

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

SOUTH CENTRAL LOS ANGELES REGIONAL
CENTER,

Service Agency.

OAH No. 2018040227

DECISION

This matter was heard by Nana Chin, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), on June 18, 2018, in Los Angeles California.

Claimant¹ was present and represented himself at the hearing. Karmell Walker, Fair Hearing Manager, represented the South Central Los Angeles Regional Center (SCLARC or Service Agency).

The documentary and testimonial evidence described below was received, and argument was heard. The record was closed and the matter was submitted for decision on the hearing day.

While reviewing the exhibits, the ALJ noted that SCLARC's Exhibit 3 cited to a Forensic Evaluation Report dated October 9, 2017, and the Neuropsychological Report of Evaluations on April 14, 2009 and April 16, 2009, which had not been admitted into evidence, but which could be helpful to the ALJ in rendering a

¹ The names of Claimant and his mother are omitted to protect their privacy.

decision in this matter. Consequently, the ALJ, on her own motion, reopened the record and ordered SCLARC to file and serve these documents by July 6, 2018. Additionally, the parties were afforded an opportunity to file and serve written comments/argument regarding the contents of the reports by July 11, 2018. SCLARC timely filed and served copies of the Forensic Evaluation Report and the Neuropsychological Evaluation Report, which were marked and admitted as Exhibits 16 and 17. Neither Claimant nor SCLARC filed any comments/argument regarding these exhibits. The record was reclosed and the matter was resubmitted for decision on July 11, 2018.

Upon review of the submitted records, the ALJ became aware that the issue for hearing was broader than that articulated by Claimant in his Fair Hearing Request, which requested a re-evaluation by the Service Agency "computed to determine if [Claimant suffers] from autism." (Exhibit 1.) The records, however, indicated that Claimant had been referred to the Service Agency by a public defender for an eligibility assessment after a psychologist completed a court-ordered evaluation of Claimant's mental competence in connection with a criminal prosecution. The psychologist recommended that a comprehensive assessment of cognitive and adaptive deficits should be conducted based on a possible diagnosis of intellectual disability (ID).

The Service Agency fully addressed the issue of Claimant's eligibility at the hearing through testimony and exhibits. Further, the issue of whether SCLARC is required to conduct an additional assessment of Claimant's eligibility for services necessarily involves a consideration of whether the Service Agency's determination that Claimant does not have a developmental disability was correct. The ALJ therefore vacated submission of the case and reopened the record to clarify the issues to include whether Claimant is eligible for services on the basis of ID or a

condition closely related to ID.

The parties were had until July 31, 2018, to object to the order, to submit supplemental written closing argument, and to request further hearing for good cause. The parties did not file additional argument or a request for further hearing. The record was reclosed and the matter was submitted on August 2, 2018.

ISSUES

1. Is Claimant eligible to receive Regional Center services within the meaning of the Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code section 4500 et seq. (Lanterman Act), due to ID or a condition closely related to ID, or a condition which requires treatment similar to that required for individuals with ID?

2. Should SCLARC be required to conduct an additional assessment as to Claimant's eligibility to receive services from SCLARC?

EVIDENCE RELIED UPON

Documents: Exhibits 1-3, 5, 8-17 and A-B.

Testimony: Wendi Jordan, Psy.D.; Claimant; and Claimant's mother.

FACTUAL FINDINGS

PARTIES AND JURISDICTION

1. Claimant is a 22-year-old male who lives in the family home with his family within the Service Agency's catchment area.

2. In 2017, Claimant was referred to the Service Agency by a public defender, who represented him in a criminal matter, for a complete assessment to determine his eligibility for regional center services.

3. The Service Agency referred Claimant for a psychological evaluation

to assess Claimant for developmental disabilities. After reviewing the assessment and Claimant's school records, the Service Agency determined that Claimant was not eligible for services.

