

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

In the Matter of:

CLAIMANT,

vs.

KERN REGIONAL CENTER,

Service Agency.

OAH No. 2020040259

DECISION

Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter telephonically on July 23, 2020, in Los Angeles, California.

Kristine Khuu, Assistant Director of Client Services, represented Kern Regional Center (Service Agency or KRC).

Claimant was represented by his brother (Brother) and sister (Sister), who are his authorized representatives pursuant to Welfare and Institutions Code section 4701.6. Claimant was present during the hearing. Claimant and his family members are identified by titles to protect their confidentiality.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on July 23, 2020.

ISSUE

Is Claimant eligible for regional center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act)?

EVIDENCE RELIED ON

Documentary: Service Agency's exhibits 1-7; Claimant's exhibit A.

Testimonial: Kimball Hawkins, Ph.D.; Kristine Khuu; and Claimant's brother and sister.

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is a 63-year-old man. He is not conserved.
2. On March 5, 2020, Service Agency sent Claimant a letter and a Notice of Proposed Action, notifying him of its decision that he is not eligible for regional center services because he does not have a qualifying developmental disability, and that his case would be closed.
3. On March 20, 2020, Brother filed a fair hearing request, on Claimant's behalf, to appeal Service Agency's decision that Claimant is not eligible for services. In

the fair hearing request, Brother explained the reason for requesting a fair hearing, as follows:

We disagree with the finding that [Claimant] is not substantially handicapped. He has significant functional limitations in major life activities: (C) Self-care, (E) Self-direction, (F) Capacity for independent living and (G) Economic self-sufficiency; and these factors derive from significant brain trauma at age 4 exacerbated by aging and AIDS.

(Exh. 1, p. 3.)

4. On April 17, 2020, Kristine Khuu, MSW, Assistant Director of Client Services for KRC, held an informal meeting, by telephone, with Claimant, Brother and Sister. Following that meeting, Ms. Khuu sent a letter to Claimant, in care of Brother and Sister, notifying them of her decision that Claimant does not have a developmental disability that qualifies him to receive regional center services. (Exh. 3.)

5. On June 19, 2020, Brother filed an amended fair hearing request, on Claimant's behalf, which was typewritten and contained the same information as the March 20, 2020 fair hearing request. The amended fair hearing request also included Claimant's signature in the Representative Authorization section confirming the appointment of Brother and Sister as his authorized representatives for the hearing. (Exh. 7.)

Claimant's Background

6. Claimant is the middle of five children. Claimant and his siblings were raised by their parents in Wisconsin. Claimant suffered a traumatic brain injury from being struck by a motor vehicle when he was four years old. Claimant graduated from high school. He moved to California as young adult in the 1970s. Brother was already living in California. Claimant lived in Canoga Park and later moved to California City, where he currently resides. Claimant lives on his own as a one-person household.

Evaluation by Dr. Lefler

7. On January 15, 2020, clinical psychologist Joshua Lefler, Psy. D., conducted a psychological evaluation of Claimant. Sister accompanied Claimant to the evaluation. The purpose of the evaluation was to clarify Claimant's diagnosis and provide information to assist Service Agency in determining Claimant's eligibility for services.

8. Dr. Lefler conducted a clinical interview, performed a mental status examination, reviewed records, and administered the Wechsler Abbreviated Scale of Intelligence, Second Edition (WASI-II) and the Vineland Adaptive Behavior Scales, Third Edition (Vineland-3). Dr. Lefler prepared a Psychological Evaluation report which summarized the findings and conclusions of his evaluation of Claimant.

9. (A) During the clinical interview, Dr. Lefler obtained information from Claimant and Sister regarding Claimant's background and current concerns. In his written report, Dr. Lefler included the collateral information provided by Sister. Dr. Lefler found Sister to be a reliable historian.

(B) Claimant was born in Minnesota and grew up in Wisconsin. Claimant's developmental milestones from early childhood were within normal limits until age four, when Claimant was struck by a motor vehicle and suffered an apparent traumatic brain injury. Claimant and his siblings attended parochial schools. Although Claimant graduated from high school, Sister felt he was merely "passed along" from grade to grade. Claimant attended some college music classes. Claimant had no friends growing up and was easily taken advantage of by others or easily convinced to do things. Sister remembers Claimant being taken to psychiatrists as a child, but she has no documentation. Claimant was very likely molested as a child and in his late teen/early twenties. He was frequently in abusive relationships and taken advantage of; his cars and money were stolen by others. Claimant is HIV positive and has a history of substance abuse. He also has had seizures in the past.

