

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

SOUTH CENTRAL LOS ANGELES REGIONAL  
CENTER,

Service Agency.

OAH Case No. 2018020296

DECISION

Cindy F. Forman, Administrative Law Judge, Office of Administrative Hearings, heard this matter on September 17, 2018, in Los Angeles, California.

Aaron Abramowitz, Attorney at Law, represented South Central Los Angeles Regional Center (SCLARC or Service Agency).

Perfesity McGhee, Attorney at Law, represented Claimant. Both Claimant and his mother were present during the hearing.<sup>1</sup>

Oral and documentary evidence was received at the hearing. The record was left open until October 2, 2018, to allow the parties to file closing briefs. Claimant's closing brief was marked and lodged as Exhibit A; Service Agency's closing brief was marked and lodged as Exhibit 13.

The record was closed and the matter was submitted for decision on October 2, 2018.

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<sup>1</sup> Initials have been used to protect the privacy of Claimant and his family.

## ISSUE

Is Claimant eligible for regional center services by reason of a developmental disability within the meaning of the Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code<sup>2</sup> section 4500 et seq. (Lanterman Act)?

## FINDINGS OF FACT

1. Claimant is a 16-year-old male. Claimant asserts he is eligible for regional center services because he suffers from either intellectual disability or a "fifth category" condition, i.e., a disabling condition closely related to intellectual disability or requiring treatment similar to that required for individuals with intellectual disability.<sup>3</sup> The parties do not dispute that Claimant does not suffer from cerebral palsy, epilepsy, or autism.

2. On December 12, 2017, SCLARC issued a Notice of Proposed Action and accompanying letter informing Claimant of his ineligibility for regional center services because he did not have an eligible disability that was substantially disabling within the meaning of the Lanterman Act. (Ex. 1.) SCLARC posited that Claimant suffered from Schizoaffective Disorder, Bipolar Type by history, and Borderline Intellectual Functioning, none of which constituted developmental disabilities under the Lanterman Act.

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<sup>2</sup> All further statutory references are to the Welfare and Institutions Code.

<sup>3</sup> At hearing, the parties agreed that Claimant was seeking regional center services based on fifth category eligibility. Claimant's closing brief, however, does appear to claim that Claimant is also eligible because he meets the developmental disability criteria as a "substantially disabled individual with intellectual disability." (Ex. A, p. 2.) This Decision addresses whether Claimant falls within any of the eligibility categories of the Lanterman Act.

3. On December 22, 2016, Claimant's attorney filed a fair hearing request on Claimant's behalf, appealing SCLARC's eligibility denial and requesting a hearing. (Ex. 3.) For reasons not made clear in the record, after receipt of the fair hearing request, SCLARC agreed to conduct an additional psychological evaluation of Claimant. The psychological examination took place on June 18, 2018. After review of the report of that examination, SCLARC again found Claimant to be ineligible for regional center services. By letter dated July 25, 2018, Service Agency informed Claimant's mother of his ineligibility. (Ex. 2.) On August 22, 2018, Claimant's attorney filed a new fair hearing request, appealing the eligibility denial and requesting a hearing. (Ex. 4.)

4. This hearing ensued.

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#### CLAIMANT'S BACKGROUND

5. Claimant has lived at home with his mother, two younger brothers, and a younger sister, except when he was detained by juvenile court. Claimant's father has been actively involved in Claimant's life. <sup>4</sup>

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<sup>4</sup> Neither Claimant nor his mother testified at the hearing. Accordingly, Claimant's medical history and educational background have been gleaned from the

6. Claimant does not suffer from any significant medical problems. He had no prenatal exposure to drugs and alcohol, and his mother received prenatal care after learning she was pregnant. Claimant has no history of head injuries or a loss of consciousness, and he does not have any problems with his hearing. Claimant reached all of his developmental milestones in a timely manner.