4. On March 6, 2018, the Service Agency issued a Notice of Proposed Action (NOPA) notifying Claimant that the interdisciplinary team at SCLARC had reviewed his case and found that he was not eligible for regional center services.

5. On March 28, 2018, Claimant filed a Fair Hearing Request to appeal the Service Agency's determination.

6. The issue was originally framed based on Claimant's Fair Hearing Request. As discussed above, the issues were amended in order to fully address those raised by the Claimant and his public defender, as well as the scope of evidence presented by the Service Agency.

PROCEDURAL HISTORY

7. On July 26, 2017, the Honorable Robert Harrison, Judge of the Superior Court, ordered an evaluation of Claimant to inquire into Claimant's mental competence pursuant to Penal Code section 1368.

8. Licensed psychologist, Michelle I. Margules, Psy.D., conducted the forensic evaluation and issued a report of her findings on October 9, 2017 (Margules Report). The evaluation included an interview with Claimant and his mother, observations of Claimant, a review of available records, and administration of the Wechsler Abbreviated Scale of Intelligence – Second Edition (WASI-II).

9. During the interview, Claimant's mother reported that Claimant needs routine and structure and that he is unable to drive or use public transportation. She also reported that there were limitations with Claimant's communication skills, explaining that Claimant's vocabulary is limited and information must be presented to him in simple terms. She further noted that Claimant needs time to consider his

words before speaking and that he processes information slowly and does not like to admit when he does not understand something.

10. Claimant's cognitive abilities were assessed by Dr. Margules with the WASI-II. The WASI-II yields a Full Scale IQ (FSIQ) score and two index scores, the Verbal IQ score (VCI) and the Performance IQ score (PRI). An individual's FSIQ is calculated by combining an individual's performance on the VCI and PRI.

11. Claimant obtained a FSIQ score of 60 on the WASI-II, indicating an extremely low range of intellectual functioning. Claimant's verbal comprehension abilities and nonverbal reasoning skills were also in the extremely low range (VCI = 60, PRI=64). The VCI represents an individual's ability to reason based on previously learned information. "Individuals scoring in the Extremely Low range in [the VCI] struggle with performing tasks that rely on verbal reasoning, verbal concept formation, and acquired verbal knowledge." (Exhibit 16.) The PRI represents an individual's ability to manipulate and process visual information. "Individuals who score in the Extremely Low range [on the PRI] have difficulty in perceptual and fluid reasoning, spatial processing, visual-motor integration." (Exhibit 16.)

12. Dr. Margules recommended that Claimant be referred to the regional center for a comprehensive neuropsychological battery to assess his cognitive and adaptive deficits. According to Dr. Margules, Claimant "meets the criteria for the DSM-5 diagnoses of Rule Out Mild Intellectual Disability. . .," and that "additional exploration of [Claimant's] intellectual and adaptive functioning is needed for diagnostic clarification." (Exhibit 16.) A "rule out" diagnosis is provided when a clinician suspects that a condition may be present but cannot confirm the diagnosis due to various reasons, including the need for additional information or testing.

SERVICE AGENCY EVALUATION

13. Following Dr. Margules' evaluation, Claimant was referred to the

Service Agency by his public defender.

14. Licensed psychologist, Wendi Jordan, Psy.D., conducted an evaluation to assess Claimant for developmental disabilities.

15. Dr. Jordan's evaluation included interviews of Claimant and his mother; formal testing; and a review of available records, including, Dr. Margules' forensic evaluation report dated October 9, 2017, a Summary and Score Report dated April 5, 2011, and Neuropsychological Evaluation dated April 14 and 16, 2009, all of which are discussed in more detail in Factual Findings 32 through 44.

16. During her interview of Claimant, Dr. Jordan noted Claimant "smiled, laughed, and engaged in some light social conversation. . . [Claimant] established and maintained appropriate eye contact throughout the sessions. No odd or unusual behaviors, patterns, or restricted/repetitive interests were observed." Dr. Jordan also noted that Claimant appeared to put forth a "fair effort but was observed to become easily frustrated even pushing some testing items to the side in frustration when he had time to continue working." (Exhibit 2.)

