

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CLAIMANT

vs.

SOUTH CENTRAL LOS ANGELES
REGIONAL CENTER,

Service Agency.

OAH No. 2018020567

DECISION

Thomas Y. Lucero, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 24, 2018, in Los Angeles, California.

Claimant was represented by his foster parent (family members' names are omitted to protect privacy).

South Central Los Angeles Regional Center, the service agency, was represented by Karmell Walker, Fair Hearing Manager.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on April 24, 2018.

ISSUE

Whether claimant is eligible for services from the service agency.

SUMMARY

Claimant, four years old, has developmental delays. His communication and social skills significantly lag behind his peers and his cognitive skills are in the borderline area. It appears claimant had scant attention from his biological parents or others until foster

parent began caring for him at three years and six months of age. She promptly had him tested and

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he now receives services at a pre-school. However, it was not established that claimant's condition fits any of the five categories of developmental disability set out in the pertinent law and regulations. Claimant does not qualify for services from the service agency.

FACTUAL FINDINGS

1. Claimant applied to the service agency shortly before he and foster parent attended an intake meeting on September 25, 2017.

2. The service agency reviewed available records and had claimant examined by a psychologist. With a January 19, 2018 letter, Exhibit 2, the service agency gave claimant Notice of Proposed Action (NOPA), advising claimant he was not eligible for services. Claimant timely appealed.

3. Claimant was born in September 2013. He has lived with foster parent and her 13-year-old son since April 16, 2017, the day the Department of Children and Family Services (DCFS) removed claimant from his father's custody and placed him with foster parent. At about the same time, claimant's DCFS social worker advised foster parent that she believed claimant showed signs of developmental delay caused by his parents' neglect. The social worker advised foster parent she had referred claimant to the service agency to evaluate his eligibility for services.

4. Personnel of the Los Angeles Unified School District (LAUSD) assessed claimant and reported their assessments on June 13, 2017.

A. Lynn Johnson, a Speech Pathologist, prepared LAUSD's Language and Speech Preschool Assessment Report (Language Report), Exhibit 7. The Speech

Pathologist found that claimant met the eligibility criteria for speech and language impairment, based on the points below.

- (i) The Language Report noted claimant's most recent medical examination on April 25, 2017, which had been performed by Rashmi Shetgiri, M.D., at the request of DCFS. Claimant had been found generally healthy, except for asthma and an allergy to chocolate.
- (ii) Foster parent expressed several concerns regarding whether claimant could:
 - (a) understand basic concepts; (b) speak normally, beyond a very basic level, so that he might "formulate expanded utterances" (Exhibit 7); and (c) socially interact with other children.
- (iii) The Language Report assessed claimant's receptive and expressive language skills. After noting the points below, Ms. Johnson concluded that claimant's "receptive and expressive language skills appear to be below age expected range." (Exhibit 7.)
 - (1) Using receptive language skills, claimant could: (a) follow one-step directions; (b) identify common objects and pictures named during the assessment; (c) understand simple sentences; (d) identify action words (two of five); (e) comprehend an object's function (three of five); and (f) comprehend prepositions such as "in" and "on."
 - (2) Claimant lacked several receptive language skills. He could not: (a) identify colors; (b) identify body parts; (c) sequence an event; (d) solve problems relating to events and actions; (e) demonstrate knowledge of pictorial verbs; (f) follow two-step directions without repetition and prompts; (g) identify basic shapes; demonstrate number or time concepts; or (h) categorize things.
 - (3) Using expressive language skills, claimant could: (a) answer simple questions yes or no; (b) ask simple questions; (c) use prepositions such as "in," "on," and

- "out"; (d) use singular subjective pronouns, such as "I"; (e) use singular possessive pronouns, such as "mine" or "my"; (f) use the present progressive tense of verbs, such as those ending in the suffix "-ing"; (g) use negation, words such as "not" and "don't."
- (4) Claimant lacked several expressive language skills. He could not: (a) use plural pronouns, such as "we," "us," "them," or "yours"; (b) suffixes for the plural, such as "s" or "es"; (c) suffixes for the possessive, such as "'s"; (d) use present tense auxiliaries such as "can" and "will"; (e) use past tense verbs; (e) answer questions beginning "who," "what," "when," "where," or "why"; (f) use expanded utterances with description; (g) sequence events; (h) recall and retell personal events; (i) complete nursery rhymes and songs; or (h) point to or label pictures.
- (iv) The Language Report summarized claimant's strengths in "voice, fluency and articulation skills." (Exhibit 7.) Ms. Johnson noted, however, that claimant's delays in language skills would have an impact on his ability to communicate with others and be understood by them.
- B. Shan-ying Tsai, MA, OTR/L, a School Occupational Therapist at LAUSD, prepared a June 13, 2017 Occupational Therapy Report (OT Report), Exhibit 6. The Occupational Therapist found that claimant required occupational therapy services (OT) to assist him in instruction to be specially designed for him, based on the points below.
- (i) Foster parent expressed concerns regarding claimant's speech and language skills, uncoordinated movement, and lack of safety awareness.
- (ii) The Occupational Therapist observed good performance of some motor skills but problems with fine motor skills.

