

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PATRICK P.,

Claimant,

vs.

NORTH LOS ANGELES COUNTY REGIONAL
CENTER,

Service Agency.

OAH No. 2012010902

DECISION

Administrative Law Judge Deena Ghaly of the Office of Administrative Hearings heard this matter on August 30, 2012, in Van Nuys, California.

Ken G. and Peck P. represented Patrick P. (Claimant).¹

Ruth Janka, Contract Administrator, represented the North Los Angeles County Regional Center (NLACRC or Service Agency).

Oral and documentary evidence was received, the record was closed and the matter was submitted at the conclusion of the hearing.

¹ Claimant and his authorized representatives are identified by first names and last initials to protect their privacy.

ISSUE

Whether Claimant is eligible to receive services from Service Agency under the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500 et seq.²

FACTUAL FINDINGS

I. JURISDICTIONAL FACTS

1. Claimant requested services from NLACRC. By letter dated December 22, 2011, NLACRC notified Claimant it had determined that he is not eligible for services. Claimant timely filed a Fair Hearing Request challenging NLACRC's determination and this hearing ensued.

2. The matter at issue is whether Claimant is eligible for regional center services either because he suffers from mental retardation or from a "5th category" condition (i.e., a disabling condition found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation). (§ 4512, subd. (a).) There was no evidence or argument suggesting that Claimant suffers, or ever has suffered, from cerebral palsy, epilepsy, or autism or that such conditions would serve as a basis for Claimant's eligibility for regional center services.

II. CLAIMANT'S HISTORY

3. Claimant is a 49-year-old male born on August 12, 1963. He is the youngest of three sons. There is no information regarding Claimant's birth history or early childhood development including developmental milestones; however, beginning from when he was as young as three, friends and family noticed that Claimant had

² All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

problems with speech and behavior and that he seemed “slower” than other children his age, including his siblings.

4. Claimant attended a special education preschool and elementary school. When he was in the sixth grade, his parents enrolled him in a private special education program, Oak Hill, from which he graduated and received a high school diploma. NLACRC’s efforts to obtain Claimant’s school records were not successful. The schools he attended prior to Oak Hill did not keep records going back to the time Claimant was enrolled and Oak Hill has since closed. Thus, there is no information about the reason Claimant had been found eligible to receive special education services during his childhood.

5. While he was in high school, Claimant’s parents also arranged for him to be privately tutored with Dr. Paul Klinger. Dr. Klinger is a credentialed elementary level teacher. He has masters and doctorate degrees in special education and is a board-certified educational therapist. Between 1977 and 1981, when Claimant was ages 13 to 17, he attended Dr. Klinger’s educational clinic, the Granada Hills One to One Reading and Claimant, Dr. Klinger administered the Peabody Picture Test (PPT), among others, to determine Claimant’s initial level Educational Center, for tutoring and educational therapy. At the outset of his work with of performance. The PPT measures an individual’s receptive vocabulary for standard American English and provides an estimate of verbal ability or scholastic aptitude. Based on that test, Dr. Klinger found that, as a ninth grader, Claimant’s reading, writing and spelling skills were at the middle third grade level. In one area tested by Dr. Klinger, the ability to repeat spoken digit sequences right after presentation, Claimant performed at the level of a four and half year old child though he was nearly fourteen years old. At the same time, Claimant’s overall verbal ability tested in the low average range of 12 years, 7 months.

6. In a written submission and in his testimony at the hearing, Dr. Klinger opined that a strong indicator of learning disabilities is a marked discrepancy –generally, two years or more – between the tested levels of an academic skill and that of mental capacity. In Claimant’s case, the discrepancies were five to eight years, “suggesting a particularly severe case.” (NLACRC Exhibit 9, p. 1.) In particular, Dr. Klinger found that Claimant suffered from severe dyslexia, which made reading an extreme challenge.

