BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

CLAIMANT

vs.

CENTRAL VALLEY REGIONAL CENTER, Service Agency

OAH No. 2021060246

DECISION

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter by videoconference on July 15, 2021, from Sacramento, California.

Claimant was represented by his mother.

Tamara Salem, Appeals and Compliance Coordinator, represented Central Valley Regional Center (CVRC).

Evidence was received and the record was left open to allow CVRC to submit copies of Exhibits 11 and 12. Copies of Exhibits 11 and 12 were received, and the record was closed and the matter submitted for written decision on July 16, 2021.

ISSUE

Is claimant eligible to receive regional center services because he is an individual with autism spectrum disorder (ASD), intellectual disability (ID), or a disabling condition closely related to ID or that requires treatment similar to that required for ID (Fifth Category)?

FACTUAL FINDINGS

Background

1. Claimant is a six-year-old boy who lives at home with his adoptive parents, two older adoptive brothers, younger biological sister, and several pets. He was born addicted to cocaine and spent the first two weeks of life in the Neonatal Intensive Care Unit. Once released from the hospital, he was temporarily placed with his adoptive parents. They legally adopted him eight months later.

2. Claimant has diagnoses of hyperactivity, impulsivity, aggression, self-injurious behavior, and difficulty interacting with peers. He has frequent temper tantrums which last 15 to 20 minutes and include falling to the ground, screaming, going limp, eloping (running away), hiding, and pushing/kicking others away. His tantrums are frequently prompted by him not getting his way or changes in his schedule.

3. Claimant's mother applied to CVRC for regional center services in late 2018 or early 2019 based on the suspicion that claimant had ASD.

Evaluation of Claimant's Eligibility for Regional Center Services

KIMBALL HAWKINS, PH.D.

4. Dr. Hawkins is a licensed psychologist. CVRC referred claimant to Dr. Hawkins for psychological evaluation. He documented his findings and conclusions in a written report dated February 4, 2019.

5. Dr. Hawkins administered three tests to determine if claimant has ASD. Claimant received a score of 2 on the Autism Mental Status Exam, below the minimum score of five required for a diagnosis of ASD. He received a score of 24 on the Childhood Autism Rating Scale, Second Edition, which correlated to "minimal to no symptoms of autism." His score of 5 on the Autism Diagnostic Observation Schedule, Module 2, was below the score of 8 to 12 necessary to diagnose autism.

6. Dr. Hawkins noted that claimant was cooperative during the testing process and appeared to put forth his best efforts. He made appropriate eye contact, used facial expressions, and initiated interaction with others on his own terms. He showed imagination and creativity when playing, pointed to pictures and objects upon request, and showed no unusual preoccupations with specific objects or activities. He did not display any unusual repetitive behaviors or any unusual or odd sensitivities.

7. Dr. Hawkins administered the Wechsler Preschool and Primary Scale of Intelligence, IV and the Vineland Adaptive Behavior Scale, 3 to measure claimant's intellectual and adaptive functioning, respectively. Claimant scored in the low average range for intellectual functioning, with an overall score of 86 and subcategory scores of 84 (verbal comprehension), 91 (visual-spatial), and 87 (working memory). He scored in the significant sub-average range for adaptive functioning, with an overall score of

65 and subcategory scores of 62 (communication), 67 (daily living skills), 65 (socialization), and 75 (motor skills).

8. Dr. Hawkins concluded claimant has "a significant speech and language delay or disorder along with a speech sound disorder." Additionally, he has "a significant number of disruptive and aggressive behaviors." However, the evaluation revealed insufficient evidence to support an ASD diagnosis, and claimant's test scores were in the low average range and precluded a diagnosis of ID. Dr. Hawkins diagnosed claimant with language disorder, speech sound disorder, and disruptive behavior, symptoms reported.

CVRC's Eligibility Team Review

9. CVRC's multidisciplinary team consisting of a staff psychologist, a consulting physician, and an intake counselor reviewed Dr. Kimball's psychological evaluation, claimant's medical records, and the intake counselor's personal interview and assessment of claimant. The team concluded claimant is not eligible for services because "there is no evidence of a qualifying developmental disability." It recommended that claimant's case be closed.

CVRC's Denial of Regional Center Services

10. On May 7, 2021, CVRC sent claimant a Notice of Proposed Action closing his case on the ground that he was determined to be ineligible for regional center services because he does not have a developmental disability. Claimant's mother timely submitted a Fair Hearing Request challenging CVRC's proposed action on the ground that claimant "should be able to get services from the 5th category."

