

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

**In the Matter of Appeal of:**

**CLAIMANT**

**vs.**

**CENTRAL VALLEY REGIONAL CENTER, Service Agency**

**OAH No. 2022120353**

**DECISION**

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter by videoconference on January 23, 2023, from Sacramento, California.

Matthew and Elisa Brown represented claimant pursuant to a power of attorney.

Amy McMahon, Assistant Director of Legal Services, and Jacqui Molinet, Appeals and Compliance Coordinator, represented Central Valley Regional Center (CVRC).

Evidence was received and the record was left open to allow claimant to submit additional evidence and CVRC to object to such evidence. Claimant's additional evidence was marked as Exhibit K, and CVRC's objections were marked as Exhibit 10.

CVRC's objections were overruled, and Exhibit K was admitted for all purposes. The record was closed and the matter submitted for decision on January 24, 2023.

## **ISSUE**

Is claimant eligible to receive regional center services because she is an individual with epilepsy, intellectual disability (ID), or a disabling condition closely related to ID or that requires treatment like that required for ID (Fifth Category)?

## **FACTUAL FINDINGS**

### **Background**

#### **FAMILY LIFE**

1. Claimant is a 28-year-old woman who was born at Valley Medical Center in Fresno, California. In utero, she was exposed to multiple toxic substances, including methamphetamine, alcohol, and tobacco. She has a history of physical, emotional, and sexual abuse early in life.

2. Claimant has a brother who is 11 months younger. Their biological parents were heavy drug users, neglectful, and abusive. Child Protective Services removed the children from their parents' custody and terminated their parental rights when claimant was five years old. An aunt was appointed the children's permanent guardian.

3. Claimant's and her brother's life improved while living with their aunt in terms of having a stable place to live and enough food to eat. However, the aunt also

struggled with substance abuse and neglected claimant and her brother. She brought the children to school in the morning and picked them up in the afternoon, but otherwise had minimal interactions with them. The children often spent weekends with other relatives, friends, or neighbors.

4. The aunt struggled to maintain steady employment because of substance abuse. By the time claimant was eight years old, the aunt had quit working altogether and turned towards a life of drugs and alcohol, sleeping all day when she was home, and in some instances not coming home at all.

5. Claimant has required 24-hour care since age 25. She currently lives in a residential care facility. She has been wheelchair-bound for the last two years due to multiple falls. She can stand and walk to and from the bathroom with assistance, but cannot walk much further without falling. She is not supposed to get in and out of bed by herself, and she has had a one-on-one aide during the day for the last six months to remind her to ask for assistance when getting in and out of bed. Claimant can move herself in her wheelchair using her feet.

6. Claimant has difficulty communicating. She has urinary incontinence, and she requires assistance with bathing, brushing her teeth, and dressing herself. Someone cuts her food into small pieces, but she can feed herself. Claimant eats by herself because her arms flail around when eating and she inadvertently throws food. Sometimes someone ends up feeding her so she gets enough nutrition.

### **ACADEMIC PERFORMANCE**

7. Claimant attended schools in the Fresno Unified School District (FUSD) for kindergarten through the 12th grade. Though she attended school regularly, she struggled academically. In middle school, she had a difficult start and earned all D's

and F's, except for one C, in the second and third quarters of the seventh grade. Her grades improved dramatically in the eighth grade, and she earned all A's and B's, except for two C's.

8. Claimant struggled significantly during high school. Her freshman grade point average (GPA) was 1.42, her sophomore GPA was 0.943, her junior GPA was 1.258, and her senior GPA was 2.065. She had to repeat four classes during summer school to meet the minimum requirements for high school graduation. She graduated with a cumulative GPA of 1.39.

9. FUSD never referred claimant for evaluation to determine if she was a student with a disability, despite her poor academic performance. An Individualized Education Program plan was never created for her, and she never received special education or services. There was no indication in claimant's school records that someone from FUSD contacted her aunt to inquire about her academic struggles. In fact, the records listed claimant's biological parents as her guardians, even though they were stripped of their parental rights before she started the first grade.