(C) Dr. Lefler was informed of Claimant's employment history. Claimant injured his back while working as a warehouse worker at Capital Records. Claimant also had a clerical job in the accounts receivable department of another company until about 10 years ago. Sister reported that Claimant's tasks at these jobs were "rather menial." (Exh. 4, p. 22.)

(D) Dr. Lefler was informed of Claimant's activities of daily living, which he summarized as follows: "[Claimant's] house is filled with junk, animal urine on the floor, etc. He does not do household chores. His laundry skills are poor. He is generally unkempt. His previous apartment in Los Angeles was infested with cockroaches due to his lack of upkeep, poor executive functioning (decision making, awareness of danger, etc.)." (Exh. 4, p. 22.) Additionally, Dr. Lefler was informed that Claimant presents with the following behavioral concerns: "Easily taken advantage of by predatory people (recurring his entire life). This includes an older man, his college professor,

manipulating him to move to California as a young adult. He has had numerous relationships with men who have taken advantage of him financially or otherwise." (*Id.* at p. 21.)

10. During the mental status examination, Dr. Lefler found that Claimant appeared to be his stated age. Claimant had a black eye from being assaulted by a person he had recently allowed into his house. Dr. Lefler noted Claimant was malodorous. Claimant made eye contact with Dr. Lefler and revealed a normal affect. Claimant was alert and oriented to person, place, and time. Claimant was in a pleasant mood. Dr. Lefler found Claimant possessed an adequate fund of general knowledge, and his working memory and processing abilities were intact. Claimant reported mental health symptoms of depression, anxiety, and hallucinations, all of which are regulated with psychotropic medications.

11. Dr. Lefler administered the WASI-II and Vineland-3. Claimant's scores on the WASI-II measured his intellectual abilities in the average range. His full-scale IQ score was 98, which fell in the average range. Claimant's scores on the Vineland-3, with Sister serving as the informant, measured his general adaptive functioning in the low range. This meant Claimant's scores were higher than less than one percent of similarly aged individuals in the Vineland-3 normative sample.

12. (A) Dr. Lefler reviewed letters by three pediatricians who treated Claimant for the traumatic brain injury he suffered after being struck by a motor vehicle at age four. The letters, which were provided by Sister, included details regarding the accident. Claimant was dragged 90 feet and suffered an occipital fracture and left side weakness. He was hospitalized for a total of 18 days, and was comatose for approximately eight days.

(B) Dr. Lefler noted that the pediatricians' letters discussed Claimant's recovery from the accident. Harold Barris, M.D., treated Claimant the month following the accident. In a letter dated May 23, 1961, Dr. Barris noted Claimant was "making an excellent recovery from this severe injury," and he recommended future electroencephalogram and psychometric evaluations. (Exh. 4, p. 23.) Irvin H. Moore, M.D., treated Claimant two months after the accident. In his letter dated June 5, 1961, Dr. Moore wrote that Claimant's progress suggested he would make a full recovery, "but only time will give us that answer." (*Id.* at pp. 23-24.)

(C) The third letter was by Paul S. Blake, M.D., who treated Claimant three months after the accident. In his letter dated July 13, 1961, Dr. Blake stated "there must obviously be permanent brain damage in both occipital and parietal regions because I visualize this damage with my own eyes. How much this brain injury is going to affect the boy remains to be seen." (Exh. 4, p. 24.) Dr. Blake recommended following Claimant's progress in school and conducting "various tests such as the electroencephalogram and the psychological testing for at least 18 to 24 months before coming to any conclusions as to the degree of permanency." (*Ibid.*)

13. Based on his evaluation of Claimant, Dr. Lefler diagnosed Claimant with Schizoaffective Disorder Depressive Type (Provisional, By History), Generalized Anxiety Disorder (By History), History of Substance Abuse, and Longer-Term Effects of Traumatic Brain Injury (Provisional). Dr. Lefler explained the basis for the diagnosis as follows:

As a primary diagnosis, I noted the client's historical presentation of Schizoaffective Disorder, General Anxiety Disorder, and substance abuse. The client's report of hallucinations along with depressive episodes and anxiety

are being treated with psychotropic medication. Further assessment would need to clarify this diagnosis, but is outside the scope of the current evaluation.