Additional Evidence at Hearing

SCHOOL RECORDS

11. Claimant was enrolled in kindergarten at Coarsegold Elementary School during the 2020/2021 school year. He has been eligible for special education services since February 22, 2018, based on a primary diagnosis of "Other Health Impairment" and a secondary diagnosis of "Speech or Language Impairment."

12. According to claimant's December 15, 2020 Individualized Education Program (IEP), he received Specialized Academic Instruction in the form of 120 minutes of English Language Assistance and 60 minutes of Mathematics each week on a "pull-out" basis from December 15, 2020, through January 31, 2021. He also received program accommodations, such as extra time to complete assignments, tests, and quizzes; short, frequent breaks to help maintain focus and concentration; and preferred seating at the front of the class, close to his teacher, and next to a classmate who can help him. On February 1, 2021, his number of minutes of Special Academic Instruction increased to 1,440 each week.

13. The IEP contains the following comments about claimant's adaptive/daily living skills:

> Staff have no concerns. At the time of his report, [claimant] is engaging in age-appropriate functional life-skills and adaptive skills. His general adaptive composite from his adaptive rating scale yielded a standard score that was within the below average range (SS=87). He was three points away from being categorized within the average range. He is able to conceptualize, socialize, and practicalize

> appropriately and effectively for his age. His functional communication is the greatest area of concern at this time, but this concern is justified through speech and language delay.

(Italics omitted.)

14. According to claimant's June 1, 2021 IEP, his number of Specialized Academic Instruction minutes remains the same until December 15, 2021. There are no changes to his program accommodations, and nothing new was written about his adaptive functioning. On June 1, 2021, he began receiving Language and Speech services for 30 minutes each week on a push-in basis.

VISALIA UNIFIED SCHOOL DISTRICT MULTIDISCIPLINARY PSYCHOEDUCATIONAL ASSESSMENT

15. Claimant was referred to the Visalia Unified School District for a triannual evaluation to assess his progress and current educational needs. A multidisciplinary team consisting of a principal, assistant principal, nurse, education specialist, speech and language pathologist, school psychologist, and program manager performed the evaluation. The school psychologist drafted a report of the team's evaluation on December 15, 2020.

16. The team reviewed claimant's developmental history, family history, relevant medical issues, and educational history. His education specialist and mother were interviewed, and an attempt was made to interview claimant. The team was unsuccessful because he was unable to speak clearly. However, he was observed during class on multiple occasions.

17. The school psychologist administered The Kaufman Assessment Battery for Children, II and the Adaptive Behavior Assessment System, 3rd Edition to measure claimant's cognitive and adaptive functioning. He received a score of 87 for cognitive functioning, which was in the average range. He received an overall score of 87 for adaptive functioning, which was in the below average range. His subcategory scores were 89 (conceptual), 83 (social), and 92 (practical).

18. The team concluded claimant was not eligible for a one-to-one aide in the classroom. However, he continued to be eligible for speech and language services based on diagnoses of "Other Health Impairment" and "Speech and Language Impairment." The team made the following recommendations:

> 1. The IEP team should meet to discuss these and other results and to determine the best placement in the least restrictive environment.
>
> 2. In this Psychologist's opinion, the least restrictive environment that has been determined to best support [claimant's] progress towards academic, behavioral, and/or social-emotional goals and objectives is believed to be the Special Education support program.
>
> 3. To fully access the breadth and depth of [claimant's] knowledge, he could be allowed extra time on tests and assignments.
>
> 4. To help maximize [claimant's] academic potential, he could be allowed the opportunity to test in a separate environment when necessitated by the material at hand.

JENNIFER JOHNSON, M.D.'S, EVALUATION

19. Dr. Johnson is a board-certified pediatrician with a sub-specialty in developmental-behavioral pediatrics. She is a Developmental-Behavioral Pediatrician at Charlie Mitchell Children's Center (Charlie Mitchell), a rural health care center that provides primary care to children with acute and chronic health conditions up to age 21 in Madera, California.

20. On May 21, 2021, Dr. Johnson administered the TONI-4 Test of Nonverbal Intelligence to estimate claimant's cognitive age. His score of 98 correlated to an estimated age of 6 years, 0 months, which was only two months less than his actual age.

21. Dr. Johnson also administered the Autism Diagnostic Observation Scale, Module 2 to observe claimant for behaviors that would support a diagnosis of ASD. His score "correlated to minimal to no evidence of autism spectrum-related symptoms."

