hassan, SEARCH evaluated Claimant for Autism Spectrum Disorder (ASD). On May 31, 2022, Jan Blacher, Ph.D., and Katherine

Stavropoulous, Ph.D., conducted the Autism Diagnostic Observation Schedule – Second Edition (ADOS-2), Module 4, and the Weschler Abbreviated Scale of Intelligence, Second Edition (WASI-II), assessments of Claimant via telehealth, and on June 12, 2022, Dr. Blacher and an assistant conducted an in-person Vineland Adaptive Behavior Scales, Third Edition (VABS-III), assessment of Claimant. Based on the referral from Dr. Hassan, when conducting these assessments Drs. Blacher and Stavropoulous understood Dr. Hassan had been working with Claimant for some time and had identified concerns about Claimant in the areas of anxiety, depression, and attention deficits.

11. The SEARCH findings were summarized in a June 29, 2022, letter sent to Dr. Hassan (SEARCH Assessment) (Exh. 5). Drs. Blacher and Stavropoulous concluded Claimant did not exhibit symptoms of ASD. “She spoke well, made eye contact, differentiated herself appropriately from others, demonstrated social skills. When she was unable to respond to the Module 4 items, it had more to do with her understanding of abstract concepts (e.g., loneliness) and her lack of vocabulary to express feelings and ideas. These deficits were shown more clearly in the cognitive testing.” (Exh. 5, p. A39.)

12. On the WASI-II Claimant’s FSIQ score was 71, third percentile, with her overall cognitive abilities falling in the Low range. “[Claimant] appeared to put forth her best effort during the cognitive assessment, and overall, this assessment appears to be an accurate reflection of her cognitive abilities.” (Exh. 5, p. A40.)

13. On the VABS-III, Claimant scored moderately low in communication and socialization (79, eighth percentile each), and adequate in daily living skills (88, 21st percentile), for an overall adaptive behavior composite of moderately low. As explained by the SEARCH Assessment, the VABS-III is “an individual assessment of

adaptive behavior, defined as the day-to-day activities necessary to take care of oneself and get along with others.” (Exh. 5, p. A40.)

Adaptive behavior reflects what an individual actually does in an independent manner (i.e., without prompts or supports) as opposed to what the individual is capable of doing. This is in contrast to standard cognitive and language measures that assess capabilities or potential under highly structured, supportive conditions. The [VABS-III] covers four adaptive behavior domains: Communication, Daily Living Skills, Socialization, and Motor Skills. . . . The results of the [VABS-III] show that [Claimant’s] overall adaptive skills, as well as her Communication, and Socialization are in the Moderately Low range for her age, while her Daily Living Skills are in the Adequate range.

(Id.)

14. The SEARCH Assessment concludes Claimant’s intellectual functioning falls below “typical” and consequently Claimant experiences challenges in many aspects of everyday life including bad memory, inability to pay attention, and needing support in many academic and adaptive tasks. “Furthermore, [Claimant] is vulnerable to being taken advantage of (e.g., in terms of financial transactions or social interactions) which puts her at risk when accessing aspects of her community.” (Exh. 5, p. A40.)

NEUROPSYCHOLOGICAL EVALUATION

15. At the referral of Dr. Hassan, on August 1, 2022, Rachel Fraser, Ph.D., a Neuropsychology Postdoctoral Fellow, Matthew J. Wright, Ph.D., Director of Harbor-UCLA's Neuropsychology Services, and Stephanie Tuncel, M.A., Neuropsychology Extern, collectively the Harbor-UCLA team, conducted a neuropsychological assessment of Claimant via teleconference to characterize Claimant's cognition.

[Claimant] reported difficulty with memory that emerged two years ago after the transition from in-person to video teleconference classes following the onset of the COVID-19 pandemic. [Claimant] reported memory difficulties were characterized by forgetting to-be-completed tasks, items for said tasks, and recent events. [Claimant's] mother corroborated this report. Notably, these memory difficulties were said to be exacerbated on tasks that must be completed under time pressure. [Claimant] also indicated that her memory difficulties have been exacerbated by long sleep latencies (1-2 hours; onset one year ago) and frequent breaks in her sleep each night (onset 1-2 months ago). Further, she stated that although she can get 7-8 hours of sleep per night, she feels tired throughout the day. Additionally, she expressed concerns with her hearing, particularly voices and sounds lower in tone (onset one year ago). Regarding mood, she reported increased sadness, anhedonia, and low motivation. She also stated that for the past two years, she has been irritable, angry, and anxious

and attributes this to being at home more often since the onset of the COVID-19 pandemic Her medical history is significant for a premature birth (2 months) and asthma. Notably, [Claimant] and her mother reported an incident when she was 3-months-old in which she "stopped breathing" to the point where she was turning "purple and blue." She stated that she was taken to the hospital where the doctors completed a tracheostomy to facilitate breathing. Her mother noted that she believes [Claimant] stopped breathing for approximately 5 minutes, which was noted to have occurred 8-10 times during infancy.

16. The neuropsychological evaluation had additional information about Claimant's memory, attention, and ability to perform major life activities. Claimant is distractible, easily confused, becomes disoriented and loses her train of thought easily, and has difficulty doing new things and problem solving. For the previous five months Claimant had to rely on others and other strategies, such as writing down her appointments on a calendar, to compensate for her memory difficulties.

17. Claimant receives assistance from her parents in managing her finances. Although she has her own debit card, Claimant has given her parents access to her accounts so they can monitor her spending. Claimant can prepare basic meals but does not know how to cook; she is able to complete basic household chores, like washing the dishes, but does not perform other chores, such as mopping, to avoid disappointing her mother.

18. Claimant drives, but infrequently. She often forgets how to get to certain places and gets confused when driving and needs assistance from her parents,

particularly with knowing when to make left and right turns and when she should stop or go. Claimant reported she can arrange her own transportation, but Dr. Hassan reported she has difficulty arranging transportation. Dr. Hassan also reported Claimant has evidenced several instances of deficits in judgment, such as falling for insurance job scams. (Exh. 4, p. A36.)