7. Claimant has a history of mental health problems. He suffers from Attention Deficit Hyperactivity Disorder (ADHD), and Claimant has reported depression, paranoid beliefs about other people harming him, auditory hallucinations, and fluctuations in his mood. In 2014, Claimant was hospitalized for approximately a week at Del Amo Behavioral Health, a psychiatric hospital, because he threatened to kill his mother and his sister. Claimant has received individual psychological counseling at his local school and while detained as well as mental health wraparound services through Star View Community Services (Star View). Claimant has been prescribed medication to address his psychiatric problems, but he has not always taken the medication. At some point not clear in the record, Claimant's wraparound services ended, and Claimant stopped taking his medication. Claimant's mother reported that Claimant then became truant, aggressive, and isolative. Claimant has recently resumed taking medication for his ADHD. The parties presented no evidence regarding whether Claimant is currently receiving mental health services and the nature of such services.

8. Claimant was reportedly in the tenth grade at the time of the June 2018 evaluation. Claimant qualified to receive special education services in 2013 when he was 11 years old as a student with a Specific Learning Disability. At the time, Claimant was easily distracted, had difficulties following directions, produced little schoolwork unless closely supervised, and was disrespectful toward his peers. (Ex. 11,

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psychological evaluations and the school records made part of the evidentiary record.

SCLARC 00073.) Claimant presently qualifies for special education services as a student with Emotional Disturbance due to his “inappropriate types of behaviors/feelings under normal circumstances, and his tendency to develop physical symptoms associated with personal/school problems, which impact his ability to progress and involvement in the general education curriculum without supports.” (Ex. 12, SCLARC 000116.)<sup>5</sup> Based on his 2017 Individualized Education Plan (IEP), Claimant receives a general education curriculum in a special day class. He also participates in 30 minutes of individual counseling each week and has a behavior plan.

9. In April 2014, Claimant’s school found him eligible for educational related mental health services based on repeated physical altercations with peers, verbal assault to peers, and defiance with teachers and staff. (Ex. 11, SCLARC 00073.)

10. Claimant was first arrested when he was 14 years old, and he has been arrested several times since then. As a result, Claimant has spent time in detention at times in Central Juvenile Hall and Barry J. Nidorf Juvenile Hall.

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<sup>5</sup> California Code of Regulations, title 5, section 3030, subdivision (b)(4), defines “emotional disturbance” as “a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child’s educational performance: (A) An inability to learn that cannot be explained by intellectual, sensory, or health factors. (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers. (C) Inappropriate types of behavior or feelings under normal circumstances. (D) A general pervasive mood of unhappiness or depression. (E) A tendency to develop physical symptoms or fears associated with personal or school problems. (F) Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under subdivision (b)(4) of this section.”

## PRIOR EVALUATIONS

11. Claimant submitted to five psychological evaluations between July 2017 and June 2018. Three of the evaluations were conducted in connection with Claimant's juvenile court proceedings; psychologists contracted by Service Agency conducted the other two evaluations. In addition, Los Angeles County of Education (LACOE) performed a number of psychological and academic tests as part of its Psychoeducational Assessment conducted during Claimant's detention.

12. A. Ann Walker, Ph.D., clinical psychologist, conducted an evaluation on July 2, 2017, at the request of Claimant's public defender. At the time of the evaluation, Claimant was 15 years old. The purpose of the evaluation was to assess Claimant's intelligence, social adaptive skills, and mental health issues.

B. Dr. Walker administered Claimant the Wechsler Intelligence Scale for Children – Fifth Edition (WISC-5) to assess his cognitive functioning. Claimant scored in the borderline range in the following areas: verbal comprehension (SS=73); fluid reasoning (SS=79); and visual spatial (SS=84). Claimant scored in the normal range for working memory and processing speed. Claimant's Full Scale Intellectual Quotient (FSIQ) was in the borderline range (FSIQ=76) and fifth percentile, indicating that Claimant processed and comprehended information, found solutions to novel problems, and learned more slowly than 95 percent of his peers. Dr. Walker found Claimant's performance "showed significant weakness in his verbal reasoning skills and in his ability to approach novel problems. ... [Claimant] is slow to analyze novel problems and he is slow to process and understand verbal information. [Claimant] may seem to understand verbal information, but does not. It takes him a long time to really understand." (Ex. 9, SCLARC 000053.)