### **PERTINENT MEDICAL HISTORY**

10. Claimant rarely visited the doctor during childhood, and records of any visits have long since been destroyed. She reported later in life having had frequent "staring spells" throughout her schooling when she would just "blank out." At the time she experienced them, she just thought that was just the way she was and did not tell anyone.

11. Claimant's seizure activity continued after she graduated from high school. She also developed intermittent urinary incontinence, lip smacking, and head movements. She eventually confided in her best friend and Ms. Brown that she had

been struggling with seizures since she was four years old but had never received medical treatment for them. She was 18 years old when she made the disclosure.

12. Claimant's brother described instances when his sister stared off and looked "checked out" when he was younger. He did not know what was going on at the time and could not recall any specific instances, but explained no one ever took his sister to the doctor to find out what was going on. Though claimant initially obtained her driver's license at an unknown age, her brother explained it was revoked after a couple of months because of her seizures.

13. Claimant's best friend has known claimant since their freshman year of high school. She described claimant as not having a lot of friends during high school. She always thought claimant was "just quirky" because she would interrupt a conversation or say random words out of context. After claimant disclosed she had been experiencing seizures since she was four years old, the friend regretted not having paid more attention to the "red flags" during high school and recognizing claimant's behaviors as seizure activity.

14. Ms. Brown met claimant when Big Brothers Big Sisters of America paired them when claimant was 12 or 13 years old. Ms. Brown has been claimant's "Big Sister" ever since. She and her husband currently hold power of attorney over claimant and help her financially.

15. Ms. Brown recalled claimant as always having been clumsy, but never thought anything of it at the time. Claimant often stared off into space and during conversations would stop mid-thought and then return to a different topic.

16. Shortly after claimant's 19th birthday, she suffered a seizure while with Ms. Brown and was taken to the hospital. The physician assistant who treated claimant

documented that claimant “has had focal seizures since she was six,” but they were occurring more frequently. She experienced urinary incontinence and headaches after the episodes. This visit was the first documented treatment for seizures.

17. Harrol Hutchison, M.D., is a board-certified pediatric neurologist and clinical geneticist. Claimant was referred to him for evaluation of her seizures five months after her visit to the emergency room. He ordered an electroencephalogram (EEG). The results were abnormal “because of prominent focal sharp activity arising from the left fronto-temporal [*sic*] region. These transients are suggestive of an underlying focal seizure tendency. The background also contains diffuse slowing. Slowing is a non-specific abnormality that suggests a diffuse encephalopathy.” Dr. Hutchison diagnosed claimant with “localization-related (focal) (partial) epilepsy and epileptic syndromes with complex partial seizures, with intractable epilepsy.”

18. The following month, claimant went to a neurology clinic for treatment of worsening seizure activity and treated with neurologist Ernestina Saxton, M.D. Claimant told Dr. Saxton she began having seizures when she was four years old but the severity and frequency were increasing. Her episodes were preceded by abnormal body sensations and glaring vision and included lip smacking, urinary incontinence, stiff muscles, and periodic bending and relaxing of the elbows, hips, and knees. Dr. Saxton’s primary diagnosis was seizure disorder, and her secondary diagnosis was partial epilepsy with impairment of consciousness. She did not express an opinion as to when claimant developed epilepsy.

19. At age 25, claimant was referred to Cedars Sinai Medical Center in Los Angeles for a comprehensive neuropsychological evaluation to assess her current cognitive and psychological status. Ann Gottuso, Ph.D., ABPP-CN, a board-certified

clinical neuropsychologist, performed the evaluation and was assisted by Justin Miller, Ph.D., a neuropsychology fellow.

