

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

In the Matter of:

CLAIMANT,

vs.

SAN GABRIEL/POMONA REGIONAL CENTER,

Service Agency.

OAH No. 2021020157

DECISION

Carmen D. Snuggs, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on July 8, 2021.

Daniel Ibarra, Fair Hearings Specialist, represented the San Gabriel/Pomona Regional Center (SGPRC or Regional Center).

Claimant, who appeared at the hearing, was represented by her authorized representative, K.N.¹

¹ Names are omitted to protect the privacy of the parties.

Oral and documentary evidence was received. The record was held open until July 12, 2021, to allow Claimant to file, with the help of SGPRC, documents demonstrating that Claimant had been diagnosed with Huntington's Disease before she was 18 years old. SGPRC, through Mr. Ibarra, did not object to the admission of the documents to be submitted by Claimant.

Claimant timely filed an undated letter from San Gabriel Valley Perinatal Medical Group, Inc., and the associated June 18, 2014 Quest Diagnostics results of Huntington Disease Mutation Analysis, which were collectively marked for identification as Exhibit B and admitted into evidence. The record was closed, and the matter was submitted for decision on July 12, 2021.

ISSUE

Does claimant have a disabling condition that either is closely related to intellectual disability or requires treatment similar to that required for individuals with intellectual disability, which would make her eligible for regional center services?

EVIDENCE RELIED ON

Documentary: Service Agency's exhibits 1-13; claimant's exhibits A and B.

Testimonial: Claimant, K.N., claimant's mother (Mother), and Amy Slavin, M.S.W.

FACTUAL FINDINGS

Background and Jurisdictional Matters

1. Claimant is a 24-year-old female who was diagnosed with Huntington's Disease prior to the age of 18. Huntington's Disease is an inherited neurological degenerative disorder that affects cognition, movement, and emotion/behavior. Claimant's biological mother also suffered from Huntington's Disease. Claimant began living with her paternal great-grandparents when she was approximately two years old, and they subsequently adopted her. Claimant's great-grandmother and great-grandfather will be referred to as Mother and Father throughout this decision. Claimant has two children, ages 5 and 6 years old. She and her children live with Mother and Father.

2. On a date not made clear by the record, but not later than October 5, 2020, Mother contacted SGPRC to request that claimant be evaluated due to Mother's concern that Claimant suffered from an intellectual disability,² and would therefore be eligible for services under the Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code section 4500 *et seq.* Mother submitted records for review by the Service Agency. After Deborah Langenbacher, Ph.D., SGPRC's staff psychologist, conducted her review, SGPRC issued a Notice of Proposed Action on January 6, 2021, denying claimant's application on the grounds that she did not demonstrate that she had a substantially handicapping developmental disability as defined in the Lanterman Act. Claimant appealed from that notice. In a letter to

² K.N. clarified at the hearing that Claimant seeks Regional Center services under a fifth category eligibility.

claimant and Mother dated January 6, 2021, SGPRC offered to provide information regarding services that are provided by other agencies as well as referral assistance.

Claimant's History Before Age 18

3. Claimant began attending schools in the Covina-Valley Unified School District (District) in kindergarten. Unfortunately, special education records for students such as claimant who born in 1996 were destroyed because the district only stores those records for 24 years. Some records, however, were recovered and others were retained by Mother. In 2012, District representatives noted that claimant's elementary school teachers reported that claimant was "a capable and smart young lady" whose work did not match her potential. (Ex. 4, p. 32.) They also expressed concern about claimant's lack of focus.