C. Dr. Walker also reviewed Claimant's scores on the Wide Range Achievement Test-Fourth Edition (WRAT-4), which had been administered on September 26, 2015, when Claimant was 13 years old, to assess Claimant's

fundamental academic skills. Claimant's word reading skills scored at a 3.0 grade level and his sentence comprehension skills scored at a 2.7 grade level, both in the significantly below normal range. Claimant had refused to complete the math portion of the test.

D. Claimant's scores on the Vineland Adaptive Behavior Scales, Second Edition (VABS II) were in the low range, with significantly low scores on the Communication, Daily Living Skills, and Socialization Domains. Dr. Walker noted, however, that Claimant easily engaged in conversation, understands what he is reading at the second grade level, dresses and bathes independently, sweeps, does dishes, places phone calls, and can tell time on an analog watch. Claimant reported he could access Facebook and the internet. Claimant also reported he had many friends, likes sports, but he easily angers at home.

E. Dr. Walker administered a Mental Status Exam to evaluate Claimant's emotional functioning. She reported Claimant sustained good eye contact and formed a good rapport with the examiner. She observed Claimant's speech was pressured and his thinking was confused and disorganized. Claimant reported auditory hallucinations and paranoid delusional ideation; he asserted that others are trying to harm him. Claimant also told Dr. Walker he suffers from depression and frequent mood shifts.

F. Based on the assessment results and her discussions with Claimant, Dr. Walker diagnosed Claimant with Schizoaffective Disorder, Bipolar Type; Borderline Intellectual Functioning; Specific Learning Disorder with Impairment in Reading skills; and Cannabis Use Disorder.<sup>6</sup> Her impressions were as follows:

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<sup>6</sup> These diagnoses, as well as the diagnoses of the other examining psychologists referred to in the Decision, are derived from the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-V) and published by the American Psychiatric Association. The Administrative Law Judge takes official notice

[Claimant] is highly immature and very easily influenced by others. [Claimant] has Borderline Intellectual Functioning, is intellectually slow, and this makes him more gullible to influence by others. [Claimant] is experiencing auditory hallucinations at times and paranoid delusional ideation and he is often not in touch with reality. This renders [Claimant] more easily influenced by others. [Claimant] is eager to be accepted by peers despite his immaturity, Borderline Intelligence and despite often being out of touch with reality. This makes [Claimant] a target, and very easily influenced by others.

(Ex. 9, SCLARC 000058.)

G. Based on her diagnoses, Dr. Walker recommended placement in a therapeutic environment, such as a psychiatric facility, where Claimant could receive psychoactive medication, psychiatric treatment, and psychotherapy. She also recommended that Claimant consider applying for regional center services based on fifth category because he has borderline intellectual functioning and "his reading, communication, self-help, and social skills are significantly below the normal range."

(Ex. 9, SCLARC 000059.)

13. A. On August 30, 2017, Nadim N. Karim, Ph.D., conducted a competency evaluation of Claimant from which he concluded that Claimant was not competent to stand trial. Dr. Karim's report of his evaluation referred to a psychological examination conducted by Sheila D. Morris, Psy.D., on August 11, 2017.

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of the DSM-V as a highly respected and generally accepted tool for diagnosing mental and developmental disorders.



Dr. Morris had also found that Claimant was incompetent to participate meaningfully in court proceedings. Dr. Morris diagnosed Claimant with Schizoaffective Disorder (rule out), Borderline Intellectual Disability (rule out), and a Learning Disability based on her examination.