Additionally, I provisionally offered that there are long-term effects of a traumatic brain injury suffered during his childhood. The evidence here is mainly based on Vineland-3 results and reports of Activities of Daily Living (ADLs) from the client and his sister. It is unclear if these deficits are the function of his childhood injury or severe and persistent mental illness combined with substance abuse.

(Exh. 4, p. 4.)

14. Based on the evaluation, Dr. Lefler opined that Claimant did not have a diagnosis of intellectual disability because his intellectual functioning was in the average range. Dr. Lefler explained his opinion as follows:

The results of intellectual assessment do not indicate the presence of an intellectual disability, as his measured level of intellectual functioning is within the average range. [*sic*]

This is consistent with his history of maintaining gainful employment and housing for much of his adult life.

However, his deficits in adaptive functioning are notable, as is his history of being taken advantage of. Nevertheless, these deficits cannot be definitively attributed to an intellectual impairment.

Based upon the results of the current evaluation, the client does not appear to be eligible for Kern Regional Center services. Nevertheless, the client is referred to the clinical team at Kern Regional Center to make a final determination of eligibility.

(Exh. 4, pp. 4-5.)

Diagnostic Criteria for Intellectual Disability

15. The Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), sets forth the diagnostic criteria for intellectual disability. (Exh. 6.) Under the DSM-5, a diagnosis of intellectual disability requires that the following three criteria 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.

(Exh. 6, p. 27.)

16. The DSM-5 provides further explanation for Criterion A, in part, as follows:

Intellectual 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 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). Clinical training and judgment are required to interpret test results and assess intellectual performance.

(Exh. 6, p. 31.)

Service Agency's Determination

17. Dr. Kimball Hawkins is a licensed psychologist. He has worked as a psychologist consultant for KRC since 1988. He was a member of the KRC clinical team that determined Claimant is not eligible for regional center services. The other members of the team were a nurse, an assessment program manager, and an

assessment coordinator. Dr. Hawkins testified credibly regarding the team's eligibility determination regarding Claimant.

18. On March 5, 2020, Claimant's case was reviewed by the KRC clinical team. The team reviewed all information that was available at the time, including the Psychological Evaluation report by Dr. Lefler. The team concluded Claimant is not eligible for services because he does not have a qualifying developmental disability that is attributable to one of five specified conditions (i.e., autism, epilepsy, cerebral palsy, intellectual disability, or a condition closely related to intellectual disability). There is no evidence of Claimant having been diagnosed with autism, epilepsy, cerebral palsy, or intellectual disability.

19. The KRC clinical team concluded that Claimant did not meet the diagnostic criteria for intellectual disability. The most recent assessment results indicated Claimant's intellectual functioning was in the average range and his full-scale IQ score was 98. Dr. Hawkins testified that, in his experience, KRC's clients who qualify for services on the basis of intellectual disability typically do not have intellectual abilities in the average range. Dr. Hawkins noted that Claimant attended a college class, he had a driver's license and drove cars, and he was employed. Dr. Hawkins testified that Claimant's condition appeared to have been affected by a neurocognitive injury he sustained at age four. Such an injury, however, is not a qualifying condition for regional center services.

20. The KRC clinical team also concluded that Claimant did not qualify for services under the "fifth category," which is defined in the Lanterman Act as disabling conditions that are closely related to or require treatment similar to intellectual disability. Dr. Hawkins testified that, in his experience, KRC has never had a client with an IQ score of 98 qualify for services under the fifth category. Dr. Hawkins' opinion is

that Claimant's scores indicate he has a mild neurocognitive disorder. Dr. Hawkins noted that Claimant has been treated for psychiatric illness and substance abuse. His current decline in adaptive functioning is due, in part, to his advancing age. Claimant has not previously been classified as having a developmental disability. Dr. Hawkins testified that Claimant's condition is not the result of a developmental disability. Claimant's adaptive functioning issues are due to medical or other reasons, but not a qualifying developmental disability.

21. The KRC clinical team's recommendations for Claimant were: (1) psychiatric treatment; (2) consider guardianship; (3) management of his medical problems; (4) counseling; and (5) support services. (Exh. 5.)