19. The Harbor-UCLA diagnostic impression results for Claimant was mild cognitive impairment due to multiple etiologies and unspecified depressive disorder.

[Claimant] demonstrated cognitive difficulties with attention and working memory, verbal learning and memory, and executive ability for time sensitive, language-based tasks. Her performances and self-report suggest the presence of Mild Neurocognitive Disorder due to multiple etiologies. Of these potential etiologies, her reported hypoxic [below normal level of oxygen in the blood] events during infancy is likely chief among these. Additional detail on her possible history of hypoxia as well as any resultant developmental difficulties would be helpful in clarifying the etiology [sic] and nature of her cognitive difficulties.

(Exh. 4, pp. A33-A34.)

PSYCHO-SOCIAL ASSESSMENT

20. Based on the referrals from SEARCH and Harbor-UCLA, on November 21, 2022, on behalf of Service Agency Ms. Melendez conducted a psycho-social assessment, or intake interview, of Claimant via telephone. Ms. Melendez reviewed and

summarized Claimant's 2020 IEP, SEARCH Assessment, and neuropsychological evaluation, and obtained the following additional information from Claimant.

21. Claimant was born two-months premature, weighing four pounds, and was cared for in the Neonatal Intensive Care Unit for two weeks. At three-months old she suffered hypoxia, resulting in trachea surgery. Claimant walked at 24-months-old, was toilet trained at four-years-old, and spoke at 12 months old, but did not speak in sentences until she was four years old.

22. Claimant communicates in sentences but has a history of speech delays and must ask others to repeat what was said for a better understanding. She can follow two-step commands but struggles with multi-step commands. Claimant can write and read but has difficulty with reading comprehension and retaining information and has difficulty explaining herself.

23. Claimant is not able to cook a complete meal; she can use a microwave but does not know how to use a stove. Claimant is able to make simple purchases using a debit card. Claimant has friends and spends time with them at the mall or park, and she gets along with her parents and extended family. Claimant spends most of her time listening to music and watching YouTube. At the time of the psychosocial assessment Claimant was attending her second year at East Los Angeles College (ELAC) with a goal of becoming a dietician. She described depressive symptoms, attended therapy, and did not have self-injurious behavior.

PSYCHOLOGICAL ASSESSMENT

Psychological Assessment Results

24. On March 18 and 25, 2023, Ms. Kim-Robinson, M.A., conducted a psychological assessment of Claimant. The psychological assessment was reviewed by Robert Koranda, Psy.D. The psychological evaluation was focused on determining whether Claimant presently meets the criteria for a developmental disability under the Lanterman Act and was "not intended to be a comprehensive diagnostic evaluation of mental or emotional disorders." (Exh. 3, p. A23.) Ms. Kim-Robinson reviewed Claimant's 2020 IEP, SEARCH Assessment, neuropsychological assessment, and psycho-social assessment, and administered additional assessments of Claimant. Based on this review and these assessments Ms. Kim-Robinson obtained the following information and drew the following conclusions.

25. Claimant's mental health symptoms include depression, sadness, anhedonia (emotional flat-lining), low motivation, passive suicidal ideations, isolation, and difficulty sleeping. She has experienced these symptoms since she was 13 years old, but they worsened when she was 15 years old, and she noticed her memory deficits began approximately two years ago (2021). Claimant received mental health services with Dr. Hassan through ELAC for approximately 10 months. In high school Claimant obtained average grades of Cs or Ds and Claimant was unsure how she obtained her high school diploma. At ELAC she improved her grades to As and Bs but dropped out of college because she found she had to spend entire days studying and the process was too stressful. Claimant has had three jobs: she worked at Smart and Final when she was 16 years old; Walgreens when she was 17 years old; and she currently works between 14 to 19 hours per week at Big-5, but is seeking full-time employment. Claimant spent time with her friends in-person pre-Covid-19, but now

maintains her friendships primarily through texting and spends most of her time at home watching YouTube or reading.

26. Ms. Kim-Robinson found Claimant to be anxious and hesitant to communicate her needs.

[Claimant] was . . . observed to be anxious and hesitant to communicate her needs with this writer. For example, she frequently looked up at the evaluator as if she wanted to say something, and with prompting she asked, "If I can't find an answer, what do I do?" or, "I don't know [the answer]." She was also observed to be inattentive, as indicated by . . . staring at pictures and often redirecting herself back to the testing. These behaviors may have negatively impacted her scores, at least to a partial degree.

(Exh. 3, p. A26.)

27. Ms. Kim-Robinson conducted a Memory Validity Profile (MVP) of Claimant which is an objective measure to assess whether an examinee is engaged in the testing process and providing test scores that can be interpreted as valid reflections of the examinee's abilities. Claimant scored "16/16," indicating her results were valid. (Exh. 3, p. A26.) "Therefore, [Claimant's] performance on subsequent tests within this evaluation are likely to be an accurate representation of her true cognitive abilities." (*Ibid.*)

28. Ms. Kim-Robinson administered the Social Responsiveness Scale, Second Editions (SRS-2), an objective measure of symptoms associated with ASD, to Claimant. Claimant scored in the severe range, which is above similarly aged peers. However, like

the SEARCH Assessment, Ms. Kim-Robinson did not observe any indicators of ASD and concluded Claimant's SRS-2 score was not consistent with Claimant's abilities to interact with Ms. Robinson. Despite Claimant's nervousness and inattentive behavior, she asked proper questions and made eye contact with Ms. Kim-Robinson and did not demonstrate any difficulty communicating by phone, email, or text. Ms. Kim-Robinson concluded the SRS-2 evaluation did not yield reliable results possibly due to Claimant's overreporting or the presence of other mental health symptoms which she speculated could be impacting Claimant's functioning or behavior.