B. During his examination, Dr. Karim observed Claimant's thought processes to be generally linear, rational, and goal-directed. According to Dr. Karim, Claimant's affect was generally calm, although he was easily agitated and became overwhelmed when he did not understand a specific question or instruction posed by the examiner. Dr. Karim observed that Claimant's "level of intellectual functioning appeared to be well below average based on his general fund of knowledge, his limited vocabulary, the latencies in his responses, his deficits with processing information, and his concrete thought process (in general)." (Ex. 8, SCLARC 000041.)

C. Dr. Karim administered the WISC-5 to Claimant. Claimant obtained a FSIQ score in the Extremely Low Range (57), but during the administration, Claimant "displayed poor frustration toleration, was easily frustrated, and lacked motivation during the testing process. He also displayed evidence of inattention and distractibility (which required the examiner to repeat directions to him)." (Ex. 8, SCLARC 000043.)

D. Dr. Karim opined that Claimant had a mental disorder, presenting with ADHD, Oppositional Defiant Disorder (ODD), and Cannabis Use Disorder. He further opined that Claimant's IQ results suggested Claimant "may have a mild Intellectual Disability." However, Dr. Karim thought Claimant's actual level of intellectual functioning may be higher than reflected in the present test results given Claimant's "low motivation, his poor frustration tolerance, and his presenting ADHD symptoms." According to Dr. Karim, Claimant "does present with significant cognitive deficits that may be consistent with a Mild Intellectual Disability," but he recommended "further evaluation by a Regional Center examiner (including adaptive living skills testing)." (Ex. 8, SCLARC 000048 - 000049.)

14. LACOE prepared a Psychoeducational Assessment (PE Assessment), dated September 5, 2017, of Claimant based on interviews with Claimant's teachers, mother, and mental health professionals and a battery of tests and assessments. The PE Assessment indicated Claimant's cognitive abilities to be within the Low Average range. On the Woodcock-Johnson, Fourth Edition (WJ-V) tests, which measure scholastic achievement and oral language abilities, Claimant's overall performance across reading, mathematics, and written language was in the Low range, comparable to an average student in grade 4.3. His scores in various achievement clusters were scattered, ranging from Very Low (second or third grade equivalent) to Average (eighth or ninth grade equivalent).

#### REGIONAL CENTER TESTING

15. A. Wendi Jordan, Psy.D., a licensed clinical psychologist, evaluated Claimant for SCLARC on October 27, 2017. As part of her evaluation, Dr. Jordan interviewed Claimant and his mother, reviewed available records, and administered the WISC-5, the Vineland Adaptive Behavior Scales, Third Ed. Domain Level Interview (Vineland-3), and a Street Survival Skills questionnaire (SSSQ).

B. With respect to his cognitive abilities, Claimant scored in the extremely low range on WISC; his FSIQ was 57. Dr. Jordan cautioned that Claimant's difficulty tolerating frustration, his expressive and receptive language deficits, and his need for frequent repetition, clarification, and simplification of instructions might have affected Claimant's FSIQ score.

C. With respect to his adaptive functioning abilities, measured by the Vineland-3 administered to Claimant's mother, Claimant obtained an Adaptive Behavior Composite in the Low Range (first percentile), with significantly low scores on the Communication, Daily Living Skills, and Socialization Domains. Claimant's maladaptive behavior scores were clinically significant for Internalizing (emotional) and Externalizing (acting-out problems) Domains. Claimant's severe maladaptive behaviors including: fixation on objects or parts of objects, hearing voices, using

strange or repetitive speech, fixating on topics to the extent that it is annoying to others; wandering or darting away without regard for safety; and threatening to hurt or to kill someone. Claimant also received an overall score in the Extremely Low Range on the SSSQ, exhibiting severe deficits in basic concepts, tools, domestics, health and safety, public services, time, and measurements.