DISTRICT RECORDS

4. A. The District's multidisciplinary team conducted a psycho-educational assessment of claimant in 2011 when claimant was in the ninth grade, and prepared a report dated January 19, 2011. Although claimant's "performance on state standardized testing [had] been consistently within the Proficient to Advanced range with the exception of 5th grade" (Ex. 3, p. 23), claimant's overall processing skills were within the Average to Low Average range. At the time of the psycho-educational assessment, claimant was receiving grades of "F" in biology, algebra, and graphic communication, "D-" in comparative literature, "C-" in Spanish, and an "A" in PE. Claimant's teachers commented that she was distracted in class, uninterested in the subjects, failed to complete classwork or homework, and worked very slowly. Mother expressed concern that claimant lacked concentration, was easily distracted, and lacked self-control.

B. The Wechsler Intelligence Scale for Children-Fourth Edition (WISC-IV) was administered to claimant, which revealed that claimant's cognitive and academic skills were in the average range. In addition, claimant's Full Scale IQ as determined by the WISC-IV was 91, which is also in the average range. It was determined, based upon Mother's and claimant's teachers' ratings on the Behavior Assessment Scale for Children (BASC) and Conner's Rating Scale, that claimant's symptoms were associated with ADHD, and that her inability to pay attention was the "primary factor" negatively impacting claimant's school performance. (Ex. 3, p. 23.)

C. Claimant, Mother, and claimant's teachers completed the Behavior Assessment Scale for Children (BASC) rating scales. The ratings were all in the at-risk and clinically significant range for adaptive and social skills, school, attention and learning problems, withdrawal, anxiety, attention problems, depression, and hyperactivity.

D. It was determined that claimant was able to learn demonstrated by her performance on one-one-one testing and state standardized testing. Because claimant has not been observed at school to engage inappropriate behaviors and she did not appear to demonstrate a pervasive mood of unhappiness, it was determined that her BASC assessment "warranted mild concern and she was referred to a therapist for more in-depth counseling." (Ex. 3, p. 22.) The District determined that claimant qualified for special education services under "Other Health Impaired" due to her issues with attention. (Ex. 3, p. 24.)

5. Claimant's January 9, 2012 Individual Education Program (IEP) identifies that claimant's areas of need as mainstreaming, "mathematics," and "pre-vocational." Under each area of need, there is an identified annual goal and three short term objectives. (Ex. 5.) In the area of mainstreaming, it was noted that claimant did not

consistently complete work in all of her classes, and instead focused on one or two classes at a time, letting her grades suffer in the others. The stated goal was for claimant to regularly attend class, complete in-class assignments and homework, and earn a grade of C or better. Claimant's mathematics goal was to develop mechanisms to help her solve linear equations and to demonstrate her understanding of linear equations. Claimant's pre-vocational goal was to participate in career interest activities, research colleges, discuss part-time employment options with a specialist, and research the requirements to obtain a driver's license.

6. A. According to an incomplete psycho-educational report (only the first two pages were submitted) dated October 25, 2012, claimant's behavior changed significantly when she was in the eleventh grade. Specifically, claimant's lack of motivation to go to school and complete her work, talking in class, and refusal to adhere to school and classroom rules increased. In addition, claimant engaged in cutting herself during the end of the school year, which resulted in her hospitalization for seven days. While claimant attended summer school, she initiated a physical altercation that resulted in harm to a staff member and a student. Instead of expelling claimant, the IEP team recommended that claimant undergo a psycho-educational assessment to determine whether her extreme change in behavior was caused by an emotional disturbance, and to reassess claimant's academic needs, services, and supports.

B. The district's multi-disciplinary team conducted classroom observations, interviewed claimant, obtained teacher reports, and administered the WISC-IV, BASC, Wechsler Individual Achievement Test (WIAT), and Scales of Independent Behavior-Revised (SIB-R), among other assessments. The results of the assessments, however, are unknown as the report is incomplete.