29. Ms. Kim-Robinson administered the Leiter International Performance Scale – Third Edition (Leiter-3) to Claimant.

[Claimant] was administered the Leiter-3, which is an individually measured assessment of cognitive ability for children and adults. The instructions are provided to the examinee in gestures, and requires no verbal language, which is ideal for individuals with suspected communication deficits or limited English proficiency. The Leiter-3 consists of two types of assessment: The Cognitive Battery . . . and the Attention/Memory Battery During the current evaluation, [Claimant] was administered the Cognitive Battery, where she obtained a Nonverbal IQ of 71, placing her in the Low Range (3rd percentile, between 65 and 77 with 95% confidence).

(Exh. 3, p. A27.) Ms. Kim-Robinson concluded this score was likely to be an underrepresentation of Claimant's true cognitive abilities because Claimant appeared

nervous and lost attention sometimes in completing the subtests to the best of her ability.

30. Ms. Kim-Robinson administered the Adaptive Behavior Assessment System, Third Edition (ABAS-3), to Claimant. The ABAS-3 is a comprehensive, non-referenced assessment of adaptive skills needed to manage self-care effectively and independently, interact with others, and meet environmental demands in different settings.

[The ABAS-3] assesses adaptive behavior in three different domains: Conceptual, Social, and Practical. The three scores are also combined in order to yield a General Adaptive Composite, which is a standard score that summarizes an individual's performance across all adaptive behavior domains. On this administration, [Claimant] obtained a General Adaptive Composite of 66, which places her in the Extremely Low Range (1st percentile, between 63 and 69 with 95% confidence).

(Exh. 3, p. A27.) Ms. Kim-Robinson concluded Claimant's ABAS-3 score was likely to be an underrepresentation of her true adaptive functioning abilities because, for example, "she referred herself to mental health therapy services and three different psychological evaluations without receiving assistance which indicates her adaptive skills in a certain degree." (*Ibid.*) However, Ms. Kim-Robinson's example lacks foundation and is incorrect. There is no evidence Claimant referred herself to therapy at ELAC without receiving assistance, and contrary to Ms. Kim-Robinson's assertions, Claimant did not refer herself to three different psychological evaluations, rather Dr. Hassan, SEARCH, and the Harbor-UCLA team made these referrals.

31. Claimant's ABAS-3 subdomain scores were reported as follows (Exh. 3, pp. A28-A29):

- Conceptual Domain:

This section of the ABAS-3 evaluates the skills related to communicating with others, applying academic skills, and accomplishing tasks. [Claimant's] overall score on this domain places her in the Extremely Low Range when compared to other individuals with a similar age range (1st percentile, between 60 and 72 with 95 percent confidence).

The Communication Subdomain measures Claimant's speech, language, and listening skills needed for communication with others. Her score on this subdomain indicates below average adaptive skills compared to others her age in the normative sample.

The Functional Academics Subdomain measures Claimant's basic skills that form the foundation for reading, writing, and mathematics, as well as other skills needed for daily independent functioning. Her score suggests the presence of Low adaptive skills when compared to similarly aged peers.

The Self-Direction Subdomain measures Claimant's skills needed for independence, responsibility, and self-control. Her score on this subdomain suggests the presence of Extremely Low adaptive skills when compared to others her age in the normative sample.

- Social Domain:

These questions are associated with skills that are needed to satisfactorily engage in interpersonal interactions and the utilization of leisure time. Claimant's

overall score on this domain places her in the Extremely Low Range when compared to other individuals with a similar age range (1st percentile, between 57 and 69 with 95 percent confidence).

The Leisure Subdomain measures the skills needed for engaging in and planning leisure and recreational activities. Her score on this subdomain indicates Extremely Low adaptive skills compared to others her age in the normative sample.

The Social Subdomain measures [Claimant's] skills that are needed for interacting socially and getting along with other people. Her score on this subdomain suggests the presence of Low adaptive skills when compared to similarly aged peers.

- Practical Domain:

This section of the ABAS-3 assesses her ability to take care of her personal needs and function in the community, in addition to taking care of home/classroom settings. Claimant's overall score on this domain places her in the Low Range when compared to other individuals with a similar age range (5th percentile, between 67 and 77 with 95 percent confidence).

The Community Use Subdomain measures Claimant's skills that are needed for functioning and performing important behaviors in the community. Her score on this subdomain indicates Low adaptive skills compared to others her age in the normative sample.

The Home Living Subdomain measures Claimant's skills that are needed for basic care at home, such as cleaning and helping adults with household tasks, and taking care of personal possessions. Her score on this subdomain suggests the presence of Extremely Low adaptive skills when compared to similarly aged peers.

The Health and Safety Subdomain assesses Claimant's skills associated with protecting her health and responding to illness or injury. Her score on this subdomain indicates Below Average adaptive skills when compared to others her age in the normative sample.

The Self-Care Subdomain measures Claimant's adaptive skills that are needed for personal care, such as eating, dressing, grooming, and hygiene. Her score on this subdomain indicates Below Average adaptive skills compared to others her age in the normative sample.

The Work Subdomain measures Claimant's vocational skills that are needed for following instructions, working as a team member, and managing equipment in a work environment. Her score on this subdomain indicates Average Range adaptive skills compared to others her age in the normative sample.

32. Based on the foregoing assessments, Ms. Kim-Robinson arrived at the following diagnostic impression of Claimant: Unspecified Depressive Disorder (F32.9); Unspecified Attention-Deficit/Hyperactivity Disorder (F90.0); and Mild Cognitive Impairment, due to multiple etiologies (by history).

Does [Claimant] present with deficits in general mental abilities? [Claimant's] intellectual abilities were evaluated with the Leiter-3, where she obtained a Nonverbal IQ in the Low Range. She scored in the Low Range on the Figure Ground Subtest, the Very Low Range on the Form Completion Subtest, the Average Range on the Classification/Analogies Subtest, and the Below Average Range on the Sequential Order Subtest. Even though some

of her subtest scores are lower when compared to age related peers, they are not low enough to warrant significant concern. Therefore, there is currently insufficient evidence to support the presence of deficits in general mental abilities. [Claimant] does not presently meet this criterion in order to diagnose Intellectual Disability.