7. Dr. Klinger does not believe that Claimant suffers from mental retardation, noting that his manners and behavior were more mature than those of students he had worked with who presented with IQ’s in the mid 50’s to mid 60’s and thus were clearly in the mental retardation range. However, he also noted that, based on the PPT, Claimant did suffer an underlying cognitive deficiency and that again, based on the PPT, he could roughly estimate Claimant’s IQ to have been somewhere between the 70’s and 80’s when Dr. Klinger tested him, a range that reflects mild retardation to borderline low average intelligence. Moreover, Dr. Klinger noted that, with proper motivation and opportunity, the solely learning disabled can overcome the hurdles their disabilities pose and can achieve satisfactory or even superlative academic performance. Those with underlying cognitive deficiencies, however, cannot compensate for learning disabilities to any substantial extent. In Claimant’s case, despite the special education program he attended at Oak Hill and years of one-on-one tutoring with Dr. Klinger and despite being an exceptionally motivated and hardworking student, ultimately, Claimant was only able to reach high 4th grade to low 5th grade reading levels.

8. While in school, Claimant took up golf and proved to be an exceptional player, reaching near professional status. Dr. Klinger occasionally organized golfing outings for some of his students, including Claimant when they were working together. It was only some thirty years later when Claimant’s family contacted Dr. Klinger in connection with preparing for this hearing and Dr. Klinger reconnected with Claimant

that he learned how much those outings had meant to Claimant. As a child and extending to the present, Claimant has been socially isolated with very few friends and few opportunities to participate in recreational activities with others so each opportunity he has had is especially precious to him.

9. Claimant did not pursue his studies beyond high school and has had no vocational training. His family was financially comfortable and able to care for him until his parents died.³ Claimant was never able to work for a sustained period. He briefly worked as a “gofer” for his father, a producer, while shooting the “Rin Tin Tin” series. In 1985 when he was about 22, Claimant’s father got him a job at a golf course which lasted about a year. Between 2002 and 2005, he worked two days a week at a golf course setting up cones. Since then, Claimant has only been able to get the occasional odd job. Employers often become frustrated with him or take advantage of him by refusing to pay his wages after he has completed his assignment. He has been fired from every job he has held. Almost entirely without financial resources, Claimant is now homeless, living in his truck on the property of his brother.

10. Claimant is able to perform some of the tasks of independent living. He can attend to the personal hygiene tasks of showering, shampooing, brushing his teeth, combing his hair, and shaving and he can dress himself, though he sometimes has trouble with shoe laces and buttons. Claimant can tell time on an analog clock. He can prepare simple foods such as oatmeal and hamburgers but generally relies on getting prepared foods from supermarkets. Claimant can order meals in a restaurant, though he often relies on pictures in the menu to guide his choices because his reading skills are not strong enough to allow him to understand the menu content otherwise. He knows his birthday and address but cannot remember his cell phone number. Claimant

³ Claimant’s mother died in 2007 and his father died in 2010.

was unable to pass a written driving test but did pass it in an oral form and also passed the practical driving test so he is a licensed driver and can drive, though he drives very slowly, avoids freeways and frequently gets lost. With respect to money management, Claimant has difficulty adding coins and bills of different denominations and cannot determine whether he was given the correct change when making a purchase. A checking account his parents established for him no longer has funds in it though the record does not establish whether that is because he misspent the money or for some other reason.

11. Claimant suffered two vascular accidents or strokes, one in 1989 and one in 2002. The second occurred following a beating by robbers during a carjacking. As a result of the strokes, Claimant displays a limp, facial numbness, and numbness in several fingers, all on his right side. He underwent extensive rehabilitation during which he had to re-learn to speak. Claimant now speaks more slowly and with a stutter.