17. Dr. Jordan administered the Weschler Adult Intelligence Scale, 4th Edition (WAIS-IV) to assess Claimant's intellectual functioning. An individual's FSIQ on the WAIS-IV is calculated from an individual's combined performance on the VCI, PRI, Working Memory Index (WMI) and Processing Speed Index (PSI).

18. Claimant obtained a FSIQ score of 69 on the WAIS-IV, which is within the extremely low range of intellectual functioning. Claimant's verbal comprehension abilities were in the borderline range (VCI = 70); his nonverbal reasoning abilities were in the borderline range (PRI = 71); and his working memory was in the low average range (WMI = 80). (Exhibit 3.)

19. To assess Claimant's adaptive functioning, Dr. Jordan administered the Street Survival Skills Questionnaire (SSSQ). The SSSQ tests nine specific areas

relating to adaptive behavior – basic concepts, functional signs, tools, domestics, health and safety, public services, time, monetary and measurements. Claimant’s overall measure of adaptive functioning was 73, which is in the borderline range. Claimant exhibited moderate deficits in health and safety, severe deficits in the areas of tools, domestics, public services and measurements and average or typical abilities in the remaining four categories.

20. According to Dr. Jordan, “[t]he diagnosis of Intellectual Disability requires deficits in cognitive functioning (FSIQ=69 with index scores ranging from Borderline to Low Average) in addition to deficits in adaptive functioning (SSSQ standard score (SS) = 73, Borderline). Finally, deficits must be in the developmental period, which [Claimant] is no longer in, and previous functioning per assessment indicated no such presence of cognitive deficits synonymous with Intellectual Disability.” (Exhibit 3.) Based on her clinical interviews, review of available records, behavioral observations, and testing results, Dr. Jordan provided the following American Psychiatric Association’s *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition*, (DSM-5)² diagnoses: V62.89 Borderline Intellectual Functioning, and 304.30 Cannabis Use Disorder, Moderate.

21. Dr. Jordan’s evaluation did not specifically address the categories of regional center eligibility found in Welfare and Institutions Code section 4512, subdivision (a). The evaluation also did not address whether Claimant exhibited significant functional limitations in the areas of self-care; receptive and expressive

² The DSM-5, published by the American Psychiatric Association, is a widely accepted manual, was utilized by the Service Agency in making its eligibility determination, and was referenced in the hearing. The ALJ took official notice of its provisions pursuant to Government Code section 11515.

language; learning; mobility; self-direction; capacity for independent living; or economic self-sufficiency.

22. Dr. Jordan testified at the hearing on behalf of the Service Agency regarding her assessment that Claimant did not have a developmental disability which would make him eligible for regional center services.

23. In order to be eligible for regional center services, a claimant must establish the existence of a qualifying development disability which originates before the individual attains age 18, which continues, or can be expected to continue indefinitely, and which constitutes a substantial disability for the individual. (Welf. & Inst. Code §4512.) The categories of eligibility listed in Welfare and Institutions Code section 4512 as eligible conditions include ID, cerebral palsy, epilepsy and autism. The fifth and last category of eligibility is listed as "disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with intellectual disability." (*Id.*)

24. Dr. Jordan established through her testimony that Claimant was not administered any assessments specific to autism as Claimant had not presented with any markers of autism which would warrant such assessments. Dr. Jordan noted that during her evaluation, Claimant did not have any difficulty with establishing and maintaining eye contact and Dr. Jordan observed no restrictive or repetitive behaviors.

25. Dr. Jordan's testimony did little to elucidate her basis for the conclusion that Claimant does not have a diagnosis of ID, in view of his low scores on the WAIS-IV and the SSSQ.