22. During testing, claimant "was noted to have normal intonation, volume, rhythm, and rate" and "exhibited no echolalia" when talking. He engaged in appropriate back-and-forth conversation "for his language abilities," and "exhibited spontaneous use of several descriptive gestures (such as making tusks with his fingers to communicate that he saw a walrus)." He used a wide range of facial expressions and made proper eye contact with Dr. Johnson, responded the first time called by name, and frequently attempted to obtain and maintain Dr. Johnson's attention. He pretended to make food with the toys available, served it to those around him, and pretended to eat it. He showed no unusual sensory interests in the toys.

23. Dr. Johnson summarized claimant's evaluation as follows:

> [Claimant] is a 6 y.o. male with a history of language delay, in utero cocaine exposure, and left eye blindness who presented for follow-up for hyperactivity and tantrums. He has a history of very impulsive and hyperactive behavior that puts him at risk of injury, as well as tantrums, aggression, self-injurious behavior, unusual interests, difficulty with transitions and changes, social interaction difficulties, and sensory issues. His ADHD symptoms were moderately controlled on Metadate CD 20 mg, but he was recently changed to Focalin XR 15 mg due to a change in insurance.
>
> [Claimant] has been noted to have very poor articulation and immature language, but he has shown good social reciprocity and desire to communicate. Parent questionnaires obtained previously were consistent with combined-presentation ADHD. An ADOS was negative for autism, and a non-verbal IQ test today was within average range.
>
> Based on the above, [claimant] meets criteria for combined-presentation ADHD, expressive-receptive language disorder, and speech disorder. He is noted to have impairment in both the home and school environment secondary to this condition.

24. Dr. Johnson recommended continuing to treat claimant's ADHD with medication. Additionally, she recommended classroom accommodations such as

preferential or flexible seating, fidget toys, and additional time for completing assignments and tests. She further recommended that he be given instructions orally and in writing, a daily schedule be taped to his desk, and he be given organizational strategies. She suggested extracurricular activities to help him improve social skills, make friends, build self-confidence, and release energy.

25. Dr. Johnson noted that claimant "likely requires much more intensive speech therapy through school." She recommended at least one hour of speech therapy and at least 30 minutes of occupational therapy each week. She also recommended that he receive Applied Behavioral Analysis therapy and undergo a Functional Behavioral Assessment and an Augmented and Alternative Communication evaluation. She suggested that using visual cues may help claimant's comprehension.

SNP MICROARRAY ANALYSIS

26. SNP microarray analysis is a genetic test that analyzes blood for chromosomal imbalances. It is a common test used in evaluating patients suspected of having developmental delay, ID, and/or ASD. A sample of claimant's blood was collected on April 1, 2021, for analysis. The results produced at hearing contained no information about him having developmental delay, ID, and/or ASD.

TESTIMONY

Kao Yang, Ph.D.

27. Dr. Yang is a licensed clinical psychologist. She has been working as a staff psychologist at CVRC for 14 years. Her duties include evaluating potential clientele for eligibility for services, consulting with her colleagues regarding the appropriate services for clientele, and various other duties related to serving clientele.

Dr. Yang was a member of the Eligibility Team that reviewed claimant's application for services.

28. Based on the behaviors Dr. Hawkins and Dr. Johnson observed while evaluating claimant for ASD, Dr. Yang agreed there was insufficient evidence to support a diagnosis of ASD. Specifically, neither clinician documented sufficient symptoms to conclude claimant satisfied the social criteria or the repetitive behavior criteria necessary for an ASD diagnosis. Dr. Yang explained that both criteria must be present to diagnose ASD.

29. Dr. Yang also explained that a diagnosis of ID must be supported by test scores below 70 for both cognitive and adaptive functioning. A diagnosis of a disabling condition within the Fifth Category must be supported by test scores in the range of 70 to 74 for both cognitive and adaptive functioning. Dr. Hawkins's, Dr. Johnson's, and the Visalia Unified School District's assessments produced scores outside either range.

30. Dr. Yang explained that claimant does not require treatment similar to that required for ID. According to both IEP's, he receives speech and language services and specialized academic instruction. A person with ID generally receives treatment that focuses more on daily skills and requires a specialized classroom and other treatment to help him work within his abilities. Additionally, claimant's test scores showed he functions at a much higher level than one with ID. Furthermore, both IEP's noted that "staff have no concerns" regarding his adaptive skills, and he was functioning at an "age appropriate" level.