7. An undated and incomplete Student Services Education Specialist Report (only the first two pages were submitted), prepared when claimant was in the 11th grade, indicates that claimant was able to read and understand at the sixth to seventh grade level. She struggled with words she was unfamiliar with and had difficulty understanding a passage that she read orally. With respect to math, claimant was able to solve various problems, but struggled with problems involving more than one variable, percentages, and geometry. In the area of written language, claimant was able to write a multi-paragraph essay with a thesis statement and supporting information. The education specialist concluded:

[Claimant] is much more capable than her grades show. When she applies herself, she does well on class work, activities, and tests. Unfortunately, she does doesn't always apply herself and put forth a lot of effort within her classes[.] She often shuts down, and has expressed on more than one occasion, that she just doesn't care. She doesn't express much concern for getting good grades or even graduating from high school. This lack of motivation has a huge impact on the caliber of work that is produced in her classes.

(Ex. 102.)

8. Claimant's December 12, 2013 IEP indicates that claimant was eligible for special education services due to Other Health Impairments – attention difficulties, and Emotional Disturbance “due to a pervasive [mood] of unhappiness [and a] diagnosis of mood disorder and depression.” (Ex. 7, p. 60.) Claimant was on track to graduate from high school in June 2014, and she passed the California High School Exit Exam.

Claimant received aids and services that included a) sitting in the front of the class away from distractions; b) teachers ensuring that claimant had necessary supplies, understood the directions to complete assignments and was ready to participate in activities; c) the provision of extra time on assignments or projects; and d) the ability for claimant to leave the classroom when she felt it was necessary to consult with her school counselor. Claimant participated in general education 64 percent of the time. She received special education and related services as follows: individual counseling 25 minutes per week, college and career awareness for 150 minutes once per year, and special academic instruction for 100 minutes daily. Claimant expressed that upon graduation, she wanted to attend college and work with animals and children. She took an early childhood education course through the ROP program and worked at a day care site.

AURORA CHARTER OAK HOSPITAL RECORDS

9. Claimant was admitted to Aurora Charter Oak Hospital (Aurora) on June 5, 2012, on a psychiatric hold for cutting and posing a danger to herself. The admission was initiated when claimant took a knife to school, wrote a note to her teacher stating that she started cutting herself in response to feeling mad or sad, but that developed into a general desire to cut herself, and that she did not care if she died. (Ex. 6, p. 38.)

10. Upon her admission to Aurora, claimant was anxious, affect was flat, and she demonstrated poor coping skills, social judgment, and insight. Claimant reported a lack of energy, disinterest in engaging in activities, panicky feelings, and difficulty sleeping. She also reported fighting with her teachers and parents, punching walls and breaking things at home. Claimant had been participating in counseling for the previous three months. Claimant was diagnosed with major depressive disorder,

recurrent and severe, and prescribed Zoloft. She attended group and individual therapy. By June 12, 2012, claimant reported being less depressed, and she was discharged on that date with instructions to continue the Zoloft and participate in outpatient therapy.

11. On July 11, 2012, claimant's parents took her back to the hospital to be assessed as a result of her anger and "out-of-control" behavior. (Ex. 6, p. 48.) Claimant stated that she did not care about anything. She was hostile and angry upon admission, and she struck hospital staff and had to be restrained during the admission process. Mother reported that claimant stopped taking Zoloft upon her release from the hospital the previous month and had been threatening to cut herself. Claimant was admitted with a diagnosis of bipolar disorder, mixed episode without psychosis, and was placed on a 72-hour psychiatric hold on the basis that she was a danger to herself and others.

12. Claimant participated in group and individual therapy and prescribed Depakote, a mood stabilizer. When claimant was discharged on July 14, 2012 her affect had improved although she continued to report experiencing occasional anxiety.

GENETIC TESTING IN 2014

13. Claimant was seen on April 21, 2014, at San Gabriel Valley Perinatal Medical Group, Inc., due to her family history of Huntington's Disease. She received counseling on May 19, 2014, and on that same date she underwent Huntington Disease Mutation Analysis by Quest Diagnostics. Quest Diagnostics' Final Report dated June 18, 2014, which contained test results for claimant's unborn child, explained that clinical manifestations of a trinucleotide called Cytosine, Adenine, Guanine (CAG) in the Huntington Disease gene of at least 36 CAG repeats is considered to be diagnostic

of Huntington's Disease. The Quest Diagnostic results indicate that claimant's previous testing revealed that claimant carried a repeat size of 61 CAG.