26. Dr. Jordan further testified that she had not considered Claimant for eligibility under the fifth category\ of regional center eligibility as Claimant did not have a condition which necessitated or required treatment similar to someone with

an ID. Dr. Jordan testified that conditions which would fall under this category include traumatic brain injuries or encephalopathy, both of which are acquired conditions, rather than developmental issues.

27. Dr. Jordan's testimony regarding whether Claimant exhibits a substantial disability in any major life activities, as defined in Welfare and Institutions Code section 4512, subdivision (l), was cursory in nature.

28. Dr. Jordan explained that her determination that Claimant does not have language limitations was based on her interview with Claimant. Dr. Jordan specifically pointed to Claimant's statements regarding his displeasure at having to undergo the assessment.

29. Dr. Jordan similarly found that Claimant does not have limitations in economic self-sufficiency testifying that his employment history indicates that Claimant was able to obtain employment.

30. Dr. Jordan did concede that Claimant has a history of learning difficulties, but indicated that it appears to have been due to emotional disturbance issues.

31. Dr. Jordan also acknowledged that Claimant has some difficulties in self-direction, pointing to Claimant's difficulty in maintaining employment.

RECORDS PRIOR TO CLAIMANT TURNING 18

32. On January 12, 2009, when Claimant was 12 years old, his school district administered a comprehensive psycho-educational evaluation of Claimant (2009 evaluation) in order to ascertain his level of cognitive and social-emotional functioning to address Claimant's ongoing difficulties in the school setting. Patrick Guevara, Board Certified in Integrative Medicine (BCIM) and a school psychologist, conducted the 2009 evaluation which included: interviews of Claimant, Claimant's mother and his teachers; review of records; direct observations of Claimant in the

classroom; and formal and informal testing.

33. According to the evaluation, Claimant had first been assessed in November 2000 when Claimant was five years old. The assessment determined that Claimant had some weaknesses in auditory comprehension and expressive language skills but that these deficits were not adversely impacting his academic progress. Results at the time did reflect that Claimant's speech articulation skills were below age level expectancy and were impacting his academic progress. Claimant was subsequently provided special education services as a student with a speech and/or language impairment. These services were discontinued on December 6, 2002. The Individualized Education Program (IEP) team determined that even though Claimant continued to work below grade level in all academic areas, he was no longer eligible for services as a student with speech and/or language impairment.

34. Mr. Guerara reported that in January 2008, the school district conducted a second assessment of Claimant when he was 12 years old due to his history of below grade level academic performance and difficulties with peer relations. The assessment results at that time indicated that Claimant was functioning with a low average range of cognitive ability as well as a processing deficit in the area of attention. Claimant was also noted to be displaying numerous maladaptive social behaviors resulting from feelings of inadequacy and anger. Claimant subsequently began receiving special education services as a student with a specific learning disability and was placed in a special day program.

35. In the 2009 evaluation, Mr. Guevara concluded that Claimant was functioning within the low average range of cognitive ability. Mr Guevara administered a number of tests to evaluate Claimant's auditory processing, visual processing, attention, association, conceptualization and sensory motor skills.

Claimant was found to be working in the far below average range in the area of English-language arts and in the below average range in the area of mathematics.

36. After Mr. Guevara completed the 2009 evaluation, the school district referred Claimant to Deborah Ely Budding, Ph.D., for a neuropsychological evaluation (Budding Evaluation) due to concerns regarding school avoidance, behavior regulation problems, and continuing learning difficulties. Testing was conducted to help clarify the neurocognitive and emotional underpinnings of [Claimant's difficulties] and to assist with educational and treatment planning." (Exhibit 17.)

37. Dr. Budding conducted the evaluation on April 14 and 16, 2009. The evaluation included interviews of Claimant's mother and Claimant, review of school records, behavioral observation and administration of a number of different assessments.