20. Dr. Gottuso's evaluation consisted of obtaining claimant's medical history by interviewing her and reviewing available medical records, a clinical interview of claimant, reviewing questionnaires completed by claimant and Ms. Brown, a neurobehavioral status examination, and the administration of numerous psychological tests. All the information gathered revealed claimant's intellectual functioning was "below average (borderline range)" with an I.Q. of 74. Dr. Gottuso concluded that claimant's intellectual functioning "certainly would lead to a diagnosis of intellectual disability (IQ < 75), however, assessment of intellectual functioning was conducted outside a sensitive developmental period."

21. Two years ago, Dr. Hutchison ordered genetic testing to determine if claimant has Huntington's Disease, a brain disorder in which brain cells in certain areas of the brain start to break down. As the brain cells degenerate, the disease can lead to emotional disturbances, loss of intellectual abilities, and uncontrolled movements. Huntington's Disease is a progressive disease for which there currently is no cure or treatment, although medications can help manage certain symptoms. The life expectancy for those with the disease is 15 to 25 years after developing symptoms.

22. There are two subtypes of Huntington's Disease: adult-onset and juvenile-onset. Adult-onset Huntington's Disease is the most common, and patients typically develop symptoms in their mid-30's and 40's. In rare instances, children develop symptoms, which often include a sudden difficulty with schoolwork. Seizures are another initial symptom of juvenile-onset Huntington's Disease.

23. Genetic testing revealed that claimant was “predicted to be affected with [Huntington’s Disease].” She was referred to Huntington’s Disease Society of America Center of Excellence at University of California Davis Medical Center for a formal diagnosis, which she received one month prior to her 26th birthday. Ever since, she has received semi-annual (more frequent when needed) evaluations by a neurologist, psychiatrist, physical therapist, social worker, and genetic counselor for disease progression and symptom management.

24. At hearing, Dr. Hutchison opined that Huntington’s Disease caused claimant’s epilepsy. He further opined that the disease could cause learning disabilities. However, he was unable to state that claimant had a learning disability prior to age 18 because he did not treat her until she was older. Dr. Hutchison did not offer an opinion as to when claimant developed epilepsy.

### **Referral for Regional Center Services**

25. Claimant was referred to CVRC for regional center services. She provided her medical records and school records to CVRC for consideration. As previously discussed, none of the medical records provided were for treatment prior to age 18.

26. CVRC has a multidisciplinary team consisting of a staff psychologist, a consulting physician, and an intake counselor that evaluates potential clients for eligibility for regional center services. The team reviewed all the documentation claimant submitted and determined she was ineligible for regional center services because “there is no documentation prior to the age of 18 supporting a developmental disability.” The team recommended that claimant’s case be closed.

27. On November 30, 2022, CVRC prepared a Notice of Proposed Action (NOPA). The NOPA explained that claimant’s referral to CVRC was being closed

because Huntington's Disease is not a qualifying condition and no evidence of a qualifying disability was provided.

28. Mr. and Mrs. Brown appealed the NOPA by filing a Fair Hearing Request. They explained:

We believe [claimant] had symptoms of . . . Epilepsy prior to her being 18. Because she . . . is diagnosed with HD the doctors (neurologist) have called it juvenile/Adult onset HD.

29. Kao Yang, Ph.D., is a licensed clinical psychologist. She has worked as a staff psychologist at CVRC for 16 years. Her duties include evaluating potential clients for eligibility for regional center services, consulting with colleagues regarding the appropriate services for existing clients, and various other duties related to serving potential and existing clients. She was part of the multidisciplinary team who evaluated claimant.

30. Dr. Yang explained that regional center services are available only to those with a "developmental disability." A developmental disability is "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." (Welf. & Inst. Code, § 4512, subd. (a)(1).) It includes "intellectual disability, cerebral palsy, epilepsy, and autism." (*Ibid.*) It also includes "disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability." (*Ibid.*)

31. Dr. Yang further explained that for a disabling condition to constitute a "substantial disability," it must cause significant functional limitations in at least three of the following:

- (A) Self-care.
- (B) Receptive and expressive language.
- (C) Learning.
- (D) Mobility.
- (E) Self-direction.
- (F) Capacity for independent living.
- (G) Economic self-sufficiency.