III. RECENT ASSESSMENTS OF CLAIMANT'S COGNITIVE ABILITIES AND FUNCTIONING

A. Dr. Lamont's psychological evaluation of claimant

12. NLACRC referred Claimant to Clinical and Neuro-psychologist John Lamont, PhD., to determine cognitive and adaptive functioning. Dr. Lamont performed his examination on November 30, 2011. At the time they met, Claimant was neatly dressed and appropriately groomed. Dr. Lamont noted that Claimant was pleasant, cooperative, sustained eye contact and was responsive in an appropriate manner. Upon initial examination, Dr. Lamont found that Claimant could perform only the simplest calculations and displayed poor judgment when tested with hypotheticals such as what to do if in a theater and saw smoke or what to do if he saw fire coming from a neighbor's window.

13. In testing Claimant's communication and language functioning, Dr. Lamont found that Claimant can follow three-step instructions and can listen to a thirty-minute story but his mind wanders while listening to an informational lecture.

14. Dr. Lamont administered the Wechsler Adult Intelligence Scales, Fourth Edition (WAIS-IV), to Claimant. The Wechsler Intelligence Scales are well-recognized, standardized, individually administered intelligence tests commonly used to assess intellectual functioning. Dr. Lamont found that Claimant's Full Scale IQ, calculated at 77, was in the borderline deficient range. His Verbal Comprehension Index, calculated at 78, was in the borderline deficient range. His Perceptual Reasoning Index, calculated at 84, Working Memory Index, calculated at 80, and Processing Speed Index, calculated at 81, were all in the low average range.

15. Dr. Lamont also administered the Vineland Adaptive Behavior Scales – Second Edition (Vineland II), the Developmental Test of Visual-Motor Integration, and the Word Reading subtest of the Wide Range Achievement Test. The Vineland II test is a standardized measure of personal and social skills needed for everyday living. On the Vineland II test, Claimant's communication skills, calculated at 74, and socialization skills, calculated at 75, fell in the borderline deficient range. His daily living skills, calculated at 84, fell in the low average range.

16. The Developmental Test of Visual-Motor Integration (VMI) evaluates the ability to copy a series of geometric designs presented in order of increasing difficulty. It is used to assess neurological impairments, learning disabilities, and motor/perceptual problems. On that test, Claimant scored an 87 which is within the low average range.

17. The Wide Range Achievement Test measures the skills needed to learn reading, spelling, and arithmetic. Claimant scored a 73 on the reading subpart of this test, which indicates a borderline deficiency.

18. Based on Claimant's Full Scale IQ score of 77 and his adaptive functioning scores, which were all above the deficient range, Dr. Lamont concluded that Claimant does not qualify for a diagnosis of mental retardation. In terms of formal diagnoses, Dr. Lamont provided the following in his report:

Axis I: - No diagnoses on Axis I (v71.09).

Axis II: - Borderline Intellectual Functioning (v62.89).⁴

B. Claimant's Social Assessment by Judith Toscano, M.S.W.

19. On September 26, 2011, Judith Toscano, M.S.W., performed a social assessment of Claimant.

20. Claimant presented to Ms. Toscano as "a sweet, sensitive, gentle, individual" (Regional Center Exhibit 6, p. 1) with no indication of thought disorder or depression. In his interview with Ms. Toscana, he engaged in basic reciprocal conversation though he stammered. He was generally happy and positive but became tearful in describing how his parents had failed to prepare him for life.

⁴ The axes system of assessment is a standard measuring tool set forth in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR). DSM-IV-TR is a generally accepted tool used by clinicians to assist in the diagnosis of mental and developmental disorders. Under DSM-IV-TR, Axis I is used to describe different aspects of a person's primary clinical disorders, Axis II is used to describe long-term, stable personality disorders or mental retardation, Axis III is used to describe acute medical conditions and physical disorders, Axis IV is used to describe psychosocial and environmental factors contributing to any disorders, and Axis V is used to provide a global assessment of functioning (GAF). Dr. Lamont limited his assessments under this system to Axis II. The record does not establish why Dr. Lamont failed to assess Claimant on the other axes.

21. Ms. Toscano noted that Claimant was generally able to engage in self-care though he had some difficulties with fine motor skills such as buttoning and tying his shoes, which may have been the result of his stroke. Ms. Toscano also noted Claimant's driving limitations and difficulty with money.