38. Dr. Budding noted in her review of records that Claimant's first documented behavioral incident occurred when Claimant was in kindergarten and threw a rock at a teacher. Throughout elementary school, Respondent continued to have difficulties getting along with peers and teachers. In the first grade, Claimant's teacher noted that Claimant was inconsistently able to write phrases and simple sentences, and required continual motivation to complete assignments. Claimant's results on the California Standardized Testing and Reporting (STAR) continually placed Claimant's skills in below basic to far below basic ranges.

39. Dr. Budding administered the Matrix Analogies Test to Claimant as an alternative assessment of his cognitive function. Claimant received scores on this task ranging from two to three standard deviations below the mean, which represented well below average problem-solving skills. His adaptive skills were generally described by both Claimant's teacher and mother as deficient.

40. Dr. Budding administered a number of cognitive tests including the Wechsler Intelligence Scale for Children, 4th Edition (WISC-IV). The results of the testing found that Claimant's FSIQ was 73 (4th percentile, confidence interval = 68-81). FSIQ was composed of a VCI score of 73 (4th percentile, confidence interval =68-81)); PRI score of 73 (4th percentile, confidence interval 68=83); WMI score of 83 (13th percentile, confidence interval = 77-92), and Processing Speed composite score of 83 (13th percentile, confidence interval = 76-94).

41. When Dr. Budding tested Claimant's executive functioning abilities, the area of cognitive functioning related to an individual's ability to plan ahead, to make good judgments, to learn from experience, and to otherwise internally guide behavior, Claimant performed poorly on a number of measures.

42. Dr. Budding noted that Claimant's performance on expressive language tasks was consistent with more global developmental cognitive problems. Dr. Budding also found Claimant's receptive and expressive language skills to be variable. Claimant performed at a standard deviation below age expectations on a receptive language task which required him to listen to and follow increasingly complex verbal instruction.

43. Dr. Budding found that Claimant presented with an overall intellectual function in the borderline to low average range. Claimant demonstrated "very significant attention problems," as well as problems in areas of inhibition and working memory which underlie Claimant's "significant difficulties with concept formation and abstract thinking in relation to both verbal and visual material. She noted that Claimant "becomes easily overwhelmed when expectations are not clear, and is prone to become angry in situations where he feels overly challenged." (Exhibit 17.) "Comprehension problems exists for both academic material and social function" and Claimant's behavioral problems spring from his underlying cognitive

deficits in combination with environmental and traumas. Dr. Budding noted that Claimant meets the criteria for Cognitive Disorder Not Otherwise Specified (NOS) due to his global cognitive difficulties.

44. On April 5, 2011, Claimant's Summary and Score Report indicated that Claimant's academic skills were in the low range for his grade, his fluency with academic tasks was within the average range and his ability to apply his academic skills was within the very low range. (Exhibit 8.)

45. IEP reports prepared by Claimant's school district dated June 18, 2012, January 20, 2012, April 11, 2011, and October 5, 2010, were admitted into evidence. The June 18, 2012, January 20, 2012, and October 5, 2010 IEP Reports indicate that Claimant was performing significantly below his grade level and noted that Claimant gets frustrated when given academic tasks he does not comprehend, leading to aggressive outbursts. The April 11, 2011, IEP Report sets a list of goals but provides little to no information regarding Claimant.

DIAGNOSTIC CRITERIA FOR ID

46. The DSM-5 contains the diagnostic criteria used for ID. It provides that 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 or 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.)

47. The DSM-5 notes that, with regard to Criterion A, "individuals with ID have scores of approximately two standard deviations or more below the population mean, including a margin for measurement error (generally ± 5 points). On tests with a standard deviation of 15 and a mean of 100, this involves a score of 65 - 75 (70 ± 5)." (DSM-5, p. 37.)