Does [Claimant] present with impairments in everyday adaptive functioning? [Claimant's] adaptive functioning abilities were measured by the ABAS-3 She . . . scored in the Extremely Low Range on the Conceptual Domain, the Extremely Low Range on the Social Domain, and the Low Range on the Practical Domain. Despite these lower scores, according to the [DSM-5], " . . . deficits in adaptive functioning must be directly related to the intellectual impairments described in Criterion A" (deficits in general mental abilities). While some of [Claimant's] scores were estimated to be lower when compared to age related peers, considering her self-reported depressive symptoms of depression and symptoms of ADHD that have not been appropriately treated, that possibly negatively impacted on [Claimant's] performance during the objective cognitive testing and her adaptive functioning, there is presently insufficient information to support that these lower scores can be attributed to the presence of deficits in general mental abilities. Therefore, [Claimant] does not meet this

criterion in order to justify a diagnosis of Intellectual Disability.

(Exh. 3, pp. A29-A30.)

Weight Attributed to Service Agency's Psychological Assessment

33. Service Agency's psychological assessment was completed by Ms. Kim-Robinson, a registered psychological assistant. The psychological assessment was reviewed by Dr. Koranda. Neither Ms. Kim-Robinson nor Dr. Koranda testified at hearing. No evidence was presented as to Ms. Kim-Robinson's training, qualifications, or experience, or specifically her qualifications and authority to diagnose, or rule out the diagnosis of, developmental delays or ADHD. Similarly, no evidence was provided regarding the extent of supervision by Dr. Koranda of Ms. Kim-Robinson during the assessment process with Claimant. The psychological assessment only notes that Dr. Koranda reviewed the assessment. Without such foundation, only little to moderate weight can be given to the psychological evaluation conducted by a psychological assistant. In contrast, the SEARCH Assessment was conducted by Drs. Blacher and Stavropoulous, Doctors of Psychology, and the UCLA-Harbor neuropsychological assessment was conducted by Drs. Fraser and Wright, Doctors of Psychology, and are given greater weight.

34. Sandra Watson, Psy.D., testified on behalf of Service Agency as a consulting clinical psychologist. Dr. Watson had reviewed the assessments of Claimant presented at hearing but did not personally assess Claimant and had not otherwise met Claimant. Dr. Watson's testimony regarding Claimant and the respective assessments was based on her review and not based on her personal knowledge.

Accordingly, Dr. Watson's testimony regarding the psychological assessment were explanatory as to Service Agency's position on eligibility, but it cannot buttress the lack of foundation or reliability of the psychological assessment.

35. Initially, and per Ms. Kim-Robinson's own statement at the beginning of the psychological assessment, the purpose of the psychological assessment was to assess Claimant for developmental delays, and it was "not intended to be a comprehensive diagnostic evaluation of mental or emotional disorders." (Exh. 3, p. A23.) No evidence was presented that Ms. Melendez or Ms. Kim-Robinson were qualified to diagnose ADHD, or that they administered any assessment for the purpose of assessing whether Claimant has ADHD. Nonetheless, it was only Ms. Melendez and Ms. Kim-Robinson who claimed Claimant has ADHD, but these conclusions are not supported by the evidence.

36. The SEARCH Assessment did not diagnose Claimant with ADHD, nor did the Harbor-UCLA neuropsychological evaluation. Rather, the SEARCH Assessment, which did not provide a diagnosis, noted Claimant's testing results suggest Claimant's attention deficits stem from, and are not separate from, her cognitive deficits: "Ana's intellectual functioning falls a bit short of "typical" and thus she experiences challenges in many tasks of everyday life. She experiences these as having a bad memory, not being able to pay attention, and needing support in many academic and adaptive tasks." (Exh. 5, pp. A40-A41.) The Harbor-UCLA neuropsychological evaluation diagnosed Claimant with Mild Cognitive Impairment and Unspecified Depressive Disorder and noted Claimant's attention was "grossly intact" (Exh. 4, p. A35), rather than at a deficit, and described Claimant's attention challenges in connection to her becoming confused or disoriented (*Id.* at p. A36). Further, the record did not contain

information about Claimant having difficulty staying calm or still or being impulsive, symptoms of hyperactivity.

37. In addition, Ms. Kim-Robinson's conclusions in Claimant's psychological assessment are unsupported and based on speculation. Initially, as to all of Claimant's testing results, Ms. Kim-Robinson administered the MVP and determined Claimant was engaged in the testing process and provided valid test scores which reflected Claimant's abilities. However, Ms. Kim-Robinson concluded Claimant's results were in fact not valid but were due to Claimant under or over reporting, her anxiety, or her alleged ADHD, or some combination of these factors. Neither Ms. Kim-Robinson or Service Agency addressed the inconsistency between the MVP's objective assessment concluding Claimant's testing results during the psychological assessment were valid and Ms. Kim-Robinson's conclusion Claimant's scores were not accurate representations of Claimant's cognition or adaptive abilities.

38. As to her conclusion Claimant does not meet the criterion required for a diagnosis of ID, Ms. Kim-Robinson supports this conclusion by stating, "Even though some of [Claimant's] subtest scores are lower when compared to age related peers, they are not low enough to warrant significant concern." (Exh. 3, p. A29.) However, Claimant only scored Average on the Classification/Analogies Subtest (63rd percentile), but scored lower than her age related peers on the remaining subtests: Claimant scored Below Average on the Sequential Order Subtest, 16th percentile; Low Average on the Figure Ground Subtest, 21st percentile; and Very Low Average on the Form Completion Subtest, 1st percentile. Ms. Kim-Robinson's sweeping conclusion that these three subtests do not warrant significant concern are without support and unreliable.