Claimant's History After Age 18

14. Claimant saw neurologist James T. Lin, M.D., between June 30, 2017 and October 5, 2018. His impression on June 30, 2017 was that claimant suffered from moderate chorea, abnormal involuntary movement, due to Huntington's Disease. By 2018, claimant reported having difficulty speaking and remembering things.

15. Xenos Mason, M.D., of the Department of Neurology at the David Geffen School of Medicine at UCLA, prepared a letter dated May 22, 2020. Dr. Mason stated that claimant was under his care at the UCLA Neurology Movement Disorders Clinic for management of Huntington's Disease. Dr. Mason noted that claimant began experiencing behavioral symptoms at age 15-16, and motor symptoms at age 18. Dr. Mason also noted that claimant had been aggressive with her teachers and was hospitalized at Aurora for aggression. He explained that:

[¶]

Juvenile Huntington's disease produces symptoms that can affect [*sic*] movements (producing excessive involuntary movements and also impairment of voluntary movement), behavior (emotional lability and impulsivity, obsessive thoughts and behaviors), and cognition (cognitive decline and eventual dementia). Cognitive function declines, mood and emotional symptoms worsen, and movement symptoms worsen as the disease progresses. This disease

has no cure and no treatments have been shown to slow progression.

[Claimant] requires extensive home support which is currently being provided by her elderly great-grandmother. This is an unsustainable situation and I fear will place a high caregiver burden on [claimant's] family and leave her and her family poorly equipped to deal with the inevitable worsening of symptoms from this chronic, progressive neurodegenerative disease.

[¶]

(Ex. 9.)

SGPRC Record Review

16. On October 12, 2020, Dr. Langenbacher reviewed Dr. Mason's letter indicating a diagnosis of Juvenile Huntington's Disease, the January 2011 psycho-educational report indicating claimant demonstrated average cognition, a Full-Scale IQ of 91, and that her academic skills were average to low average, claimant's medical records containing a Huntington's Disease diagnosis, and records from Aurora showing that claimant was diagnosed with suffering from major depression and bipolar disorder. Dr. Langenbacher concluded that there was no evidence that claimant suffered for intellectual disability, autism spectrum disorder (ASD), or any other Regional Center eligible condition.

17. On January 4, 2021, Dr. Langenbacher reviewed: a) claimant's October 2012 IEP, which that indicated claimant was eligible for special education services due

to attention issues and emotional disturbance and participated in general education classes 64 percent of the time; b) the October 2012 psycho-educational evaluation that indicated claimant demonstrated behavioral changes in 2012, including self-injurious behavior, and the undated, incomplete Student Services Education Specialist Report indicating that claimant was reading at a sixth to seventh grade level and displayed poor motivation. Dr. Langenbacher again concluded that “there is no indication for [intellectual disability], ASD, or other [Regional Center] eligible condition.” (Ex. 13, p. 108.) Dr. Langenbacher offered to review the complete October 25, 2012 psycho-educational report if it was made available.

Claimant’s Evidence

18. K.N., claimant’s sister-in-law, is married to claimant’s brother. K.N. has been claimant’s In-Home Supportive Services (IHSS) provider since May 10, 2021, when claimant was approved to receive 39.7 hours of IHSS services.³ K.N. assists claimant with meal preparation, housework, laundry, cleaning, and transporting claimant to doctor appointments.

19. K.N. has known claimant for 10 years and observed that claimant began displaying behavioral symptoms due to Huntington’s Disease when claimant was 15 or 16 years old. Claimant was diagnosed with Huntington’s Disease at age 17, when claimant was pregnant with her first child.

³ It was not made clear by the record whether IHSS services are provided on a weekly or monthly basis, or some other schedule.