48. The DSM-5 cautions that IQ tests must be interpreted in conjunction with considerations of adaptive function. It states that "a person with an IQ score above 70 may have such severe adaptive behavior problems in social judgment, social understanding, and other areas of adaptive functioning that the person's actual functioning is comparable to that of individuals with a lower IQ score." *Id.* at 37. The reverse, that a person with an IQ score below 70 with appropriate adaptive behavior functioning would be less comparable to an individual with an ID, is also true. (DSM-5, p. 37.)

49. With regard to Criterion B, the DSM-5 provides that "Criterion B is met when at least one domain of adaptive functioning – conceptual, social, or practical – is sufficiently impaired that ongoing support is needed in order for the person to perform adequately in one or more life settings at school, at work, at home, or in the community." (DSM-5, p. 37.)

FUNCTIONAL LIMITATIONS

50. Claimant's mother testified at the hearing on behalf of Claimant. She described the functional limitations Claimant has experienced during his life.

Claimant has not been able to hold down a job because he is confrontational with supervisors and does not seem to comprehend why he needs to follow instructions. Due to these deficits, Claimant's mother believes Claimant may be autistic.

51. Claimant also testified on his own behalf, and did not appear to fully comprehend the purpose of the hearing. Claimant became visibly upset at various points during the hearing, particularly during questioning of Dr. Jordan. When questions were brief and pointed, however, Claimant was at ease and able to respond. Claimant's demeanor and testimony were consistent with the descriptions of the limitations in Claimant's language skills documented in Exhibits 16 and 19, as set forth in Factual Findings 9, 33, 35, 42 and 43.

52. Dr. Jordan conceded that Claimant has functional limitations in the area of self-direction. These limitations were also documented in the exhibits introduced at the hearing. Specifically, Dr. Jordan noted Claimant has a documented history of behavioral difficulties in both home and school settings which reflects a significant functional limitation in self-direction. This was further supported by statements by Claimant's mother regarding Claimant's contentious relationships with family members and his inability to accept direction from his supervisors. Additionally, it was Claimant's limitation on his self-direction which resulted in the 2009 evaluations by the school district as set forth in Factual Findings 32 and 37.

53. Claimant has a history of significant functional limitations in learning as corroborated by his extremely low VCI score on the WASI-II and borderline score on the WAIS-IV as set forth in Factual Findings 11 and 18. Additionally, Claimant's school records also document Claimant's FSIQ on the WISC-IV was 73 (4th percentile, confidence interval = 68-81) as set forth in Factual Finding 40. The confidence interval indicates that Claimant's true FSIQ could have been as low as 68

or as high as 81.

LEGAL CONCLUSIONS

STANDARD OF PROOF

1. When a person seeks to establish eligibility for government benefits or services, the burden of proof is on him. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) As no other statute or law specifically applies to the Lanterman Act, the standard of proof in this case is preponderance of the evidence. (See Evid. Code, §§ 115, 500.) Therefore, the burden is on Claimant to demonstrate that the Service Agency's decision is incorrect by a preponderance of the evidence.

SERVICE AGENCY'S ELIGIBILITY ASSESSMENT

2. In order to establish eligibility for regional center services, a claimant must have a qualifying developmental disability. 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 [ID], cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to [ID] or to require treatment similar to that required for individuals with an [ID], but shall not include other handicapping conditions that are solely physical in nature."

3. Whereas the first four categories of eligibility are very specific, the disabling conditions under this residual fifth category are intentionally broad to encompass unspecified conditions and disorders. However, this broad language is not intended to be a catchall, requiring unlimited access for all persons with some form of learning or behavioral disability. There are many persons with sub-average

functioning and impaired adaptive behavior; under the Lanterman Act, the Service Agency does not have a duty to serve all of them.