39. Similarly, Ms. Kim-Robinson's conclusion that there was insufficient information to support a conclusion that Claimant's lower adaptive functioning scores could be attributed to the presence of deficits in general mental abilities were flawed and unreliable. First, like Ms. Kim-Robinson's conclusion about Claimant's lack of ID diagnosis, Ms. Kim-Robinson concluded Claimant scored lower on some adaptive functioning assessments in comparison to her peers; however, contrary to Ms. Kim-Robinson's statement, Claimant scored lower in all the adaptive functioning assessments scores. Claimant scored in the Extremely Low Range on the Conceptual Domain, first percentile; the Extremely Low Range on the Social Domain; first percentile; and the Low Range on the Practical Domain, fifth percentile. Further, Ms. Kim Robinson supported her conclusion regarding Claimant's adaptive functioning by attributing Claimant's adaptive functioning scores to Claimant's alleged ADHD. However, the evidence did not establish Claimant has ADHD.

TESTIMONY OF SANDRA WATSON, PSY.D.

Dr. Watson's Assessment of Claimant's Lack of Eligibility

40. Dr. Watson was the sole witness for Service Agency. Dr. Watson has been a clinical psychologist for 20 years and has consulted with Service Agency since 2015. Her current duties for Service Agency include consulting on Service Agency's eligibility team to make eligibility decisions pursuant to the Lanterman Act. She had not met Claimant before the hearing and did not conduct any assessment of Claimant. She based her testimony on her review of the exhibits submitted at hearing.

41. Dr. Watson explained that Service Agency's eligibility team is comprised of at least one clinical psychologist, individuals trained as school psychologists, a nutritionist, and a manager of eligibility. The team reviews an applicant's psychosocial

report, psychological report, and other information provided before making an eligibility determination. Dr. Watson did not testify that there is a physician on Service Agency's eligibility team.

42. Dr. Watson summarized the eligibility requirements of the Lanterman Act, i.e., the applicant must have a qualifying disability that originates before the individual is 18 years of age and which constitutes a substantial disability; the qualifying disabilities are epilepsy, cerebral palsy, ID, ASD, or eligibility under the 5th Category (described in more detail below). Dr. Watson agreed with Ms. Kim-Robinson's diagnostic impressions, and with the eligibility team's determination that Claimant is not eligible for Lanterman Act services. She explained Claimant was denied eligibility because she was not diagnosed with any qualifying condition, but she focused her testimony on Claimant's alleged lack of a substantial disability.

43. No evidence was presented, nor was it claimed, that Claimant has epilepsy or cerebral palsy. Regarding ASD, Dr. Watson summarized that Claimant's ability to form and maintain relationships with her friends and family, make eye contact, and engage in reciprocal communication demonstrated Claimant does not meet requirements of an ASD diagnosis.

44. Regarding ID and the 5th Category, Dr. Watson acknowledged Claimant did not walk until she was 24 months old, and Claimant was not toilet trained and did not complete full sentences until she was four years old, but concluded these delayed milestones were not remarkable because Claimant ultimately achieved these skills. Similarly, Dr. Watson acknowledged Claimant's hypoxia occurred as reported but concluded that although it may have been the cause of Claimant's Mild Cognitive Disorder because it has not caused Claimant to have a qualifying condition under the Lanterman Act or one that occurred before Claimant was 18 years of age. In response

to questions asked by the ALJ, Dr. Watson acknowledged that based on her FSIQ of 70 Claimant meets one of the requirements of an ID diagnosis. However, Dr. Watson dismissed the significance of Claimant's FSIQ score, testifying it was not reliable because, in summary, it was likely caused by Claimant's mental health issues.

45. In support of the eligibility team's determination Claimant does not have a substantial disability, Dr. Watson addressed topics related to substantial disability, including learning, self-care, and safety awareness. Dr. Watson noted that although Claimant struggled to have good grades in school, she successfully navigated through the school system and achieved a diploma. Claimant is now able to maintain a job and drive a car, activities which, Dr. Watson concluded, demonstrate Claimant is high functioning and does not have a substantial disability. Dr. Watson added that Claimant's ability to maintain a job also demonstrates she would not require job coaching, a service available under the Lanterman Act. In addition, Claimant is able to independently feed herself, groom and bathe, wash dishes, calculate change and use a debit card, and she executes sufficient safety awareness to drive and conduct herself in public without assistance.

46. Dr. Watson testified that the foregoing examples demonstrate Claimant has the capacity to engage in these major life activities, and that individuals eligible for Lanterman Act services do not have this capacity for such high-level functioning. However, in response to the ALJ's inquiry, Dr. Watson acknowledged that in fact persons eligible for Lanterman Act services do have the capacity for such major life activities and in fact that is often the purpose of Lanterman Act services, to develop individuals' capacities to, for example, work, drive, or make simple purchases using a debit card.

Lack of Weight Attributed to Dr. Watson's Testimony

47. Dr. Watson's testimony relied heavily on speculations that Claimant's challenges with school, self-care, and other major life activities were caused by Claimant's anxiety, depression, a lack of motivation, or ADHD, and that these symptoms are not necessarily caused by a developmental delay. However, Dr. Watson's speculations are given little weight. As was previously found, the evidence did not establish Claimant has ADHD. In addition, Service Agency did not establish Claimant had anxiety or depression as a minor and, as such, these challenges would not have caused her learning challenges. Further, a single IEP and a diploma do not establish Claimant does not have a substantial disability in learning. In addition, the evidence does not support Claimant's challenges with major life activities are due to a lack of motivation. To the contrary, the evidence established that Claimant's motivation to engage in life like her peers may be her strength. As an example, Claimant alone submitted her Request for Appeal and appeared and participated in hearing because she is aware she is experiencing increasing cognitive challenges with which she is unable to cope.