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- (1) Claimant demonstrated functional muscle tone and strength throughout his trunk and extremities, allowing him to move without difficulty. He was able to sit in a chair and could walk, jump, and run independently. He could climb stairs independently, but did not use alternate feet.
 - (2) Claimant had difficulty with fine motor control and coordination, which the Occupational Therapist stated would affect his ability to write.
- C. Two LAUSD Psychologists, Teresa Pinzon and MaryEllen Zigrang, prepared LAUSD's Preschool Team Assessment, Exhibit 6. The assessment was revised on June 29, 2017. The psychologists administered tests and made clinical observations and reached several preliminary conclusions, including: (a) "Overall, based on [claimant's] performance on the Mullen Scales of Early Learning (MSEL) and information gathered via observation and interview on the Developmental Profile Third Edition (DP3), [claimant's] current functioning in school readiness is below his chronological age" (Exhibit 6, p 6 of 14); (b) claimant's intellectual ability was delayed; (c) he showed deficits in communication and social skills; (d) his deficits would likely impair claimant's school performance. The report notes that claimant "had limited interaction with same aged peers and likely was not provided appropriate social interactions or care prior to being placed" with foster parent. (Exhibit 6, p. 11 of 14.) The psychologists concluded: "[Claimant] does not meet the eligibility criteria for Intellectual Disability (ID) as environmental factors and lack of school experience cannot be ruled out as the primary reason for concerns at this time" (Exhibit 6, p. 12 of 14).
- (i) The MSEL is designed to test cognitive and related general abilities, including in perception, concept development, reasoning, memory, categorization, and insight. LAUSD uses the MSEL to evaluate strengths and weaknesses in

learning and processing information. The MSEL has four scales: (a) Visual Reception scale; (b) Fine Motor scale; (c) Receptive Language scale; and (d) Expressive Language scale. In all four scales, claimant's performance was within the well below average range.

- (ii) LAUSD used the Developmental Profile 3 (DP3) as another way to assess claimant's cognitive and related academic potential. The test administrator observes the child tested and an informant, such as a parent, answers questions to complete the DP3. Based on foster mother's answers, the DP3 indicated claimant had some ability in communication, conveying his wants and needs with short phrases, for instance. But he had difficulty answering factual questions and could not identify several objects in pictures. Based on foster parent's information, the DP3 rated claimant in the well below average, or delayed, range in three areas: (a) motor abilities, (b) social-emotional status, and (c) self-help and adaptive behavior functioning.
- (iii) To evaluate the information gathered during the Preschool Team Assessment, LAUSD used the Behavior Assessment System for Children, Third Edition (BASC-3), and the Autism Spectrum Rating Scale (ASRS). "The [BASC-3] results are consistent and show acceptable response patterns. . . . No areas of clinical significance were identified. Atypically, social skills and functional communication were rated at-risk." (Exhibit 6, p. 9 of 14.) Claimant's score on the ASRS was elevated. But claimant's "very elevated peer and adult socialization may be negatively impacted by limited experience with same aged peers and adults in [a] stable home environment prior to being placed" with foster parent. (*Id.*, p. 10 of 14.)

5. Based on concerns about his gross motor delays, foster parent and Ms. Tsai, the Occupational Therapist, referred claimant for an APE, Adapted Physical

Education assessment. Ms. Harrison, one of the IEP team, conducted the assessment and prepared the APE Assessment Report on June 23, 2017, Exhibit 8. Ms. Harrison observed that claimant had an unsteady gait. She stated that his diagnosis of Global Developmental Delays would impede his participation in general physical education. She concluded that claimant met the eligibility criteria for APE.