20. K.N. believes claimant was misdiagnosed with behavioral/psychiatric problems while at Aurora Oaks, and that claimant's maladaptive behaviors at that time were due to Huntington's Disease.

21. According to K.N., claimant's symptoms have worsened significantly during the past two to three years. Despite receiving speech and occupational therapy, claimant has difficulty speaking and only those who know her and spend a lot of time with claimant can understand what she says. Claimant twitches and has difficulty eating because she often chokes.

22. K.N. does not recall any medical professional suggesting that claimant is suffering from intellectual disability or ASD.

23. Mother testified that claimant became rebellious and moody starting at age 13 or 14 and would not attend class or do her schoolwork. Though claimant was capable of doing the schoolwork, she was easily distracted. Claimant associated with boys and not girls because girls would call claimant names. When claimant was 16 years old, she began cutting her wrists. Claimant also would tell her parents that she was going to visit friends and would not return home for two to three days. After claimant hit a teacher, a psychologist referred claimant to Aurora.

24. Mother does not have any concerns that claimant suffers from an intellectual disability. In support of her denial that claimant is intellectually disabled, Mother asserted that claimant improved her academic performance because she wanted to ensure that she graduated from high school.

25. Mother corroborated K.N.'s testimony that claimant's condition has significantly deteriorated. Mother explained that most people cannot understand claimant when claimant speaks, and claimant has to eat and drink slowly because she

often chokes when she eats. Mother also described claimant as forgetful and stated that claimant sleeps "a lot." Claimant will be participating in speech and physical therapy in the future. Mother takes care of claimant's children.

26. Claimant is currently being treated by a neurologist identified by Mother as Dr. Pearlman. Claimant takes Austedo to control her involuntary movements, as well as Olanzapine and Sertraline. Official notice is taken pursuant to Government Code section 11515, and Evidence Code section 452, subdivision (h), that Olanzapine is typically prescribed to treat psychotic conditions, and Sertraline is typically prescribed to treat depression and anxiety.

27. Amy Slavin has been employed as a social worker at Huntington's Disease Society of America (HDSA) Center of Excellence at the University of California Los Angeles (UCLA) Medical Center for six years. She obtained her master's in social work in 2014 and is in the process of obtaining her license as a clinical social worker.

28. Ms. Slavin works with claimant at the HDSA Center of Excellence at UCLA as part of a multi-disciplinary team consisting of a psychologist, genetic counselor, physical therapist, and a research team. Ms. Slavin also works with patients who are regional center clients.

29. Ms. Slavin explained that Huntington's Disease is extremely rare, and that it is even more rare for someone to be diagnosed with juvenile Huntington's Disease. According to Ms. Slavin, since juvenile Huntington's Disease is uncommon, symptoms associated with the cognitive decline caused by the disease that may be displayed in a school setting, specifically rebellion, failure to attend class or complete work, poor judgment, lack of motivation, aggression, anti-social behavior and poor decision

making, are misdiagnosed. Those suffering from Huntington's disease are told to work harder when their deficits are due to the disease.

30. Ms. Slavin expressed her opinion that claimant's destroyed school records most likely contained evidence of claimant's cognitive decline, and that claimant suffers from cognitive impairment. Claimant needs assistance with managing her medication, dressing, showering, toileting, and meal planning, and she cannot be left alone or manage her finances. It is Ms. Slavin's understanding that claimant watches television all day, displays mood swings and apathy, and has difficulty performing tasks due to twitching.

31. Claimant testified at the hearing. She displayed involuntary movements and it was apparent that she had difficulty speaking. Parts of claimant's testimony could not be understood, but claimant did say that she chokes easily and breaks things inadvertently. She also stumbles over her feet a lot and falls. In addition, claimant stated that she makes a mess whenever she eats, she wears an adult bib because she spills, she is tired all the time, and she uses a shower chair so that she does not fall in the bathtub.