Claimant's Evidence

22. Brother testified at the hearing. He is the second oldest child of the family. Brother testified that the brain injury Claimant suffered at age four changed the trajectory of his life. Claimant has struggled intellectually and socially since that time. Brother testified that Claimant repeated kindergarten and first grade. Claimant was passed along without completing much education in his grades. According to Brother, Claimant was passed to the next grade because of his age, not because he demonstrated more skills.

23. Brother testified the injury at age 4 has affected Claimant his whole life. Claimant was allowed to drive but it was difficult for him. There were no regional center services when Claimant was growing up in Wisconsin in the 1960s. Brother feels Claimant is being held to a current standard that was not available at that time. Brother admitted the family does not have records from when Claimant was young. Brother contends that Claimant has significant adaptive issues that relate to

intellectual deficits resulting from his brain injury. According to Brother, the records the family has reflect that the level of science at the time of the accident was not as advanced as it is today. Brother testified that, prior to age 18, Claimant always had substantial issues that have become somewhat worse with age. The issues are "noticeable plainly" by those who have known Claimant from a young age.

24. Sister testified at the hearing. She agreed with Brother's testimony. Sister also agreed with the background information contained in Dr. Lefler's written report. Sister feels the brain injury Claimant suffered at age four affected his educational and social abilities. Back in the early 1960s, the effects of traumatic brain injury were not recognized and understood as they are today. Sister explained that, in essence, the psychiatrists said Claimant could walk and talk, "it was a miracle," and so Claimant could be taken home. Sister testified their mother was the primary caregiver and support for Claimant. After Claimant moved to California, Brother has been providing support for Claimant throughout Claimant's adult life. Sister has also become more involved with Claimant since their mother passed away. Sister confirmed that Claimant obtained the jobs described in Dr. Lefler's report on his own, and that he was employed in those jobs for years.

25. Sister recalled that Claimant was under psychiatric care prior to age 18, but the family has no access to those records, and she does not recall his diagnosis. Sister feels Claimant is not aware of how much his life has been affected by his brain injury, which is why he has not shared information regarding the injury with his healthcare providers. Sister testified that people have said mental health issues are the cause of Claimant's condition, but her sense is that Claimant's many mental health issues are due to his brain injury. Sister explained the family had not sought regional center services for Claimant until now because they were not aware the services were

available. Sister only became aware because her daughter works as a coordinator at Inland Regional Center and asked about Claimant possibly being eligible for regional center services.

26. Brother and Sister jointly prepared a written statement which provides examples of Claimant's substantial handicaps in the areas of self-care, self-direction, capacity for independent living, and economic self-sufficiency. They wrote, in part:

A few hours of testing of [Claimant's] intellectual functioning is not sufficient to assess his ability to reason in real-life situations and his inability to master practical tasks. His deficits in intellectual functions demonstrate themselves in poor reasoning, poor planning, limited abstract thinking, poor judgment and difficulty learning from experience. His cognitive functioning is expected to continue declining with age, as has been the experience with people with early brain injuries. His deficits in adaptive functioning have resulted in substantial handicaps in three or more of the following areas of major life activities: [redacted] (C) Self-care; [redacted] (E) Self-direction; (F) Capacity for independent Living; [redacted] (G) Economic self-sufficiency.

(Exh. A.)

27. Brother makes monthly in-person visits to Claimant's home. During those visits, Brother regularly finds Claimant is "malodorous and unbathed, unshaved, with unwashed hair, food residue on his face, and [wearing] clothing that is soiled with dirt and cat hair, stained, and ripped." (Exh. A.) Although Claimant's family has ensured that

he has a washer and dryer and clothing that is not stained, Claimant is unable to keep his clothes clean or recognize that clothes he is wearing are not appropriate because of stains and wear. Similarly, Dr. Lefler documented in his report that Claimant was "malodorous" during his visit. Claimant was aware he was attending a doctor visit but was unable to anticipate the need for basic hygiene. In their written statement, Brother and Sister note that Claimant is living with AIDS because he did not practice sexual hygiene with his partners. In 2019, Claimant stopped taking his AIDS medications for almost six months because of insurance issues, even though his family offered to pay for the drugs.