22. During his interview with Ms. Toscano, Claimant could add but not subtract or multiply multi-digit numbers. He could read and write some simple single syllable words but had difficulty with multi-syllable words. He reported his history of learning problems, special education services, and employment.

23. At the conclusion of her report, Ms. Toscano recommended that Claimant be evaluated for regional center eligibility but did not herself opine about whether he qualified for services.

C. Dr. Ballmaier's Assessment of Claimant

24. NLACRC's expert witness at the hearing was Heike Ballmaier, Psy.D. Dr. Ballmaier supervises NLACRC's psychology and intake services. Dr. Ballmaier did not personally examine Claimant; however, based on her review of Claimant's file, she concluded that Claimant is learning disabled – possibly severely so – and cognitively compromised by the strokes he suffered. However, she does not believe he is mentally retarded nor qualifying of services based on a "5th category" diagnosis.

25. During the hearing, Dr. Ballmaier detailed why she had concluded Claimant was not mentally retarded. To diagnose mental retardation, the DSM-IV-TR criteria generally require a standardized IQ score of less than 70, along with standardized adaptive functioning scores of less than 70. In addition, because adaptive skills functioning can be influenced by many different factors, such as psychiatric illness or physical condition, any deficits in adaptive functioning must be evaluated in that context. Dr. Ballmaier opined that Claimant's deficiencies were very likely caused or greatly exacerbated by the strokes he suffered. Dr. Ballmaier pointed out that, in

Claimant's case, his IQ is some seven points over the limit for diagnosing mental retardation. Even allowing for the test's standard deviation of five points, his score is still too high for a mental retardation diagnosis. Moreover, his adaptive skills, all in the mid-seventies to mid-eighties range are higher than the 70 point cut-off associated with mental retardation. Thus, Dr. Ballmaier opined that Claimant conclusively does not meet the criteria for a diagnosis of mental retardation.

26. Dr. Ballmaier's conclusions were guided, in part, by the DSM-IV-TR section discussing Mental Retardation. The DSM-IV-TR notes that "[t]he essential feature of Mental Retardation is significantly subaverage general intellectual functioning . . . that is accompanied by significant limitations in adaptive functioning in at least two of the following skill areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health and safety" (Exhibit 12, at p. 49.)

27. With respect to the question of whether Claimant fit the criteria for 5th category condition, Dr. Ballmaier determined that he did not for three reasons: first, generally, consumers qualifying for regional center services based on a 5th category diagnosis test at score levels for IQ and adaptive living skills at just above the scores typical for those diagnosed as mentally retarded with IQ scores falling between 70 and 74 and adaptive living scores falling at no greater than the low 70's. As noted above, Claimant's scores in both areas are higher than those standards. Second, to the extent there are adaptive living skills deficiencies, there must be evidence that those deficiencies are the result of cognitive impairment as opposed to for instance, psychiatric illness or a learning disability. Dr. Ballmaier opined that there is sufficient evidence on the record, primarily through Dr. Klinger's testimony, that Claimant exhibited clear manifestation of a learning disability not just because he performed poorly in his academic endeavors but that, in her view, he exhibited areas of near

normalcy in his cognitive abilities. While mental retardation and related conditions are marked by diminished cognitive ability across the spectrum of the areas of testable mental skills, the learning disabled have areas of weakness coupled with areas of relative strengths. Finally, 5th category eligibility, as with other developmental disabilities covered by the Lanterman Act, requires evidence of having manifested before a claimant reaches age 18. Dr. Ballmaier contended that the strokes Claimant suffered as an adult very likely resulted in a severe exacerbation of his condition and made it more likely than not that he is much worse off now than when he was a minor. Dr. Ballmaier based her contentions regarding the effects of Claimant's strokes on her experience with patients and consumers of regional centers who have experienced head traumas from such events as bicycle accidents.