(Welf. & Inst. Code, § 4512, subd. (l)(1).)

32. Dr. Yang opined that claimant did not qualify for regional center services based on ID because Dr. Gottuso determined claimant's I.Q. to be 74, which Dr. Yang classified as "borderline to low range." She explained that the average I.Q. is 100, and only an I.Q. of 70 and below supports a diagnosis of ID.

33. Dr. Yang also explained that claimant's academic performance alone was insufficient to support a diagnosis of ID because there are many reasons for poor performance unrelated to ID. Additionally, she noted that there was no evidence claimant was evaluated for or received special education and services, and she earned her high school diploma.

34. Dr. Yang also opined that claimant did not qualify for regional center services based on epilepsy. She explained that whether claimant has epilepsy was a decision for the consulting physician, not her. But even if the consulting physician concluded claimant has epilepsy, claimant still would be ineligible based on that

disabling condition because she did not meet the other two criteria for a developmental disability: that her epilepsy manifested prior to her 18th birthday, and it constitutes a substantial disability.

## **Analysis**

### **ELIGIBILITY BASED ON EPILEPSY**

35. It is undisputed that claimant has been diagnosed with epilepsy, a disability that could qualify as a "developmental disability." However, it is also undisputed that Dr. Hutchison, the first medical provider to diagnose claimant with epilepsy, did not make his diagnosis until after her 19th birthday. Neither he nor any other medical provider opined that claimant developed epilepsy prior to her 18th birthday. Therefore, there was insufficient evidence that claimant's epilepsy constitutes a "developmental disability."

### **ELIGIBILITY BASED ON ID**

36. The Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (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.

37. Dr. Yang persuasively explained that claimant did not show sufficient deficits in intellectual functions during Dr. Gottuso's comprehensive neuropsychological evaluation. Claimant's I.Q. measured 74, which Dr. Yang explained was above the threshold for an ID diagnosis. Though Dr. Gottuso opined that an I.Q. of less than 75 supports an ID diagnosis, she admitted the "assessment of intellectual functioning was conducted outside a sensitive developmental period." The DSM-V's third diagnostic criteria for ID is that the intellectual deficits occur "during the developmental period." There was insufficient evidence that claimant has ID.

### **ELIGIBILITY BASED ON FIFTH CATEGORY**

38. 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.

39. 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* (2010) 185 Cal.App.4th 1462, 1492.)

40. 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 her “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.” (*Ibid.*, italics original.)

41. As previously discussed, claimant’s I.Q. is 74, which falls within the Association of Regional Center Agencies guidelines’ for eligibility under the Fifth Category. But there was no evidence that claimant’s condition manifested itself prior to her 18th birthday. Therefore, there is insufficient evidence to conclude she has “a disabling condition closely related to [ID].” Similarly, she cannot establish she has “a disabling condition that requires treatment similar to that required for individuals with [ID].”

## **LEGAL CONCLUSIONS**

### **Applicable Burden/Standard of Proof**

1. Claimant has the burden of proving she 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 she 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” to enable such persons to live “in the least restrictive environment.” (Welf. & Inst. Code, § 4502, subd. (b)(1).) The California 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 her 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 she is eligible for services under the Lanterman Act. She did not meet her burden. The evidence presented did not establish that she has a developmental disability. She did not demonstrate that her epilepsy manifested prior to her 18th birthday. Nor did claimant demonstrate that she has ID, a condition similar to ID, or a condition that requires treatment similar to that required for ID.

## **ORDER**

Claimant's appeal from Central Valley Regional Center's November 30, 2022 Notice of Proposed Action closing her regional center referral because she does not have a qualifying developmental disability is DENIED. She is not eligible for regional center services under the Lanterman Act.

DATE: February 6, 2023

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 of receipt of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)