Analysis

32. Here, claimant was diagnosed with Huntington's Disease prior to the age of 18. She suffers from physical and psychological disabilities due to the disease's progression and receives IHSS based upon her disabilities so that she can remain safely in her home. It is undisputed, however, that Huntington's Disease is not an eligible condition for Regional Center Services.

33. Claimant's Full-Scale IQ of 91 was determined to be in the average range in 2011. IQ is usually perceived as stable absent an intervening event. Even if

Huntington's Disease can be categorized as an intervening event, claimant was never diagnosed, by clinical assessment or standardized testing, as intellectually disabled, after receiving her Huntington's Disease diagnosis. In addition, to fall within the fifth category, any deficits an individual may have in adaptive functioning must be related to his or her cognitive limitations; the individual's deficits cannot be caused by physical or psychological conditions. Here, the evidence established claimant suffered from a lack of attention in high school and currently experiences forgetfulness. However, claimant presented no evidence that she has adaptive deficits in the areas of self-care, social or interpersonal skills, self-direction, etc., due to sub-average intellectual functioning. In sum, although claimant's Huntington's Disease is a debilitating disorder, claimant did not show that she currently has a disabling condition closely related to intellectual disability.

34. Similarly, claimant did not present evidence that she required treatment similar to that required by an individual with an intellectual disability, such as training, and instructions broken down into small steps and simple language to help claimant develop adaptive skills. Rather, the evidence established that claimant's treatment consists of medications that ameliorate Huntington's chorea and treat psychiatric conditions. While claimant may benefit from many of the *services* provided by SGPRC to individuals with intellectual disabilities, the *treatment* she requires is different from that required by a person who has an intellectual disability. SPRG is prohibited from funding regional center services solely to improve the current quality of claimant's life and to help her cope with the progressively deteriorating effects of her disease. In sum, claimant did not present sufficient evidence to show that she currently requires treatment, as opposed to services, similar to that required by individuals with an intellectual disability.

LEGAL CONCLUSIONS

1. An administrative hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Act to appeal a contrary service agency decision. (Welf. & Inst. Code, §§ 4700-4716.) Claimant requested a hearing to contest Service Agency's proposed denial of claimant's eligibility for services under the Lanterman Act and therefore jurisdiction for this appeal was established.

2. Generally, when an applicant seeks to establish eligibility for government benefits or services, the burden of proof is on her to prove by a preponderance of the evidence that she 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. [Citations] . . . [T]he 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.)

3. In order to be eligible for regional center services, a claimant must have a qualifying developmental disability. Welfare and Institutions Code section 4512, subdivision (a), defines "developmental disability" as:

[A] disability that originates before an individual attains 18 years of age; 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.

The eligibility categories of cerebral palsy, epilepsy and autism, and intellectual disability are not at issue in this fair hearing. Only the eligibility category of a disabling condition closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability, also known as the fifth category, will be addressed.

4. To prove the existence of a qualifying developmental disability within the meaning of Welfare and Institutions Code section 4512, a claimant must show that she has a "substantial disability." Pursuant to Welfare and Institutions Code section 4512, subdivision (l)(1):

"Substantial disability" means the existence of significant functional limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person:

(A) Self-care.

(B) Receptive and expressive language.

(C) Learning.

(D) Mobility.

(E) Self-direction.

(F) Capacity for independent living.

(G) Economic self-sufficiency.

5. California Code of Regulations, title 17, section 54001 further refines the definition of "substantial disability." It states, in pertinent part:

(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.

(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. California Code of Regulations, title 17, section 54001, subdivision (b), provides, in pertinent part, that the "assessment of substantial disability shall be made by a group of Regional Center professionals of differing disciplines," consisting of, "as a minimum a program coordinator, a physician, and a psychologist."

7. In addition to proving that she suffers from a "substantial disability," a claimant must show that her disability fits into one of the five categories of eligibility set forth in Welfare and Institutions Code section 4512.