28. Dr. Ballmaier testified that she was guided by the Association of Regional Center Agencies Proposed Guidelines for Determining "5th Category" Eligibility for the California Regional Centers (ARCA Guidelines) in coming to her conclusions.⁵ According to the ARCA Guidelines, which incorporate the applicable statutory and regulatory provisions, "[e]ligibility for Regional Center services under the 5th category requires a determination as to whether an individual functions in a manner that is similar to that of a person with mental retardation **OR** requires treatment similar to that required by individuals with mental retardation." (Exhibit 5, at p. 1, emphasis in original.)

29. The ARCA Guidelines note that an individual can be considered to be functioning in a manner similar to a person with mental retardation if general intellectual functioning is in the low borderline range of intelligence and there are

⁵ The ARCA Guidelines are not codified regulations. Nonetheless, they provide assistance in applying the statutory and regulatory provisions and DSM-IV-TR criteria to an individual case.

significant deficits in adaptive skills. (*Id.*, at pp. 2-3.) Pertinent to the instant case, the ARCA Guidelines go on to state as follows: "Occasionally, an individual's Full Scale IQ is in the low borderline range (IQ 70-74) but there is a significant difference between cognitive skills. For example, the Verbal IQ may be significantly different than the Performance IQ. When the higher of these scores is in the low average range (IQ 85 or above), it is more difficult to describe the individual's general intellectual functioning as being similar to that of a person with mental retardation. In some cases, these individuals may be considered to function more like persons with learning disabilities than with mental retardation." (*Id.*, at p. 2.) In assessing the necessary concomitant adaptive skills deficits, the areas of communication, learning, self-care, mobility, self-direction, capacity for independent living, and economic self-sufficiency should be considered. The deficits must be related to intellectual limitations and be expressed "by an inability to perform essential tasks within adaptive domains or by an inability to perform those tasks with adequate judgment." (*Id.*, at p. 3.)

30. To determine that a person requires treatment similar to that required by individuals with mental retardation, the ARCA Guidelines indicate that, among other factors, "*the nature of training and intervention* that is most appropriate for the individual who has global cognitive deficits" should be considered, such as "*long-term training* with steps broken down into small, discrete units taught through repetition." (*Ibid.* Emphasis in the original.)

IV. ADDITIONAL EVIDENCE FROM CLAIMANT'S FAMILY AND FRIEND

31. Claimant's older brother, Peck P., and his longtime family friend, Ken G. testified at the hearing. Both of them testified about Claimant's life-long difficulties. In particular, they noted that, long before the strokes, Claimant could not follow instructions and was lost without a set routine. Both of them also testified that, more than anything, Claimant had a deep desire to please and that very likely this allowed

him, for the short time he was under testing circumstances, to perform at his most optimal level. However, to anyone observing the day in, day out routine of his life, the picture would be entirely different. From that vantage point, they testified that it becomes very clear that Claimant does not have the mental acumen to function effectively at any level. There are no areas of relative strength, no ability to compensate. His steadily devolving life circumstances since he no longer has the care and support of his parents is, in their estimate, proof of profound deficiencies not reflected in the testing Claimant has undertaken. Neither Peck P. nor Ken G. believe there were marked changes in Claimant's mental acumen or general life skills after his strokes although they acknowledge that his speech was impacted and that he had to undergo intensive rehabilitation to re-learn to speak. Rather, it was the loss of his parents' intense and all-encompassing support that changed. Without it, Claimant did not have the internal resources to cope.

32. Ken G., who along with his wife, has known the P. family since prior to Claimant's birth, testified that his family and the Ps were extremely close, spending frequent evenings and weekends together. The Gs had children close in age to the P. children. When Claimant was about three years old, Ken G.'s wife, noticing Claimant's lagging development, asked Claimant's mother whether she had considered having Claimant tested. The suggestion caused Claimant's mother so much distress that, temporarily, a rift developed between the families.