CLAIMANT'S PARENTS

31. Claimant's mother explained that she and her husband took custody of claimant immediately upon his release from the hospital after birth. He has had difficulty with communication since the beginning and has always tested in the low range but never low enough to be diagnosed with ASD.

32. Based on her research, claimant's mother no longer believes he shows symptoms of ASD but does show symptoms of being developmentally delayed. Therefore, her goal with the school district has been to have him enrolled in a special day class so he can be reevaluated next year when his language skills are more developed and testing will be more accurate.

33. Claimant is currently enrolled in a developmental delay clinic at Charlie Mitchell. He qualifies for a handicap parking placard based on his history of eloping. He rides in a medical grade car seat to prevent him from opening the door while the car is moving. He is not toilet trained.

34. Claimant's father agreed with his wife's testimony. Additionally, he explained that claimant has struggled with communication since he was little, and even babbling took him a long time. Now that he is older, friends and family still have trouble understanding him, which concerns his parents about the accuracy of testing.

35. Claimant's father is unable to hold a job because the school routinely calls home for assistance because claimant soiled his clothes and refused to allow others to change him, was outside playing and refused to come back into the classroom, or had other issues the school is unequipped to handle.

Analysis

ELIGIBILITY BASED ON ASD

36. The Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-V) identifies five criteria that must be present for a diagnosis of ASD. They include:

> A. Persistent deficits in social communication and social interaction across multiple contexts, as manifested by the following, currently or by history (examples are illustrative, not exhaustive; see text):
>
> 1. Deficits in social-emotional reciprocity, ranging, for example, from abnormal social approach and failure of normal back-and-forth conversation; to reduced sharing of interests, emotions, or affect; to failure to initiate or respond to social interactions.
>
> 2. Deficits in nonverbal communicative behaviors used in social interaction, ranging, for example, from poorly integrated verbal and nonverbal communication; to abnormalities in eye contact and body language or deficits in understanding and use of gestures; to a total lack of facial expressions and nonverbal communication.
>
> 3. Deficits in developing, maintaining, and understanding relationships, ranging, for example, from difficulties adjusting behavior to suit various social contexts; to

difficulties in sharing imaginative play or in making friends; to absence of interest in peers.

Specify current severity:

Severity is based on social communication impairments and restricted, repetitive patterns of behavior (see Table 2).

B. Restricted, repetitive patterns of behavior, interests, or activities, as manifested by at least two of the following, currently or by history (examples are illustrative, not exhaustive; see text):

1. Stereotyped or repetitive motor movements, use of objects, or speech (e.g., simple motor stereotypes, lining up toys or flipping objects, echolalia, idiosyncratic phrases).

2. Insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior (e.g., extreme distress at small changes, difficulties with transitions, rigid thinking patterns, greeting rituals, need to take same route or eat same food every day).

3. Highly restricted, fixated interests that are abnormal in intensity or focus (e.g., strong attachment to or preoccupation with unusual objects, excessively circumscribed or perseverative interests).

> 4. Hyper- or hyporeactivity to sensory input or unusual interest in sensory aspects of the environment (e.g., apparent indifference to pain/temperature, adverse response to specific sounds or textures, excessive smelling or touching of objects, visual fascination with lights or movement).
>
> *Specify* current severity:
>
> **Severity is based on social communication impairments and restricted, repetitive patterns of behavior** (see Table 2).

(Emphasis original.)

37. Dr. Johnson, a Developmental-Behavioral Pediatrician, concluded claimant does not have ASD. Though he may exhibit symptoms of ASD, the evidence as a whole did not demonstrate that he has sufficient symptoms to satisfy the social communication and interaction criterion or the repetitive behavior criterion. Dr. Yang persuasively explained that both criteria must be met for a diagnosis of ASD.

ELIGIBILITY BASED ON ID

38. The DSM-V identifies the following three criteria that must be present to diagnose ID:

> 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 sociocultural 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.

39. Dr. Johnson concluded claimant does not have ID. Additionally, Dr. Yang testified persuasively that claimant's scores for cognitive functioning and adaptive functioning were higher than those received by people with ID. Although he showed some limitations in adaptive functioning, a diagnosis of ID cannot be based solely on adaptive deficits, but they must be related to deficits in general mental abilities. (*Samantha C. v. State Department of Developmental Services* (2010) 185 Cal.App.4th 1462, 1486 [rejecting argument that deficits in adaptive skills alone establish eligibility under the Fifth Category].)