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D. Dr. Jordan diagnosed Claimant with Schizoaffective Disorder, Bipolar Type, by history, and Borderline Intellectual Functioning, noting as follows:

Because [Claimant] has been assessed so many times in a short amount of time, it makes assessing his true cognitive abilities a bit difficult as he demonstrated such variability. His abilities are likely hovering between borderline and mild delays, affected by behavioral, emotional, and psychiatric concerns. Based on clinical interview, review of available records, behavioral observations, and testing results, the diagnosis of Borderline Intellectual Function is being upheld and rendered here. Differentiating Borderline Intellectual Function and (Mild) Intellectual Disability requires careful

assessment of intellectual adaptive functions, their discrepancies, and their distinctions, particularly in the presence of co-occurring mental disorders, herewith a reported history across assessments of symptoms and features of Schizophrenia and Bipolar, specifically a recent diagnosis of Schizo-affective Disorder, Bipolar Type. Additionally, [Claimant] reportedly showed improvement when services including psychotropic medication and therapy were introduced.

(Ex. 7, SCLARC 000034.)

E. Dr. Jordan recommended that Claimant receive special education services, a full mental health evaluation with treatment recommendations, and adaptive skills training. She also encouraged Claimant to explore more interests and hobbies to lessen his amount of unstructured down time.

16. A. Robert Koranda, Psy.D., a clinical psychologist, examined Claimant on June 18, 2018. As part of his evaluation, Dr. Koranda interviewed Claimant and his father, administered a variety of cognitive and adaptive skills tests, and reviewed available records.

B. Dr. Koranda did not observe that Claimant suffered from any physical impairment, and he reported that Claimant was able to walk without difficulty. According to Dr. Koranda, Claimant presented with a "restricted range of affect, but was polite and had the ability to engage in back and forth conversation." Claimant "appeared to exhibit ongoing symptoms of distractibility, and he did not appear to be consistently engaged in the assessment." (Ex. 6, SCLARC 000017.) Dr. Koranda noted that Claimant frequently looked around the examination room and fidgeted with his hands and arms. Dr. Koranda opined that Claimant's inconsistent engagement in the assessment affected his performance during the assessment. (Id., SCRC 000018.)

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C. Dr. Koranda administered the Leiter International Performance Scale - Third Edition (Leiter- 3) to test Claimant's cognitive and intellectual functioning, The Leiter-3 is nonverbal, and the test is appropriate for individuals who have limited English language skills or deficits in expressive communication. On the Cognitive Battery, Claimant obtained a Nonverbal IQ of 51, placing him in the Moderate Delay range. Dr. Koranda noted that the score was likely to be an underrepresentation of Claimant's true cognitive abilities because Claimant did not appear "to be significantly invested in completing the assessment to the best of his ability." (Ex. 6, SCLARC 00018.)

D. Dr. Koranda administered the Adaptive Behavior Assessment System, Third Edition (ABAS-3) to Claimant's father to evaluate Claimant's adaptive skills. According to Dr. Koranda, the ABAS-3 is a comprehensive, norm-referenced assessment of adaptive skills needed to effectively and independently care for oneself, respond to others, and meet environmental demands at home, school, work, and the community. The ABAS-3 assesses behavior in three different domains: Conceptual, Social, and Practical. Claimant's combined score in the three domains was 82 (12th percentile), placing him in the Below Average Range. His scores on the individual subdomains ranged between Low and Average.

E. Dr. Koranda posited the following diagnoses based on his observations and Claimant's test scores: ADHD (by history) and Unspecified Disruptive, Impulse- Control and Conduct Disorder. Dr. Koranda found Claimant did not meet criteria for a diagnosis of Intellectual Disability because Claimant's behaviors during the time of testing made it likely that his Leiter-3 scores were an underrepresentation of his true cognitive abilities and Claimant's prior psychological

assessments were insufficient to establish the presence of deficits in Claimant's cognitive abilities. Although some of Claimant's adaptive functioning scores were low when compared to age-related peers, Dr. Koranda found the scores were not "presently low enough to warrant significant concern." (Ex. 6, SCLARC 000021.)