48. Finally, Dr. Watson's testimony did not establish that Service Agency's conclusion Claimant does not have a substantial disability was based upon a reasonable assessment of Claimant as appropriate to her age. Claimant is 21 years old, and Service Agency found it sufficient, and comparable to her 21-year-old peers, that Claimant could use a microwave, wash dishes, bathe herself, text friends, drive, maintain a part-time job, and use a debit card. In support of Service Agency's determination, Dr. Watson placed great weight on the fact that Claimant drives and has not incurred driving tickets or accidents. However, the evidence established Claimant is confused when she drives, often relying on her parents to remind her of

basic driving rules, such as how to execute a turn and when to stop. Great weight was also placed on the fact that Claimant has maintained a job at Big-5 for several months. However, Claimant is 21 years old and has not, in fact, been able to maintain a job for a prolonged period of time as evidence by her multiple jobs over a short period of time. In addition, Claimant did not demonstrate the independent living skill of money management. Rather, the evidence established that while she can use a debit card to make simple purchases, at age 21 she relies on her parents to monitor her spending and bank accounts. Finally, whether or not they might choose to do so, 21-year-olds generally are able to cook beyond using a microwave and socialize more than infrequent texting.

Claimant's Testimony

49. During hearing Claimant was primarily quiet, though she stated she understood the hearing process and information provided. Claimant's testimony focused on her increasing problems with memory and daily functioning. Upon hearing Service Agency explain why it had determined she is not eligible for services, Claimant asked for assistance with obtaining mental health services.

50. By advocating for herself in the fair hearing process, Claimant demonstrated a practical ability to complete the Appeal Request Form, and to log into and follow the fair hearing procedures. However, Claimant was passive and quiet throughout most of the hearing, providing little testimony and asking few questions. Further, after hearing Service Agency's reasons for denying her eligibility, Claimant readily acquiesced to Service Agency's position that her challenges were caused by her mental health challenges and asked for mental health service referrals. Claimant's presentation at hearing was consistent with the SEARCH Assessment and Harbor-UCLA

neuropsychological assessment denoting her cognitive challenges and a tendency to be easily led by others.

LEGAL CONCLUSIONS

Jurisdiction

1. The Lanterman Act governs this case. An administrative “fair hearing” to determine the rights and obligations of the parties is available under the Lanterman Act. (§§ 4700-4716.) (Factual Findings 1-7.)

Burden of Proof

2. The party asserting a condition which would make the individual eligible for a benefit or service has the burden of proof to establish he or she has the condition. (*Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 160-161.) In this case, Claimant bears the burden of proving by a preponderance of the evidence Claimant has a developmental disability as defined by the Lanterman Act and is eligible for regional center services. (Evid. Code, § 115.)

Lanterman Act Eligibility Requirements

3. A developmental disability is a disability that originates before an individual turns 18 years old. This disability must be expected to continue indefinitely and must constitute a substantial disability for the individual. Developmental disabilities are limited to cerebral palsy, epilepsy, ASD, ID, or a disabling condition found to be closely related to intellectual disability or to require treatment similar to that required for an individual with an intellectual disability (5th Category). Developmental disabilities do not include other handicapping conditions that are

solely physical in nature, or which are solely psychiatric disorders or learning disabilities. (§ 4512, subd. (a); Cal. Code Regs., tit. 17, § 54000.)

DSM-5 DEFINITIONS OF AUTISM SPECTRUM DISORDER AND INTELLECTUAL DISABILITY; DEFINITION OF 5TH CATEGORY

Autism Spectrum Disorder

4. The DSM-5 defines ASD as having the following four essential features. First, an individual must have persistent impairment in reciprocal social communication and social interaction (Criterion A), as manifested either currently or historically by all of the following: (1) deficits in social-emotional reciprocity, (2) deficits in nonverbal communication behaviors used for social interaction, and (3) deficits in developing, maintaining, and understanding relationships. Second, the individual must have restricted, repetitive patterns of behavior, interests or activities (Criterion B), as manifested by at least two of the following: (1) stereotyped or repetitive motor movement, use of objects or speech, (2) insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior, (3) highly restricted, fixated interests that are abnormal in intensity or focus, and (4) hyper- or hypo-reactivity to sensory input or unusual interest in sensory aspects of the environment. Third, these symptoms must be present in early childhood (Criterion C). Fourth, these symptoms must limit or impair everyday functioning. (Criterion D).

5. The evaluations, assessments, and other evidence presented at hearing did not establish Claimant has ASD. For example, evidence was not presented, nor did Claimant allege, that she had deficits in social-emotional reciprocity or restricted, repetitive patterns of behavior, interests, or activities. (Factual Findings 8-49.)

Fifth Category

6. Under the fifth category of eligibility the Lanterman Act provides for assistance to individuals with “disabling conditions found to be closely related to [ID] or to require treatment similar to that required for [individuals with ID],” but does “not include other handicapping conditions that are solely physical in nature.” (Welf. & Inst. Code § 4512, subd. (a); see *Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, 1129 (*Mason*)). The fifth category is not defined in the DSM-5. Because the evidence established Claimant is eligible under the Lanterman Act category of ID, an assessment of Claimant’s eligibility under the 5th Category is not necessary.

Intellectual Disability

7. The DSM-5 provides that the following three diagnostic criteria must be met to be diagnosed with ID.

An individual must have deficits in intellectual functions, such as reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience, confirmed by both clinical assessment and individualized, standardized intelligence testing (Criterion A). Individuals with ID have Full-Scale Intelligence Quotient (IQ) scores between 65 to 75, including a five-point margin for measurement error. The DSM-5 cautions that IQ tests must be interpreted in conjunction with considerations of adaptive function. The DSM-5 explains that a person with an IQ score above 70 may have such severe challenges in adaptive behavior, such as problems with social judgment or social understanding, that the individual’s actual functioning is comparable to that of individuals with a lower IQ score.

The DSM-5 definition of ID also requires individuals with ID to have deficits in adaptive functioning that result in a failure to meet developmental and socio-cultural standards for personal independence and social responsibility, which, without ongoing support, limit functioning in one or more activities of daily life, such as communication, social participation, and independent living, across multiple environments, such as home, school, work, and community (Criterion B). This criterion is met when at least one domain of adaptive functioning – conceptual, social, or practical – is sufficiently impaired such that the individual requires ongoing support to perform adequately in one or more life settings at school, at work, at home, or in the community. The levels of severity of ID are defined on the basis of adaptive functioning, and not IQ scores, because the adaptive functioning determines the level of supports required.