ELIGIBILITY BASED ON FIFTH CATEGORY

40. The appellate court in *Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, 1129, said the following about the Fifth Category:

> The fifth category condition must be very similar to [ID], with many of the same, or close to the same, factors required in classifying a person as [ID]. Furthermore, the various additional factors required in designating an individual developmentally disabled and substantially handicapped must apply as well.

41. Determination of eligibility under the Fifth Category typically begins with an initial consideration of whether the person has global deficits in intellectual functioning. Eligibility may be based on the person having "a disabling condition closely related to [ID]" or "a disabling condition that requires treatment similar to that required for individuals with [ID]." (*Samantha C. v. State Department of Developmental Services*, *supra*, 185 Cal.App.4th at p. 1492.)

Closely Related Condition

42. The Association of Regional Center Agencies has adopted guidelines for determining eligibility under the Fifth Category. The guidelines provide that a person may be considered to have a condition closely related to ID when his "general intellectual functioning is in the low borderline range of intelligence (I.Q. scores ranging from 70-74)." Additionally, "the person also must demonstrate significant deficits in *Adaptive* skills." (Italics original.)

43. Claimant's general intellectual functioning is not in the low borderline range of intelligence. He received scores of 86 (Dr. Hawkins), 98 (Dr. Johnson), and 87 (Visalia Unified School District) on his cognitive assessments. Although he showed some deficits in adaptive functioning, such deficits without concomitant cognitive

deficits do not establish eligibility under the Fifth Category. (*Samantha C. v. State Department of Developmental Services*, *supra*, 185 Cal.App.4th at p. 1486.)

A Condition Requiring Similar Treatment

44. The Association of Regional Center Agencies' guidelines suggest that the eligibility team focus on the nature of the treatment the consumer needs when determining if he has a disabling condition requiring treatment similar to that required for ID. But the Lanterman Act is worded in terms of providing "services and supports" to the developmentally disabled, not "treatment."

45. "Services and supports" include those "specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of the developmental disability," as well as those directed "toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives." (Welf. & Inst. Code, § 4512, subd. (b).) Though some services and supports may be considered "treatment," the definition also includes services and supports focused on improving the consumer's social, personal, physical, or economic status or assisting him with living an independent, productive, and normal life.

46. Additionally, Welfare and Institutions Code section 4512, subdivision (b), explains that the services and supports identified in a consumer's individual program plan may include "diagnosis, evaluation, *treatment*, personal care, day care . . . ." (Italics added.) The designation of treatment as a separate service and support is a clear indication that the terms "treatment" and "services and supports" are not synonymous.

47. The wide range of services and supports listed under Welfare and Institutions Code section 4512, subdivision (b), are not specific to ID, and one need not

have ID to benefit from them. But the Legislature clearly intended that an individual have a condition that requires treatment similar to that required by individuals with ID to qualify for regional center services under the Fifth Category.

48. In *Samantha C.*, no attempt was made to distinguish treatment under the Lanterman Act as a discrete part or subset of the broader array of services provided. The appellate court made reference to individuals with ID and with Fifth Category eligibility both needing "many of the same kinds of treatment, such as services providing help with cooking, public transportation, money management, rehabilitative and vocational training, independent living skills training, specialized teaching and skill development approaches, and supported employment services." (*Samantha C. v. State Department of Developmental Services*, *supra*, 185 Cal.App.4th 1462, 1493.) The court's broader characterization of "treatment" cannot properly be interpreted as allowing individuals with difficulties in adaptive functioning, or who require assistance with public transportation, child care, vocational training, or money management, to qualify under the Fifth Category without more. The California Department of Rehabilitation offers vocational training to individuals without ID, which demonstrates that it is not necessary for an individual to have ID to benefit from services helpful to one with ID.

49. Many of the services and supports available to consumers with ID under Welfare and Institutions Code section 4512 could also benefit any member of the public. Extending the reasoning of *Samantha C.*, any individual found to need regional center services or supports could be found eligible under the Fifth Category. However, it is unreasonable to conclude that any individual that might benefit from regional center services or supports requires treatment similar to that required by individuals with ID. This clearly was not the Legislature's intent.

50. Though Fifth Category eligibility has separate condition- and needs-based prongs, the latter must still consider whether the individual's condition has many of the same, or close to the same, factors required for diagnosing a person as intellectually disabled. (*Mason v. Office of Administrative Hearings*, *supra*, 89 Cal.App.4th 1119, 1129.) Furthermore, the various additional factors required for designating an individual as developmentally disabled and substantially handicapped also apply. (*Ibid.*) *Samantha C.* must therefore be viewed in context of the broader legislative mandate to serve only individuals with developmental disabilities.