6. Claimant's initial Individualized Education Program (IEP) team meeting took place on June 30, 2017. At the meeting were: (a) foster parent, (b) Karen Sierke-Noriega, an administrative designee, (c) special education teachers Monica Lopez and (d) Mericia Castro, (e) Ms. Zigrang, school psychologist and one of the psychologists who prepared the Preschool Team Assessment, and LAUSD personnel knowledgeable in related services, (f) Dawn Sawyer, in language and speech (LAS), (g) Ms. Tsai, who had prepared the OT Report, and (h) Susan Harrison, knowledgeable in Adapted Physical Education (APE). The IEP report is Exhibit 5.

- A. The report noted that claimant's birth and developmental history and milestones were unknown. It took into account, however, each of the assessments performed by LAUSD on June 13, 2017, as indicated in the previous finding.
- B. The IEP report concluded: "Based upon [claimant's] current needs, the IEP team recommends a Preschool for All Learners classroom (PAL). The PAL is an educationally-based special day program that operates 4 hours and 30 minutes 5 days a week. The preschool curriculum is delivered through evidenced-based practices. [Claimant's] Communication goals, included in the IEP, will be supported in an integrated fashion by a multi-disciplinary on-site team comprised of a speech-language pathologist, early childhood special education teacher, and District special education assistants. The Speech-

language pathologist will provide 2 hours of direct and collaborative support to the classroom each week.” (Exhibit 5.)

7. Foster parent and claimant went to the service agency for intake and initial evaluation on September 25, 2017. Claimant believes, based on statements at the meeting by Michael Gosano, Service Coordinator, Intake Unit, that the service agency had already determined that claimant was not eligible for services because any developmental delays were the result of previous neglect, not a disability like ID or Autism Spectrum Disorder (ASD).

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8. On October 30, 2017, Jennie M. Mathess, Psy.D., a clinical psychologist, evaluated claimant regarding his application for services. She assessed claimant especially regarding ID, intellectual disability, and ASD. Her Psychological Assessment report is Exhibit 3.

- A. Dr. Mathess reviewed four reports prepared by LAUSD personnel: (a) the Language Report (Finding 2A), (b) the OT Report (Finding 2B), (c) the APE Assessment Report (Finding 3), and (d) the IEP report (Finding 4).
- B. Dr. Mathess observed claimant at the service agency, noting that he had a typical gait and appropriate eye contact with social smiling. She observed claimant’s difficulties with articulation. She noted that claimant was easily engaged and played with toys while Dr. Mathess interviewed foster parent.
- C. To assess claimant’s cognitive functioning, Dr. Mathess administered the Wechsler Preschool and Primary Scale of Intelligence, Fourth Edition (WPPSI-IV). The WPPSI-IV is a standardized intelligence test designed to measure both verbal and non-verbal cognition, as well as working memory and processing speed. On the Verbal Comprehension Index, claimant scored in the borderline range. Other scores were in the low average range. Among these

were the Visual Spatial Index (VSI) and the Fluid Reasoning Index (FRI). Claimant's Full Scale IQ (FSIQ) was in the borderline range at 74, as indicated on page 6 of Dr. Mathess's report:

<u>Composite Scores</u>	<u>Standard Score</u>
Verbal Comprehension Index	77
Fluid Reasoning Index	85
Full Scale IQ	74

- D. Foster parent provided information for the Autism Diagnostic Interview – Revised (ADI-R). Claimant was above the cut-off score in the area of Abnormality of Development prior to 36 months, but below the cut-off score in other areas. Dr. Mathess concluded that “a diagnosis of Autism Spectrum Disorder is not likely.” (Exhibit 3, p. 3.)
- E. Foster parent also supplied information for the Vineland Adaptive Behavior Scales, Third Edition (Vineland-3).
- (i) In the Communication domain, claimant was scored in the low range. Dr. Mathess noted many of foster parent's responses, such as that claimant's vocabulary was less than 50 words and he did not use simple sentences to describe his activities.
- (ii) Based on foster parent's responses about claimant's ability to care for himself, he was rated in the low range in the Daily Living Skills domain. Dr. Mathess noted several ways in which claimant could care for himself: “In terms of his self-care and independent living skills, [claimant] cooperates with washing his hands and face, uses the toilet, and stays near his caregiver in public places.”

She described other practical skills claimant demonstrated, as described by foster parent.

(iii) Claimant scored in the moderate range in the Socialization domain. According to foster parent, he has some social skills, such as showing affection toward familiar people, and some lack of skill, such as not playing simple make-believe games with other children.