8. The Lanterman Act and its implementing regulations contain no definition of the qualifying developmental disability of "Intellectual Disability." Consequently, when determining eligibility for services and supports on the basis of intellectual disability, that qualifying disability had previously been defined by the DSM-5 diagnostic definition of intellectual disability.

9. The DSM-5 describes intellectual disability as follows:

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.

(DSM-5, p. 33.)

10. The DSM-5 notes the need for assessment of both cognitive capacity and adaptive functioning and that the severity of intellectual disability is determined by adaptive functioning rather than IQ score. (*Id.* at 37.)

11. Pursuant to Welfare and Institutions Code section 4512, subdivision (a), the “fifth category” of eligibility under the Lanterman Act refers to individuals with “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 does “not include other handicapping conditions that are solely physical in nature.”

12. The fifth category is not defined in the DSM-5. *In Mason v. Office of Administrative Hearings* (2001) 89 CalApp.4th 1119, 1129, the California Court of Appeal held that the fifth category was not unconstitutionally vague and set down a general standard: “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.”

13. Individuals may qualify for regional center services under the fifth category on either of two independent bases, with one basis requiring only that an individual require treatment similar to that required for individuals with intellectual disability. Thus, an individual can qualify for regional center services under the fifth category if he or she satisfies either prong: (1) a condition closely related to intellectual disability or (2) a condition requiring treatment similar to that required for an intellectually disabled individual. (*Samantha C. v. State Department of Developmental Services* (2010) 185 Cal.App.4th 1462, 1492.)

14. Determining whether a claimant’s condition “requires treatment similar to that required” for persons with intellectual disability is not a simple exercise of enumerating the services provided and finding that a claimant would benefit from them. Many people, including those who do not suffer from intellectual disability, or any developmental disability, could benefit from the types of services offered by regional centers (e.g., assistance with cooking, money management, public transportation, counseling, vocational training, living skills training, or supervision). The criterion therefore is not whether someone would benefit from the provision of services, but whether that person’s condition requires treatment similar to that required for persons with intellectual disability, which has a narrower meaning under the Lanterman Act than services. (*Ronald F. v. Dept. of Developmental Services (Ronald F.)* (2017) 8 Cal.App.5th 94, 98.)

Discussion

15. While claimant submitted sufficient evidence to show that her Huntington's Disease originated before she was 18 years old, she did not submit sufficient evidence to establish that, as a result of her disease, she has a developmental disability as that term is defined in the Lanterman Act and implementing regulations. Specifically, while claimant experienced the onset of behavioral and motor symptoms prior to the age of 18, she did not present sufficient evidence to show that she suffers from deficits in intellectual functions that have been confirmed by both clinical assessment and individualized, standardized intelligence testing. As set forth in Factual Finding 32 and 33, claimant did not show that she currently has a disabling condition closely related to intellectual disability. Moreover, as set forth in Factual Finding 34, claimant did not establish that she currently has a disabling condition that requires treatment similar to that required for individuals with an intellectual disability designed to assist the individual develop on-going adaptive living skills.

17. Based on the foregoing, Claimant has not established her eligibility under the fifth category.

18. Although the result may seem harsh, particularly for individuals with conditions as debilitating as claimant's, the legislature did not grant regional centers the authority to provide services to individuals whose disabilities fall outside the five specified categories. Because claimant did not show that she currently has a disabling condition that is closely related to intellectual disability or requires treatment similar to that required for individuals with an intellectual disability, she did not establish that she is eligible for services under the Lanterman Act at this time. Claimant and Mother are encouraged to seek referral assistance from SGPRC as well as information regarding other agencies that provide services that may be beneficial to claimant.

ORDER

Claimant's appeal of the denial of eligibility for services under the Lanterman Act from the San Gabriel/Pomona Regional Center is denied.

DATE:

CARMEN D. SNUGGS

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.