51. The Lanterman Act and the implementing regulations do not discuss regional center services and supports in the eligibility criteria. Rather, an individual's planning team discusses services and supports after that individual is made eligible. (Welf. & Inst. Code, § 4512, subd. (b) [a consumer's necessary services and supports are determined through the individual program plan process].) There is no mandate that eligibility determinations include consideration of whether an individual might benefit from an available service or support. Rather, services and supports are determined by the planning team based on "needs and preferences" of the consumer. A need or preference for a specific service or support determined by the planning team is not the same as a determination by a qualified professional of what treatment is required for an individual with a specific developmental disability.

52. Claimant did not produce persuasive evidence that he needs treatment similar to that required by a person with ID. Rather, his recommended treatments are geared toward addressing mental health, learning, and behavioral issues, none of which constitute a developmental disability under the Lanterman Act. The fact that he might benefit from regional center services does not establish otherwise.

LEGAL CONCLUSIONS

Applicable Burden/Standard of Proof

1. Claimant has the burden of proving he is eligible for CVRC's services and supports by a preponderance of the evidence. (*Lindsay v. San Diego Retirement Board* (1964) 231 Cal.App.2d 156, 161 [the party seeking government benefits has the burden of proving entitlement to such benefits]; Evid. Code, § 115 [the standard of proof is preponderance of the evidence, unless otherwise provided by law].) This evidentiary standard requires claimant to produce evidence of such weight that, when balanced against evidence to the contrary, is more persuasive. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.) Claimant must prove it is more likely than not that he is eligible for services and supports. (*Lillian F. v. Superior Court* (1984) 160 Cal.App.3d 314, 320.)

Applicable Law

CARE FOR THE DEVELOPMENTALLY DISABLED

2. Under the Lanterman Act (Welf. & Inst. Code, § 4500 et seq.), the State of California accepts responsibility for persons with developmental disabilities and pays for the majority of the "treatment and habilitation services and supports" in order to enable such persons to live "in the least restrictive environment." (Welf. & Inst. Code, § 4502, subd. (b)(1).) The State Department of Developmental Services is charged with implementing the Lanterman Act, and is authorized to contract with regional centers to provide the developmentally disabled access to the services and supports needed. (Welf. & Inst. Code, § 4620; *Williams v. California* (9th Cir. 2014) 764 F.3d 1002, 1004.)

ELIGIBILITY FOR REGIONAL CENTER SERVICES

3. Eligibility for regional center services is dependent on the person having a developmental disability, that originated before his 18th birthday, is likely to continue indefinitely, and constitutes a substantial disability. (Welf. & Inst. Code, § 4512, subd. (a); Cal. Code Regs., tit. 17, § 54000, subd. (b).) Under the Lanterman Act, developmental disability includes intellectual disability, cerebral palsy, epilepsy, autism, and disabling conditions "closely related to" intellectual disability or that "require treatment similar to" that required for intellectual disability. (Welf. & Inst. Code, § 4512, subd. (a); Cal. Code Regs., tit. 17, § 54000, subd. (a).)

4. Developmental disability does not include disabling conditions "that are solely physical in nature." (Welf. & Inst. Code, § 4512, subd. (a); Cal. Code Regs., tit. 17, § 54000, subd. (c)(3).) Nor does it include those conditions that are "solely psychiatric disorders" or "solely learning disabilities." (Cal. Code Regs., tit. 17, § 54000, subd. (c)(1), (2).)

5. A "substantial disability" is one that causes the person "significant functional limitations in three or more of the following areas of major life activity:" self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency. (Welf. & Inst. Code, § 4512, subd. (l).)

Conclusion

6. Claimant bears the burden of establishing he is eligible for services under the Lanterman Act. He has not met that burden. The evidence presented did not establish that he is substantially disabled by a developmental disability that originated before his 18th birthday and is expected to continue indefinitely. Although he has

challenges and exhibits a wide array of symptoms, his challenges and symptoms appear to result from his mental health, learning, and behavioral issues, none of which constitute a developmental disability under the Lanterman Act.

ORDER

Claimant's appeal from Central Valley Regional Center's May 7, 2021 Notice of Proposed Action closing his case because he does not have a qualifying developmental disability is DENIED. He is not eligible for regional center services under the Lanterman Act.

DATE: July 26, 2021

COREN D. WONG
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. (Welf. & Inst. Code, § 4712.5, subd. (a).)