F. Discussing "Diagnostic Considerations," Dr. Mathess wrote:

[Claimant's] cognitive functioning is within the borderline range and . . . adaptive functioning was rated in the low to moderately low range, depending upon the domain. The diagnosis of Intellectual Disability requires significant deficits in intellectual functioning with concurrent deficits in adaptive functioning. Onset of such deficits must have occurred during the developmental period. After careful consideration of his profile and level of cognitive functioning, a diagnosis of Intellectual Disability is not given. While that is the case, he meets criteria for Borderline Intellectual Functioning. It is strongly recommended that he be reevaluated in one year to continue monitoring his development.

. . . [Claimant] does not meet criteria for Autism Spectrum Disorder. While that is the case, his history and presentation is consistent with a Language Disorder.

(Exhibit 3, p. 4.)

Dr. Mathess applied the criteria provided in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), published by the American Psychiatric

Association, and diagnosed claimant with Borderline Intellectual Functioning and Language Disorder.

G. Dr. Mathess made several recommendations.

- (i) Her fifth recommendation was that claimant should continue to take advantage of "opportunities to develop his strengths and interests." (Exhibit 3, p. 5.)
- (ii) Dr. Mathess's sixth recommendation was that claimant continue in his home with foster parent, which Dr. Mathess described as "stable, structured, and nurturing." (*Ibid.*) Dr. Mathess thus agrees with LAUSD School Psychologists, Teresa Pinzon and MaryEllen Zigrang, and their Preschool Team Assessment (Finding 4C(iii), that foster parent is providing claimant a stable and otherwise beneficial home.
- (iii) The seventh recommendation by Dr. Mathess is that claimant's "cognitive and adaptive functioning be reevaluated in approximately 12 months" (*Ibid.*)

9. Claimant cited in support of his appeal *Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119 (*Mason*). He also cited, and likened his situation to that of the claimant in, *Samantha C. v. Dept. of Developmental Services* (2010) 185 Cal.App.4th 1462 (*Samantha C.*). *Samantha C* is factually distinguishable from claimant's case, as discussed below.

LEGAL CONCLUSIONS

1. The party asserting a claim generally has the burden of proof in administrative proceedings. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, claimant bears the burden of proving, by a preponderance of the evidence, that he is eligible for services under the Lanterman Developmental Disability Services Act, Welfare and Institutions Code section 4500 et seq. (Lanterman Act). (Evid. Code, §§ 115, 500.) Claimant did not carry his burden of

proof in this case.

FIVE CATEGORIES OF DISABILITIES THAT MAKE A PERSON ELIGIBLE FOR SERVICES

2. "Developmental disabilities" under the Lanterman Act have three characteristics. An individual is eligible for services whose disability: (i) "originates before an individual attains 18 years of age"; (ii) "continues, or can be expected to continue, indefinitely"; and (iii) "constitutes a substantial disability for that individual." (Welf. & Inst. Code, § 4512, subd. (a).)

3. Welfare and Institutions Code section 4512, subdivision (1)(1), provides guidance on a disability's third characteristic. Under this statute, a disability is "substantial" when it causes "significant functional limitations, as determined by a regional center, in three or more of the following areas of major life activity, as appropriate to the person's age: (A) Self-care. (B) Receptive and expressive language. (C) Learning. (D) Mobility. (E) Self-direction. (F) Capacity for independent living. (G) Economic self-sufficiency."

4. Further guidance is provided in California Code of Regulations, title 17, section 54001, subdivision (a)(1): a substantial disability "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"

5. The Lanterman Act puts developmental disabilities into five categories.

A. The first four categories have brief labels: (i) "intellectual disability"; (ii) "cerebral palsy"; (iii) "epilepsy"; and (iv) "autism." (Welf. & Inst. Code, § 4512, subd. (a).)

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B. Developmental disabilities in the fifth category have a more extended description: "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 [the category] shall not include other handicapping conditions that are solely physical in nature." (*Ibid.*)

6. A claimant's substantial disability must not be caused solely by an excluded condition. The statutory and regulatory definitions of "developmental disability" (Welf. & Inst. Code, § 4512 and Cal. Code. Regs., tit. 17, § 54000) exclude conditions that are solely physical in nature. California Code of Regulations, title 17, section 54000, also excludes conditions that are solely psychiatric disorders or solely learning disabilities. A claimant with a dual diagnosis, a developmental disability coupled either with a psychiatric disorder, a physical disorder, or a learning disability, could still be eligible for services. But the claimant whose conditions originate only from excluded categories (psychiatric disorder, physical disorder, or learning disability, alone or in some combination) and who does not have a developmental disability, would be ineligible.