Finally, individuals with ID must experience the onset of these symptoms during the developmental period (before reaching 18 years of age) (Criterion C).

8. The DSM-5 includes descriptions of the three severity levels of ID, mild, moderate, and severe. Mild ID presents as follows (Exh. 7, pp. A72-A73):

Conceptual Domain: In adults, abstract thinking, executive function (i.e., planning, strategizing, priority setting, and cognitive flexibility), and short-term memory, as well as functional use of academic skills (e.g., reading, money management), are impaired. There is a somewhat concrete approach to problems and solutions compared with age-mates.

Social Domain: Compared with typically developing age-mates, the individual is immature in social interactions. For example, there may be difficulty in accurately perceiving peers' social cues. Communication, conversation, and language

are more concrete or immature than expected for age. There may be difficulties regulating emotion and behavior in age-appropriate fashion; these difficulties are noticed by peers in social situations. There is limited understanding of risk in social situations; social judgment is immature for age, and the person is at risk of being manipulated by others (gullibility).

Practical Domain: The individual may function age-appropriately in personal care. Individuals need some support with complex daily living tasks in comparison to peers. In adulthood, supports typically involve grocery shopping, transportation, home and child-care organization, nutritious food preparation, and banking and money management. Recreational skills resemble those of age-mates, although judgment related to well-being and organization around recreation requires support. In adulthood, competitive employment is often seen in jobs that do not emphasize conceptual skills. Individuals generally need support to make health care decisions and legal decisions and to learn to perform a skilled vocation competently. Support is typically needed to raise a family.

9. The DSM-5 definition of ID also includes a section addressing Associated Features Supporting Diagnosis (Exh. 8, p. A76) which provides the following:

Intellectual disability is a heterogeneous condition with multiple causes. There may be associated difficulties with social judgment; assessment of risk; self-management of behavior, emotions, or interpersonal relationships; or motivation in school or work environments. Lack of communication skills may predispose to disruptive and aggressive behaviors. Gullibility is often a feature, involving naivete in social situations and a tendency for being easily

led by others. Gullibility and lack of awareness of risk may result in exploitation by others and possible victimization, fraud, unintentional criminal involvement, false confessions, and risk for physical and sexual abuse. These associated features can be important in criminal cases, including Atkins-type hearings involving the death penalty. [¶] . . . [¶]

10. The DSM-5 also includes a section addressing Risk and Prognostic Factors and not that postnatal causes of ID include hypoxic ischemic injury. (Exh. 7, p. A77). Finally, the DSM-5 addresses comorbidity with ID (Exh. 7, p. A78) as follows:

Co-occurring mental, neurodevelopmental, medical, and physical conditions are frequent in intellectual disability, with rates of some conditions (e.g., mental disorders, cerebral palsy, and epilepsy) three to four times higher than in the general population. The prognosis and outcome of co-occurring diagnoses may be influenced by the presence of intellectual disability. Assessment procedures may require modifications because of associated disorders, including communication disorders, autism spectrum disorder, and motor, sensory, or other disorders. Knowledgeable informants are essential for identifying symptoms such as irritability, mood dysregulation, aggression, eating problems, and sleep problems, and for assessing adaptive functioning in various community settings.

The most common co-occurring mental and neurodevelopmental disorders are attention-deficit/hyperactivity disorder; depressive and bipolar disorders; anxiety disorders; autism spectrum disorder; stereotypic movement disorder (with or without self-injurious behavior); impulse-control disorders; and major neurocognitive disorder. Major depressive disorder may occur throughout the range of severity of intellectual disability. . . .

SUBSTANTIAL DISABILITY

11. "Substantial disability" means:

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

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

(A) Receptive and expressive language;

(B) Learning;

(C) Self-care;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living;

(G) Economic self-sufficiency.

(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.

(Cal. Code Regs., tit. 17, § 54001; see § 4512 (1)(1).)

12. In addition to the insufficient reliability of Service Agency's psychological assessment and testimony of Dr. Watson (Factual Findings 33 through 39 and 46 through 47), Service Agency's eligibility determination is attributed less weight because of its failure to comply with the requirements set forth in California Code of Regulations, title 17, section 54001, subdivision (b) and (c). Subdivision (b) requires its

assessment of substantial disability be made by a group of Service Agency professionals which must include a physician, however no evidence was provided that a physician was on Service Agency's eligibility determination team. In addition to being a requirement of subdivision (b), the expertise of a physician may have provided necessary insight into the effect of Claimant's multiple incidents of hypoxia on her cognitive functioning as an infant, child, teenager, and young adult. In addition, Service Agency failed to consult with Claimant's parents, educators, or advocates, such as Dr. Hassan. Rather, Service Agency consulted solely with Claimant, a 21-year-old with, among other cognitive challenges, memory challenges, and relied on a few statements gathered by Claimant's mother by the Harbor-UCLA team.

13. Service Agency submitted the Association of Regional Center Agencies "Clinical Recommendations for Defining Substantial Disability" (Recommendations). (Exh. 9.) The Recommendations provide that "[w]hen determining Regional Center eligibility, consider the following guidelines when formulating an opinion as to whether or not an individual has a "substantial disability" across multiple settings in at least 3 or more areas of major life activities" (Exh. 9, p. A80):

Self-Care: significant limitations in the ability to acquire and perform basic self-care, e.g., personal hygiene, (toileting, washing and bathing), grooming (dressing, hair and nail care), and feeding (chewing and swallowing).

Receptive and Expressive Language: significant limitations in both the comprehension and expression of verbal and/or nonverbal communication resulting in functional impairments. Consider receptive language, individual needs information rephrased to a simpler level in order to enhance understanding, significant difficulty understanding simple conversation, following directions, or understanding and

interpreting nonverbal communication. Expressive: significant difficulty participating in basic conversations or atypical speech patterns.