28. Claimant's deficits in self-direction and self-care are also demonstrated by his dental issues. Claimant has approximately six teeth left because he has demonstrated consistently poor oral hygiene throughout his adult life. He has suffered with gingivitis throughout his adult life. Claimant is living with significant deterioration of his jawbone. When his medical insurer referred him to a specialist in San Jose, a five-hour drive from his home, Claimant did not contest the recommendation and "just gave up." With Sister's help, Claimant was referred to the UCLA dental school, a two-hour drive away. On the day of the appointment at UCLA, Claimant was unable to locate the instructions given to him, and he failed to leave his house in time to make the appointment. Claimant struggles to plan and carry out basic activities.

29. Brother and Sister contend Claimant demonstrates deficits in his capacity for independent living. Prior to moving to California City in 2014, Claimant lived in an apartment in Canoga Park. The apartment was infested with cockroaches. Claimant's family needed to hire a hoarding and roach specialist to move him out, and most of Claimant's belongings had to be trashed. Claimant had become so accustomed to

roaches jumping on him through the night that after he moved to California City, he commented on how peaceful it was in his new home without bugs.

30. Claimant is unable to maintain a sanitary living environment. Although the family pays for a service to clean Claimant's apartment twice per month, Brother has found, during his monthly visits, that Claimant's stove is caked with grease, the sink is stacked with dirty dishes, the counters are grimy and never wiped down, and the floor "crunches" from being littered with dirt, cat food, and cat litter. Claimant has hoarding tendencies. Each month, Claimant acquires new pieces of furniture and other items, which reduces his actual living space and the area that can be cleaned. Claimant lives with explosive diarrhea. The toilet areas in his home often show signs of feces that he makes no effort to clean. This also results in extra cleaning charges when Claimant stays in hotels when traveling for family reunions.

31. (A) Claimant has difficulty making friends. He will associate with people who take advantage of him just so he can be around people. Claimant has been in two abusive relationships, one of which required a restraining order. Claimant often feels threatened and gives some of his money to people who threaten him, which makes Claimant unable to meet his own household expenses. Claimant's house has been broken into multiple times by people he knows. Claimant has a big heart and wants to help people, which often leads to him being taken advantage of by others. Claimant has had his iPad, telephone, computers, and other things of value stolen by people he allows into his home.

(B) For example, one person asked to borrow Claimant's Rolex watch that he had purchased when he received three years of disability pay. The person did not return the watch and initially claimed it was stolen. Later, the person told Claimant he found the watch in a pawn shop but would not tell Claimant which one until Claimant

gave him \$2,800 to get the watch out of the pawn shop. Although Claimant's family warned him this was a scam, Claimant gave the money to the person and then was immediately physically abused by the person.

(C) Another example is when Claimant allowed a person without a home to stay with him, the person borrowed Claimant's car one night, and the car was impounded when the person was arrested. Claimant did not have the funds to retrieve his car. Claimant then loaned his other car to the same person. The person claimed the car had been stolen. When the police investigated, they found the person was cooperating with other people to take advantage of Claimant. Claimant had to pay thousands of dollars from his 401(k) retirement account to retrieve and repair his second car.

32. Claimant receives a disability check. His family provides him with a rent-free home and pays for his utilities, cell phone and internet service, and his car repairs. Even with his family's financial support, Claimant routinely runs out of money and calls Brother for financial help within a few days after receiving his disability check. Claimant drives people places and receives money for the rides, but he rarely charges enough to cover his costs.

LEGAL CONCLUSIONS

1. This matter is governed by the Lanterman Act, set forth at Welfare and Institutions Code section 4500 et seq., and the implementing regulations set forth at California Code of Regulations, title 17, § 54000 et seq.

2. A state level fair hearing to determine the rights and obligations of the parties, if any, is referred to as an appeal of the service agency's decision. Claimant

properly and timely requested a fair hearing and therefore jurisdiction for this case was established. (Factual Findings 1-5.)

3. Generally, when a person seeks to establish eligibility for government benefits or services, the burden of proof is on him to prove by a preponderance of the evidence that he meets the criteria for eligibility. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161; Evid. Code, §§ 115, 500.) "'Preponderance of the evidence means evidence that has more convincing force than that opposed to it.' [¶] The sole focus of the legal definition of 'preponderance' in the phrase 'preponderance of the evidence' is the *quality* of the evidence. The *quantity* of the evidence presented by each side is irrelevant." (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 324-325, citations omitted, italics in original.)