F. Dr. Koranda noted that the full extent of Claimant's cognitive abilities and deficits could not be determined without further reliable data. Accordingly, Dr. Koranda recommended that Claimant submit to another evaluation in 12 to 24 months to obtain additional information to clarify or rule out the presence of any cognitive or intellectual deficits. Dr. Koranda suggested that the next examiner administer the Wechsler Adult Intelligence Scale, Fourth Edition for that purpose because Claimant had already been tested using the WISC-5 and the Leiter-3. Dr. Koranda also recommended that any future evaluation incorporate all of Claimant's mental health records, including records from his psychiatric hospitalization and mental health and medical reports from Star View.

G. In addition to further testing, Dr. Koranda recommended continued medical management of Claimant's ADHD and continued support for his educational needs.

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#### TESTIMONY

17. A. Laurie Brown, Ph.D., SCLARC's lead consulting clinical psychologist, testified on behalf of Service Agency. Dr. Brown was familiar with Claimant's psychological evaluations and educational assessments. Based on her review of these materials, Dr. Brown opined that Claimant did not suffer from Intellectual Disability and was not eligible for regional center services based on the fifth category. Dr. Brown cited to several factors to support her conclusion: Claimant

met his developmental milestones in a timely manner, which was atypical for a developmentally disabled individual; Claimant was deemed eligible for special education services because of Emotional Disturbance, not Intellectual Disability; the examining psychologists' recommendations were related to the treatment of mental illness; and, Claimant's cognitive and academic achievement scores were in the low average range.

B. Dr. Brown opined that Claimant's intellectual and adaptive skill deficits were due to Claimant's mental health disorders; Claimant therefore required different treatments than a developmentally disabled individual to address those deficits. According to Dr. Brown, Claimant's deficits would improve if Claimant received appropriate medication, psychological therapy, and other psychiatric treatment and these kinds of treatments were not appropriate to treat developmentally disabled persons.

18. Claimant did not offer any testimony by any examining psychologist or expert to support his appeal. Instead, Claimant relied solely on his low scores on the WISC-V and on various achievement and adaptive skills tests and assessments. Claimant did not provide any evidence to rebut Service Agency's contention that his mental health disorders had affected his test performance and assessment of his adaptive skills. Nor did Claimant offer any evidence to demonstrate he required treatment for his deficits similar to a person suffering from intellectual disability.

#### ON INTELLECTUAL DISABILITY AND BORDERLINE INTELLECTUAL FUNCTIONING

19. A. The DSM-V defines intellectual disability as "a disorder with onset during the developmental period that includes both intellectual and adaptive functioning deficits in conceptual, social, and practical domains." (DSM-5, p. 33.)

B. The DSM-V sets forth the three criteria for a diagnosis of Intellectual Disability:

A. 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, intelligence testing.

B. Deficits in adaptive functioning that result in failure to meet developmental and socio-cultural standards for personal independence and social responsibility. Without ongoing support, the adaptive deficits limit functioning in one or more activities or daily life, such as communication, social participation, and independent living, across multiple environments, such as home, school, work, and community.

C. Onset of intellectual and adaptive deficits during the developmental period.

(DSM-V, p. 33.)

C. Thus, the definitive characteristics of intellectual disability include deficits in general mental abilities (Criterion A) and impairment in everyday adaptive functioning, in comparison to an individual's age, gender, and socio-culturally matched peers (Criterion B). To meet the diagnostic criteria for intellectual disability, the deficits in adaptive functioning must be directly related to the intellectual impairments described in Criterion A. Onset is during the developmental period (Criterion C). A diagnosis of intellectual disability should not be assumed because of a particular genetic or medical condition. Any genetic or medical diagnosis is a concurrent diagnosis when Intellectual Disability is present. (DSM-V, pp. 39-40.)

D. In the section pertaining to differential diagnosis, the DSM-V states: "Intellectual Disability is categorized as a neurodevelopmental disorder and is distinct from the neurocognitive disorders, which are characterized by a loss of cognitive functioning." (DSM-V, p. 40.)