7. Its more expansive description notwithstanding, the fifth category does not confer eligibility on every person with a learning or behavioral disability. Many with such disabilities are ineligible.

INTELLECTUAL DISABILITY

8. At hearing, claimant did not claim eligibility for services under the Lanterman Act's first four categories. He contends he is eligible under the fifth category, either because his condition is closely related to Intellectual Disability, or it requires treatment similar to that for Intellectual Disability, or both.

9. While claimant agreed with Dr. Mathess's conclusion that he is not properly diagnosed with Intellectual Disability, a discussion of the diagnosis is set out here to illuminate considerations under the fifth category.

10. The Lanterman Act and its implementing regulations do not define

Intellectual Disability. It is appropriate to analyze eligibility under this category as Dr. Mathess did, using these criteria in the DSM-5:

Intellectual disability . . . is a disorder with onset during the developmental period that includes both intellectual and adaptive functioning deficits in conceptual, social and practical domains. The following three criteria must be met:

- 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, standardized 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 of 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.

(Exhibit 9, DSM-5, p. 33.)

11. The DSM-5 calls for assessing adaptive functioning, not just such cognitive capacity as may be assessed by an IQ score:

IQ test scores are approximations of conceptual functioning but may be insufficient to assess reasoning in real-life situations and mastery of practical tasks. For example, 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. Thus, clinical judgment is needed in interpreting the results of IQ tests.

(Exhibit 9, DSM-5, p. 37.)

12. "To meet diagnostic criteria for intellectual disability, the deficits in adaptive functioning must be directly related to the intellectual impairments described in Criterion A." (Exhibit 9, DSM-5, p. 38.)

FIFTH CATEGORY

13. Because Intellectual Disability is characterized by significant cognitive and adaptive deficits, a closely related condition must be likewise characterized by significant deficits, cognitive or adaptive or both. The deficits must affect a claimant's ability to function so that it is at a level close to that of a person with Intellectual Disability. The quantity of deficits is not determinative. A condition in the fifth category need not strictly replicate the same deficits as Intellectual Disability. Otherwise the fifth category would be redundant. The question is the quality, and how low the quality, of a claimant's cognitive and adaptive functioning.

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CLAIMANT'S CONDITION AND THE THREE CHARACTERISTICS OF A SUBSTANTIAL DISABILITY

14. The evidence established that claimant's condition has one of the three characteristics of a substantial disability. It originated before he was 18 years old.

15. Whether claimant's condition will or is likely to continue indefinitely was not established. Dr. Mathess recommended that claimant continue in his stable, structured, and nurturing home with foster parent. LAUSD's two school psychologists

who evaluated claimant likewise agreed that claimant is benefitting from a stable home provided by foster parent. Claimant lacked such a home and home life before he was placed with foster parent in April 2017. The evidence indicates that the previous lack of such nurturing and stability is a cause of claimant's delays. Dr. Mathess's recommendation that claimant continue to have a home and home life such as he enjoys with foster parent suggests that claimant's new environment will mitigate his delays. That is, the delays will not necessarily continue, or will not continue to the same degree.

16. Specific test results indicate likewise that claimant's delays do not have the characteristics of deficits such as typically underlie a diagnosis of Intellectual Disability. Claimant's FSIQ is above that of persons usually diagnosed with Intellectual Disability. Some of claimant's overall or composite scores for mental ability are in the low average range, as opposed to the borderline range, in VSI and FRI in particular. (Finding 8C.) These indices are less dependent on language ability than the Verbal Comprehension Index, which Dr. Mathess found to be in the borderline range. This evidence suggests that because claimant's biological parents neglected him, he developed delays in speaking and verbal comprehension, but that his mental abilities which are less dependent on language and on interaction with others, were not so adversely affected. The evidence also showed that claimant's delays in language and social skills obscure his natural, higher abilities in other areas and that, while claimant suffers delays, especially related to verbal and social interactions, his delays were not shown to be deficits that will continue indefinitely.

17. Dr. Mathess's seventh recommendation that claimant be reevaluated in approximately October 2018 anticipates that claimant's delays may be found to have lessened by then and not prove intractable or continuing deficits.