33. Peck P. recalls as a child, wondering about why Claimant attended a special school instead of the neighborhood elementary school he and their third brother attended. Peck P. had heard the word "dyslexia" used in reference to Claimant. He thought perhaps that was the reason Claimant went to a different school but since he himself had some dyslexic tendencies, he surmised that that could not have been the complete reason. When he asked their father about the situation, Mr. P. explained that

all the boys and even he suffered from some degree of dyslexia. The difference was that Claimant, according to Mr. P., "did not know whether to put his shoes or his pants on first."

V. EVALUATION OF EVIDENCE

A. Claimant's Adaptive Skills

32. Claimant's presentation of his lack of adaptive skills was persuasive.

Claimant's scores on the Vineland II administered by Dr. Lamont show deficits in two of the three domains and the one low average score in daily living skills is belied by every other observation reported at the hearing or in the written analyses submitted including that of Dr. Lamont's who point out that Claimant cannot follow an instructional video, cannot perform anything but the simplest math, and cannot exercise appropriate judgment in matters of health and safety. (Factual Findings 12 and 13.) Claimant's uncontroverted evidence is that he has been able to maintain an acceptable work and living situation only when he has received significant support and assistance. Without the help of his parents, Claimant has been unable to find a job, consistently care for himself, make appropriate economic judgments, or arrange a living situation. (See Findings 6 through 10.) Moreover, those deficiencies cut across multiple areas, including communication, learning, self-care, self-direction, capacity for independent living, and economic self-sufficiency. The evidence reflects that his adaptive skills deficits are substantial and are related to his intellectual functioning.

B. Evidence of Mental Retardation

33. Although some of the DSM-IV-TR descriptions of the features of mild mental retardation and moderate mental retardation are similar to elements of Claimant's cognitive abilities, there was no evidence that Claimant met all of the diagnostic criteria for mental retardation.

C. Evidence of 5th Category Eligibility

34. The evidence presented supports a finding that Claimant meets the criteria for 5th category eligibility. Claimant's full scale IQ, calculated by Dr. Lamont a 77, is at best borderline. With the five point standard deviation, it could be as low as 72, barely above the cut-off for mental retardation. While some of the subtest scores are higher, there is not such a profound "scatter" factor to support Dr. Ballmaier's conclusion that his cognitive deficiencies are solely caused by his learning disability, however severe. More convincing is Dr. Klinger's assessment of underlying, pervasive cognitive deficiency with an overlay of learning disability. Finally, Dr. Klinger's test results from Claimant's childhood and Peck P. and Ken G.'s convincing testimony conclusively demonstrate that these deficiencies have been with Claimant since well before his 18th birthday.

35. Claimant's inability to function without a set routine and a protective environment, his limited social skills, his limited judgment regarding areas of health and safety, and his inability to succeed in the work situations he has tried support the conclusion that he would benefit from long-term training involving breaking functions into small steps and teaching through repetition, the treatment most commonly associated with mental retardation.

LEGAL CONCLUSIONS

1. Section 4512, subdivision (a), defines "developmental disability" as:

a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy,

epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature.

2. California Code of Regulations, title 17, section 54000, similarly defines "developmental disability" as a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals. The disability must originate before age 18, be likely to continue indefinitely, and constitute a substantial handicap. Excluded are handicapping conditions that are solely psychiatric disorders, solely learning disabilities, or solely physical in nature.

3. The three exclusions from the definition of "developmental disability" under California Code of Regulations, title 17, section 54000, are further defined in that section. Solely psychiatric disorders involving impaired intellectual or social functioning which originated as a result of the psychiatric disorders would not be considered developmental disabilities. "Such psychiatric disorders include psycho-social deprivation and/or psychosis, severe neurosis or personality disorders even where social and intellectual functioning have been seriously impaired as an integral manifestation of the disorder." (Cal. Code Regs., tit. 17, § 54000, subd. (c)(1).)