4. The Lanterman Act requires that the qualifying condition be “closely related” (§ 4512) to ID or “require treatment similar to that required for individuals with an ID.” (§ 4512.) The definitive characteristics of ID include a significant degree of cognitive and adaptive deficits. Thus, to be “closely related” or “similar” to ID, there must be a manifestation of cognitive and/or adaptive deficits which render that individual’s disability like that of a person with ID. However, this does not require strict replication of all of the cognitive and adaptive criteria typically utilized when establishing eligibility due to ID (e.g., reliance on I.Q. scores). If this were so, the fifth category would be redundant. Eligibility under this category requires an analysis of the quality of a claimant’s cognitive and adaptive functioning and a determination of whether the effect on his performance renders him like a person with an ID. Furthermore, determining whether a claimant’s condition is a disabling condition “found to be closely related to ID or to require treatment similar to that required for individuals with an ID” is not a simple exercise of enumerating the services provided and finding that a claimant would benefit from them. Many people could benefit from the types of services offered by regional centers (e.g., counseling, vocational or living skills training, speech therapy, or occupational therapy). The criterion is not whether someone would benefit. Rather, it is whether someone’s condition *requires* such treatment.

5. Pursuant to Welfare and Institutions Code section 4512, subdivision (l):

“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:

- (1) Self-care.
- (2) Receptive and expressive language.
- (3) Learning.
- (4) Mobility.
- (5) Self-direction.
- (6) Capacity for independent living.
- (7) Economic self-sufficiency.

6. Additionally, California Code of Regulations, title 17, section 54001 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; and
 - (2) The existence of significant functional limitations, as determined by the regional center, in three or more of the following areas of major life activity, as appropriate to the person's age:
 - (A) Receptive and expressive language;
 - (B) Learning;
 - (C) Self-care;
 - (D) Mobility;
 - (E) Self-direction;
 - (F) Capacity for independent living;
 - (G) Economic self-sufficiency.

7. California Code of Regulations, title 17, section 54002 states, “[c]ognitive’ as used in this chapter means the ability of an individual to solve problems with insight, to adapt to new situations, to think abstractly and to profit from experience.”

8. In order to establish eligibility, a claimant’s substantial disability must not be solely caused by an excluded condition. The statutory and regulatory definitions of “developmental disability” (§ 4512, and Cal. Code. Regs., tit. 17, § 54000) exclude conditions that are *solely* physical in nature. California Code of Regulations, title 17, section 54000, also excludes conditions that are *solely* psychiatric disorders or *solely* learning disabilities. Therefore, a person with a “dual diagnosis,” that is, a developmental disability coupled with a psychiatric disorder, a physical disorder, or a learning disability, could still be eligible for services. However, someone whose conditions originate from just the excluded categories (psychiatric disorder, physical disorder, or learning disability, alone or in some combination) and who does *not* have a developmental disability would not be eligible.

9. Section 4642 provides, in pertinent part, that “any person believed to have a developmental disability, and any person believed to have a high risk of parenting a developmentally disabled infant shall be eligible for initial intake and assessment services in the regional centers.” The statute defines initial intake to include the provision of information and advice about the nature of and availability of services that are provided by regional centers and “other agencies in the community.” Those other services might include mental health, housing, education, and vocational training. The statute concludes by stating that “intake shall also include a decision to provide assessment.”

10. The Service Agency provided an initial intake and referred Claimant to

Dr. Jordan for an evaluation for eligibility.

11. The evidence did not establish that Claimant suffers from cerebral palsy or epilepsy.

12. Further, based on Dr. Jordan's observations and review of Claimant's records, she determined that Claimant did not require an autism assessment. That belief is reasonable given the record. Claimant did not present any evidence that he had ever received a clinical diagnosis of autistic disorder (under the DSM-IV, the prior edition of the DSM) or Autism Spectrum Disorder (under the DSM-5) by a qualified psychologist nor did Dr. Jordan observe any markers which would suggest that Claimant may have a diagnosis of autism. Based on this record, the decision by the Service Agency not to provide Claimant with an autism assessment is upheld.