20. The authors of the DSM-V have indicated that "[i]ntellectual functioning



is typically measured with individually administered and psychometrically valid, comprehensive, culturally appropriate, psychometrically sound tests of intelligence. Individuals with intellectual disability have scores of approximately two standard deviations or more below the general population mean, including a margin for measurement error (generally +5 points). On tests with a standard deviation of 15 and a mean of 100, this involves a score of 65-75 (70 + 5)." (DSM-V, p. 37.) At the same time, the authors of the DSM-V recognize that "IQ test scores are approximations of conceptual functioning but may be insufficient to assess reasoning in real-life situations and mastery of practical tasks." Thus, "a person with an IQ score above 70 may have such severe adaptive behavior problems in social judgment, social understanding, and other areas of adaptive functioning that the person's actual functioning is comparable to that of individuals with a lower IQ score." (*Id.*)

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21. According to the DSM-V, "[a]daptive functioning is assessed using both clinical evaluation and individualized, culturally appropriate, psychometrically sound measures. Standardized measures are used with knowledgeable informants (e.g., parent or other family member; teacher; counselor; care provider) and the individual to the extent possible. Additional sources of information include educational, developmental, medical, and mental health evaluations." (*Id.*) Whether it is intellectual functioning or adaptive functioning, clinical training and judgment are required to interpret standardized measures, test results and assessments, and interview sources.

22. Borderline intellectual functioning is not a form of intellectual disability according to the DSM-V. The DSM-V considers borderline intellectual functioning a separate category to be used when “an individual’s borderline intellectual function is the focus of clinical attention or has an impact on the individual’s treatment or prognosis.” (DSM-V, p. 727.) The DSM-V cautions that differentiating borderline intellectual functioning and mild intellectual disability (intellectual development disorder) requires careful assessment of intellectual and adaptive functions and their discrepancies.” (*Id.*)

## LEGAL CONCLUSIONS

1. Jurisdiction exists to conduct a fair hearing in the above-captioned matter, pursuant to section 4710 et seq., based on Factual Findings 1 through 4.

2. Because Claimant is the party asserting a claim, he bears the burden of proving, by a preponderance of the evidence, that he is eligible for government benefits or services. (See Evid. Code, §§ 115 and 500.) Claimant has not met his burden of proving he is eligible for regional center services in this case.

### LEGAL CONCLUSIONS PERTAINING TO ELIGIBILITY GENERALLY

3. The Lanterman Act, at section 4512, subdivision (a), defines developmental disabilities as follows:

“Developmental disability” is a disability which originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. ... [T]his term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required

for individuals with an intellectual disability, but shall not include other handicapping conditions that are solely physical in nature.

4. California Code of Regulations, title 17 (CCR), section 54000, subdivision (c), specifies those conditions that are not considered developmental disabilities. The excluded conditions 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 [intellectual disability], 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 [intellectual disability].

5. To prove the existence of a developmental disability within the meaning of section 4512, a claimant must show that he has a "substantial disability." CCR section 54001 defines "substantial disability" to mean:

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

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

(A) Receptive and expressive language;

(B) Learning;

(C) Self-care;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living;

(G) Economic self-sufficiency.

6. A. In addition to proving a "substantial disability," a claimant must show that his disability fits into one of the five categories of eligibility set forth in section 4512. The first four categories are as follows: intellectual disability, epilepsy, autism, and cerebral palsy. The fifth and last category of eligibility is described as

“Disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with intellectual disability.” (§ 4512.)

B. The fifth category is not a diagnosis in the DSM-V, and its meaning and scope are not defined by statute or by regulation. In *Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, 1129, the California Court of Appeal provided general guidance: “The fifth category condition must be very similar to [intellectual disability], with many of the same, or close to the same, factors required in classifying a person as [intellectually disabled]. Furthermore, the various additional factors required in designating an individual developmentally disabled and substantially handicapped must apply as well.” It is therefore important to consider factors required for a diagnosis of intellectual disability when assessing fifth category eligibility.