18. The evidence did not establish that claimant's deficits in adaptive

functioning are directly related to intellectual impairments, as required for a finding of Intellectual Disability. At this time, the evidence does not establish whether claimant's adaptive functioning, particularly his social skills and verbal ability, may be impaired because of a previous lack of stability and attention in his home life. For this reason as well, claimant's condition does not closely resemble Intellectual Disability.

19. Claimant's citation to *Mason* does not support his contention that his deficits make his condition closely resemble Intellectual Disability. In *Mason*, the appellate court held that "the fifth category condition must be very similar to mental retardation, with many of the same, or close to the same, factors required in classifying a person as mentally retarded. Furthermore, the various additional factors required in designating an individual developmentally disabled and substantially handicapped must apply as well." (*Id.* at p. 1129.) The court upheld denial of services to the claimant, who was alleging eligibility under the fifth category:

Morgan [the claimant] failed to provide substantial evidence refuting Dr. Gross's and Dr. Shields's testing results and conclusions that Morgan's adaptability skills were not within the close range of mental retardation, and even if they were, his scores were impacted by his ADHD learning disability (which does not qualify as a developmental disability). In addition, school psychologist Charlotte Witsoe, M.S., stated in her educational assessment report, dated September 25, 1998, for the Riverside Unified School District, that Morgan had adaptive skills within the average range and he had significant ADHD symptoms. Monica Chavez also stated in her report that, "Due to Morgan's impulsivity, and difficulty in sustaining his attention to directed tasks," his test results

might not be an accurate measure of his potential/performance.

(Id., 89 Cal.App.4th at 1137.)

The court noted that Morgan's intelligence was found to be in the low average range. The condition of claimant here is similar to that of the claimant in *Mason*, although his intelligence was measured as lower than the claimant in *Mason*. Claimant's intelligence does not fall in the range of Intellectual Disability. Moreover, the measure of his adaptability skills is affected by a condition or conditions unrelated to Intellectual Disability.

20. All of this evidence together indicates that claimant does not have a condition closely resembling Intellectual Disability. But even if claimant's condition may be considered indistinguishable at present from Intellectual Disability, his condition is not likely to continue indefinitely. As a result, it lacks a characteristic typical of a developmental disability that would make a claimant eligible for services under Welfare and Institutions Code section 4512, subdivision (a).

TREATMENT CONSIDERATIONS

21. Another approach to the question of eligibility for services is determining whether a claimant's condition "requires treatment similar to that required" for persons with Intellectual Disability (Welf. & Inst. Code, § 4512, subd. (a)), whether or not the condition closely resembles Intellectual Disability. The question is not answered by enumerating services for Intellectual Disability and finding that a claimant would benefit from them. Many people might benefit from the types of services that service agencies offer, such as counseling, vocational training, living skills training, speech therapy, or occupational therapy. The deciding factor is not benefit, but whether a claimant's condition requires such treatment.

22. Experts at LAUSD concluded that claimant required treatment, such as occupational therapy, that is similar to that required for people with Intellectual Disability. (See, e.g., Finding 4B.) They did so, however, in an academic context, emphasizing that claimant's deficits could prevent him from activities in which students typically engage, such as writing. (Finding 4B(ii)(2).) These deficits may be contrasted with the practical skills Dr. Mathess noted. (Finding 8E(ii).) The evidence did not establish that the findings by LAUSD experts are equivalent to findings that claimant would be unable to adapt to environments less specialized than a school.

23. In *Samantha C.*, another appellate decision cited by claimant, the court agreed with the claimant before it that she was in the fifth category because she required treatment similar to that for Intellectual Disability (called Mental Retardation at the time). The claimant there, however, had clearly suffered impairment owing to hypoxia at birth, an insult to her brain that would not improve and would remain an obstacle to development throughout her life. In contrast, claimant here, as indicated above, has not shown that any impairment he suffers will continue indefinitely. It is also unclear from the evidence that claimant here requires the same sort of treatment as those with Intellectual Disability. Instead, as Dr. Mathess and others noted, crucial to claimant is that he live in a nurturing home, such as that provided by foster parent. To the extent that may be considered treatment, it is different from professional treatments and therapies typically provided to those with Intellectual Disability.

24. Claimant did not establish the necessity of his being treated as would a person with Intellectual Disability.

25. The preponderance of the evidence did not establish that claimant is eligible to receive services from the service agency under the Lanterman Act.

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ORDER

Claimant's appeal is denied. The service agency's determination that claimant is not eligible for services is upheld.

DATED:

THOMAS Y. LUCERO

Administrative Law Judge

Office of Administrative Hearings

NOTICE

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