13. The Lanterman Act and its implementing regulations contain no definition of the qualifying developmental disability of "ID." Consequently, when determining eligibility for services and supports on the basis of ID, that qualifying disability had previously been defined as congruent to the DSM-5 definition of ID.

14. As set forth in Factual Findings 47 through 50, the diagnostic criteria for a diagnosis of ID include deficits in intellectual functions; adaptive functioning and the onset of these deficits in the developmental period.

15. In the present instance, the Service Agency's assessment, as set forth in Factual Findings 18, 19 and 20, established that Claimant met the first and second criterion based on his extremely low range of intellectual functioning coupled with borderline adaptive functioning abilities.

16. Dr. Jordan, however, did not find Claimant to have an ID as these deficits had not been present during the developmental period. Dr. Jordan's conclusion is not credited as it is inconsistent with the evidence presented.

17. Claimant's overall developmental delays and difficulties in

comprehension were well documented in the records reviewed by Dr. Jordan. In particular, the neuropsychological evaluation conducted by Dr. Budding on April 14 and 16, 2009, revealed Claimant obtained scores on the Matrix Analogies Tests ranging from two to three standard deviations below the mean and received a FSIQ score of 73 (4th percentile, confidence interval = 68-81). Additionally, Claimant's school records show Claimant consistently performing far below his age level.

18. As set forth in Factual Finding 50, deficits in adaptive functioning are found to exist when an individual is sufficiently impaired in at least one domain of adaptive functioning – conceptual, social, or practical – so as to require ongoing support to perform adequately at school work, home or in the community. Claimant's school records reveal Claimant has had a history of behavior regulation problems which resulted in the evaluations conducted by school district in 2009.

19. Dr. Jordan's assessment that Claimant's impairments did not result in significant functional limitations in three or more major life activities is also not consistent with the records and evidence and is therefore not credited.

20. Dr. Jordan maintained Claimant did not have deficits in receptive and expressive language, based on Claimant's ability to express his displeasure at participating in the Service Agency's assessment. The evidence, however, uniformly demonstrated Claimant's deficits in his communication skills. Claimant's significant difficulties in comprehension were noted to cause Claimant to display maladaptive social behaviors. Claimant's behavior at the hearing was also consistent with those documented observations.

21. There was no dispute that Claimant's limitations substantially impacted his learning ability as documented by school records.

22. According to Dr. Jordan, Claimant's inability to maintain his employment points to his inability to self-direct

23. Dr. Jordan determined that Claimant's impairments did not affect his economic ability, pointing to Claimant's ability to obtain employment. A more considered review of his employment history, however, results in a different conclusion. The evidence establishes that despite Claimant's desire for employment and his ability to obtain employment, Claimant has been unable to maintain employment because of his difficulty understanding the importance of following supervisor instruction.

24. Based on the forgoing, Claimant's impairments exist in four of the regulatory categories that establish a substantial disability (learning, expressive and receptive language, self-direction, and economic self-sufficiency). (Cal. Code Regs., tit. 17, § 54001.) Claimant therefore meets the substantial disability requirement. (*Ibid.*)

25. Dr. Jordan testified that the Service Agency determined that Claimant was not eligible for regional center services under the fifth category as Claimant's condition did not necessitate or require treatment similar to someone with an ID.

26. This, however, is a partial analysis. Eligibility under the fifth category would require that Claimant's condition be "found to be closely related to ID *or* to require treatment similar to that required for individuals with an ID." [Emphasis added.] The Service Agency apparently did not consider whether Claimant fell under the fifth category on the basis that his condition is "closely related to ID."

27. Claimant's condition meets the qualifying conditions of ID. Therefore, he need not be considered under the fifth category.

ORDER

No further assessment of Claimant is required. Claimant has a developmental disability, as defined in Welfare and Institutions Code section 4512, subdivision (a), and is therefore eligible for services from the Service Agency.

DATED:

NANA CHIN
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.