#### LEGAL CONCLUSIONS SPECIFIC TO THIS CASE

7. Claimant is not eligible to receive regional center services on the grounds of autism, cerebral palsy, or epilepsy.

8. Claimant did not establish by a preponderance of evidence he is eligible for regional center services based on intellectual disability. None of the examining psychologists diagnosed Claimant with Intellectual Disability and Claimant did not meet any of the DSM-V criteria for the condition. (Factual Findings 11 through 17.)

A. Although Claimant obtained two FSIQ scores and another IQ score well below the range required for a diagnosis of intellectual disability, the weight of evidence did not establish that these low scores were due to deficits in intellectual functioning. The three psychologists who administered these tests believed respondent’s poor test scores likely underrepresented Claimant’s abilities because Claimant’s mental health disorders, including his ADHD, schizoaffective disorder, and other conditions, affected his comprehension and ability to focus.

(Factual Findings 13D, 15B, 16C.) In addition, Claimant's cognitive and academic achievement test scores were variable, testing at times in the average range, and such variability is not indicative of an intellectual disability. (Factual Finding 14.) Claimant's eligibility for special education because of Emotional Disturbance and not Intellectual Disability further challenges Claimant's assertion that he suffers from intellectual disability. Impaired intellectual functioning due to psychiatric condition is not a covered developmental disability under the Lanterman Act. (Legal Conclusion 4.)

B. Claimant's adaptive skills testing results were likewise variable, from low to below average, depending on the person interviewed; below average adaptive skills do not satisfy the DSM-V criteria for intellectual disability. Claimant's adaptive functioning was also affected by his severe maladaptive behaviors related to his psychiatric disorders. (Factual Finding 15C.) In addition, Claimant failed to establish that his deficits in adaptive functioning were directly related to any intellectual impairment as required by the DSM-V.

C. Claimant did not establish that he first experienced the onset of intellectual adaptive deficits during his developmental period. Claimant attained all of his developmental milestones in a timely manner. (Factual Finding 6.) Although Claimant was found eligible for special education when he was 11 years old, his eligibility was based on a Specific Learning Disability, not because of Intellectual Disability. (Factual Finding 8.)

9. Claimant did not establish by a preponderance of evidence he is eligible for regional center services based on the fifth category. Claimant has not demonstrated that he suffers a condition similar to intellectual disability. Borderline intellectual functioning is not the same as intellectual disability, and, as set forth in Legal Conclusion 8, Claimant's impaired intellectual functioning is not conclusive evidence of an intellectual disability in light of Claimant's psychiatric conditions. Nor has Claimant established that he requires treatment similar to treatment provided to

a person suffering from a developmental disability. Claimant's medical or educational records did not reflect any treatment recommendations based on conditions closely related to intellectual disability. Instead, the examiners recommended treatments for Claimant's mental disorders, such as psychiatric treatment, psychological counseling, and psychoactive medication (Factual Findings 12G, 15E, 16G), and Claimant did not establish that those treatments were similar to those required for an individual with an intellectual disability. At least one examiner reported that Claimant's abilities improved when he received treatments for his psychiatric conditions, underscoring that Claimant's impairments were due to psychological afflictions and did not constitute a developmental disability. (Factual Findings 15D.)

10. As set forth in Factual Findings 1 through 22 and Legal Conclusions 1 through 9, Claimant did not establish that he has a developmental disability that makes him eligible for services under the Lanterman Act. Because of the difficulties in assessing Claimant's intellectual abilities and deficits, further evaluation of Claimant is recommended within 12 to 24 months of this Decision pursuant to the guidelines set forth in Dr. Koranda's report and detailed in Factual Finding 16F.

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## ORDER

Service Agency's determination that Claimant is not eligible for regional center services is sustained. Claimant's appeal of that determination is denied.

DATED:

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CINDY F. FORMAN

Administrative Law Judge

Office of Administrative Hearings

## NOTICE

This is the final administrative decision in this matter and both parties are bound by this Decision. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.