Learning: substantially impaired in the ability to acquire and apply knowledge or skills to new situations even with special intervention. Consider general intellectual ability, academic achievements, retention for short or long term memory, and reasoning, e.g., ability to grasp concepts, perceive cause and effect relationship and ability to generalize information and skills from one situation to another.

Mobility: significant limitations with independent ambulation.

Self-Direction: significant impairment in the ability to make and apply personal and social judgments and decisions. Emotional development: routinely has difficulty coping with fears, anxieties or frustrations; interpersonal relationships has significant difficulties establishing and maintaining relationships with family or peers, social immaturity; marked difficulty protecting self from exploitations; personal judgement significant difficulty in making appropriate choices, maintaining daily schedules, following prescribed treatments and diet.

Capacity for Independent Living: unable to perform age-appropriate independent living skills without the assistance of another person: significant difficulty performing age appropriate household tasks; managing multiple-step domestic activities (grocery shopping, meal planning and preparation, laundry, home repair and maintenance); does not have age appropriate capacity to be left unsupervised, lack of safety awareness; significant difficulty with money management (using bank accounts), making small purchases independently and budgeting.

Economic Self-Sufficiency: individual lacks the capacity to participate in vocational training or to obtain and maintain employment without significant support.

Analysis of Claimant's Eligibility for Lanterman Act Services

14. As provided above, Claimant is not eligible for Lanterman Act services under the categories of cerebral palsy, epilepsy, or ASD, and a determination regarding eligibility under the fifth Category does not need to be reached because Claimant is eligible under the Lanterman Act category of ID. (Factual Findings 10-14, 43; Legal Conclusions 5 & 6.)

15. In consideration of the evidence presented and requirements of the Lanterman Act, the DSM-5, and the Recommendations, it was established by a preponderance of the evidence Claimant is eligible for Lanterman Act services under the category of ID and is substantially disabled in three areas of major life activity, learning, self-direction, and her capacity for independent living. (Factual Findings 8-49.)

16. Claimant's FSIQ score was 71, both on the WASI-II and the Leiter-3 assessments. This FSIQ score places Claimant within Criterion A of the DSM-5's definition of ID. Contrary to Service Agency's representations that Claimant's symptoms of depression, anxiety, and attention deficits preclude Claimant from the DSM-5's definition of ID, or that these symptoms inappropriately skewed Claimant's scoring to make it appear Claimant has ID, the DSM-5 actually identifies these symptoms as common comorbidities of ID. Further, as the SEARCH Assessment found it was Claimant's intellectual functioning which resulted in Claimant experiencing challenges with her memory and attention.

17. As provided by Criterion B of the DSM-5's definition of ID, Claimant has deficits in three domains of adaptive functioning - conceptual, social, and practical - that result in a failure to meet developmental and socio-cultural standards for personal

independence and social responsibility which, without ongoing support, limit her functioning in one or more activities of daily life, such as communication, social participation, and independent living, across multiple environments, (Factual Findings 8-49.) Claimant's ID is consistent with Mild Intellectual Disability: in the conceptual domain, Claimant's abstract thinking and short-term memory are impaired; in the social domain, Claimant has limited understanding of risk in social situations, her social judgment is immature, and she is at risk of being manipulated and exploited by others; and in the practical domain, claimant needs support with complex daily living tasks such as driving and banking and money management. (Factual Findings 8-49.)

18. Finally, the evidence established Claimant experienced the onset of these symptoms during the developmental period (before reaching 18 years of age) therefore meeting the requirement of Criterion C of the DSM-5's definition of ID. Claimant experienced multiple episodes of hypoxia in her infancy, a noted postnatal cause of ID. Soon after, she demonstrated delays in reaching developmental milestones including walking, toileting, and speaking complete sentences. Once in school, Claimant struggled with her memory to the point she had to reread information multiple times or have others repeat themselves to achieve retention, and she was limited to following two-step commands but struggled with multi-step commands. (Factual Findings 8-49.)

19. Claimant also meets the Lanterman Act's definition of Substantial Disability and the evidence established she is substantially disabled in three areas of major life activities, learning, self-direction, and her capacity for independent living. Claimant is substantially impaired in the major life activity of learning: she struggles to acquire and apply knowledge or skills to new situations even with special intervention; she dropped out of college because the academic struggles were too great, causing he

significant stress; she struggles grasping abstract concepts; and she is increasingly losing her memory. Claimant is substantially impaired in the major life activity of self-direction: although Claimant has some strengths in self-direction, she has marked difficulty protecting herself from exploitations and maintaining daily schedules, to the point she must write multiple notes to herself, not typical of a 21-year-old. Finally, Claimant is substantially impaired in the major life activity of the capacity for independent living: although she has a basic capacity to drive, intellectually she cannot remember how to turn or stop without the assistance of her parents; although she can use a debit card to make simple purchases, she requires her parents' assistance to manage her money; and although she can use the microwave and wash dishes, she is not able to prepare or cook a meal or perform more complex household chores. (Factual Findings 8-49.)

Conclusion

20. It was established by a preponderance of the evidence Claimant has a developmental disability as defined by the Lanterman Act. Claimant has ID, a qualifying disability which originated before Claimant was 18 years of age, and Claimant is substantially disabled in three areas of major life activity, learning, self-direction, and her capacity for independent living. (Factual Findings 8-49.) Claimant's appeal is granted.

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ORDER

Claimant is eligible for regional center services under the Lanterman Act under the category of Intellectual Disability. Claimant's appeal is granted.

DATE:

CHANTAL M. SAMPOGNA
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. Each party is bound by this decision. Either party may request a reconsideration under Welfare and Institutions Code section 4713, subdivision (b), within 15 days of receiving the decision, or appeal the decision to a court of competent jurisdiction within 180 days of receiving the final decision.