4. To establish eligibility for regional center services, a person must prove he has a disabling condition that meets the definition of "developmental disability" under Welfare and Institutions Code section 4512, subdivision (a). The disabling condition must: (1) originate before age 18; (2) continue indefinitely; (3) constitute a "substantial disability" for the person; and (4) be attributable to one of the five categories of eligible conditions specified in Welfare and Institutions Code section 4512, subdivision (a). The first four categories are specified as intellectual disability, cerebral palsy, epilepsy, and autism. The fifth and last category, commonly known as the "fifth category," is defined as "disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability." (*Id.*)

5. A more specific definition of a "fifth category" condition is not provided in the statutes or regulations. Whereas the first four categories of eligibility are specific, the disabling conditions under the residual fifth category are intentionally

broad so as to encompass unspecified conditions and disorders. But the condition must be “closely related” or “require treatment similar” to intellectual disability. “The fifth category condition must be very similar to mental retardation [the prior diagnostic term for intellectual disability], with many of the same, or close to the same, factors required in classifying a person as mentally retarded.” (*Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, 1129.)

6. (A) For purposes of establishing eligibility under the Lanterman Act, the term “developmental disability” excludes disabling conditions that are solely psychiatric disorders, solely learning disabilities, or solely physical in nature. (Cal. Code Regs., tit. 17, § 54000, subd. (c); Welf. & Inst. Code, § 4512, subd. (a).)

(B) “Solely psychiatric disorders [are those] where there is impaired intellectual 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.” (Cal. Code Regs., tit. 17, § 54000, subd. (c)(1).)

(C) “Solely physical in nature” refers to disabling conditions that “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].” (Cal. Code Regs., tit. 17, § 54000, subd. (c)(3).)

7. The term “substantial disability” is defined in California Code of Regulations, title 17, section 54001, subdivision (a), as follows:

(a) “Substantial disability” means:

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

(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; and (G) Economic self-sufficiency.

8. The term "cognitive" means "the ability of an individual to solve problems with insight, to adapt to new situations, to think abstractly and to profit from experience." (Cal. Code Regs., tit. 17, § 54002.)

9. In determining if an individual meets the Lanterman Act's definition of developmental disability, "the regional center may consider evaluations and tests, including but not limited to, intelligence tests, adaptive functioning tests, neurological and neuropsychological tests, diagnostic tests performed by a physician, psychiatric tests, and other tests or evaluations that have been performed by, and are available from, other sources." (Welf. & Inst. Code, § 4643, subd. (b).)

10. With regard to eligibility for regional center services, "the Lanterman Act and implementing regulations clearly defer to the expertise of the DDS (California Department of Developmental Services) and RC (regional center) professionals'

determination as to whether an individual is developmentally disabled." (*Mason, supra*, 89 Cal.App.4th at p. 1127.)

Discussion

11. The preponderance of the evidence does not support a finding that Claimant is eligible to receive regional center services. Claimant does not have a disabling condition that meets the definition of "developmental disability" under Welfare and Institutions Code section 4512, subdivision (a). It was not established Claimant is substantially disabled due to autism, epilepsy, cerebral palsy, intellectual disability, or a "fifth category" condition. Claimant has deficits in adaptive functioning which Dr. Lefler described as "notable." However, those deficits cannot be attributed to intellectual disability, a "fifth category" condition, or other diagnosis that would qualify Claimant for regional center services.

12. Claimant's deficits in adaptive functioning are related to multiple factors, including the long-term effects of his traumatic brain injury, his mental health issues (i.e., depression, anxiety, and hallucinations) which are regulated with psychotropic medications, his history of substance abuse, his HIV-positive status, and the natural process of aging. Brother and Sister acknowledge that Claimant's condition has been exacerbated by aging and AIDS. They also acknowledge that Claimant's adaptive issues and intellectual deficits result from the long-term effects of his traumatic brain injury. Claimant's traumatic brain injury (which is a condition solely physical in nature) and his mental health issues (solely psychiatric disorders) are excluded conditions, as discussed in Legal Conclusion 6.

13. Based on the foregoing, Claimant is not eligible for regional center services under the Lanterman Act. Claimant's appeal shall be denied. (Factual Findings 1-32; Legal Conclusions 1-12.)

ORDER

Claimant's appeal is denied. Kern Regional Center's determination that Claimant is not eligible for services under the Lanterman Act is affirmed.

DATE:

ERLINDA G. SHRENGER
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.