4. Similarly, an individual would not be considered developmentally disabled if his or her only condition was a learning disability, "which manifests as a significant discrepancy between estimated cognitive potential and actual level of educational performance and which is not a result of generalized mental retardation, educational or

psycho-social deprivation, [or] psychiatric disorder” (Cal. Code Regs., tit. 17, § 54000, subd. (c)(2).) Also excluded are solely physical conditions, such as faulty development not associated with a neurological impairment, that result in a need for treatment similar to that required for mental retardation.

5. The term “substantial disability” is defined in subdivision (l) of section 4512: “‘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.” (See also Cal. Code Regs., tit. 17, § 54001, subd. (a).)

6. In *Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, the appellate court held that the “the fifth category condition must be very similar to mental retardation, with many of the same, or close to the same, factors required in classifying a person as mentally retarded. Furthermore, the various additional factors required in designating an individual developmentally disabled and substantially handicapped must apply as well.” (*Id.*, at p. 1129.) As noted in Factual Finding 26, mental retardation is characterized by significantly sub average general intellectual functioning accompanied by significant limitations in adaptive functioning in specified skill areas.

7. More recently, however, in another appellate court case, *Samantha C. v. State Department of Developmental Services* (2010) 185 Cal.App.4th 1462., the court found that in some instances, claimants with higher IQ scores than those just above the standard for mental retardation may also qualify for regional center services under the Lanterman Act. The claimant in the *Samantha C.* case scored a relatively high full scale IQ of 90. (*Id.*, at 1472.) She had been born premature, suffered prolonged oxygen

deprivation as a newborn, exhibited behavior problems by the time she was two years old, was hospitalized for depression at seven, diagnosed with attention deficit disorder at 11, and by the time she was in her early twenties, diagnosed with a learning disorder among many other related maladies. The court found that these many maladies, including the learning disorder, did not preclude her from eligibility for regional center services. Specifically with respect to the learning disabilities, the court found that, because claimant did not suffer *solely* from them and because they were not the sole basis of functional limitations, they could not be the basis of denying claimant services. Finally, the court found that, based on the second prong of 5th category eligibility, need for treatment similar to that required for individuals with mental retardation, claimant did need such treatment and therefore qualified for services based on that second prong of 5th category eligibility.

8. Claimant suffers from significant limitations in adaptive functioning across multiple areas, along with overall borderline intellectual functioning. There is no evidence that he suffers from psychiatric disorder or physical conditions that limit his functionality substantially. He does have a learning disability but he does not suffer solely from a learning disability nor do all his cognitive deficiencies stem from the learning disability. His condition has been part of his constitution since early childhood and is ongoing. (Factual Findings 3 through 22, and 31 through 33.)

9. Claimant's condition constitutes a substantial disability for him in that he has functional limitations in the following major life activities: (i) He is unable to properly care for himself by finding and maintaining a home; (ii) he is not able to learn quickly enough or exercise proper judgment in a variety of areas from health and safety to independent work situation; (iii) he has limited mobility due to his limited driving skills and lack of sense of direction; and (iv) he cannot maintain economic self-

sufficiency because he cannot function in an independent working environment and because he is unable to handle money. (Factual Findings 3 through 22.)

10. Claimant's inability to function in real world conditions strongly supports the finding that he would benefit from the long-term training involving breaking functions into small steps and teaching through repetition commonly associated with the treatment of mental retardation. (Factual Findings 3 through 22, and 31.)

11. Claimant's cognitive deficiencies, adaptive deficiencies, and likelihood of requiring treatment associated with the treatment of mental retardation support the finding that he is eligible for services based on 5th category disability. (Factual Findings 34 and 35, and Legal Conclusions 1 through 7.)

ORDER

Claimant Patrick P.'s appeal of Service Agency's determination that he is not eligible for regional center services is granted. North Los Angeles County Regional Center's decision denying Claimant services is reversed. By reason of a "5th category" developmental disability, Claimant is eligible for regional center services and the North Los Angeles County Regional Center will provide them.

DATED: September 20, 2012

/s/

DEENA GHALY

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.