

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

SOUTH CENTRAL LOS ANGELES

Service Agency.

OAH No. 2014120144

DECISION

This matter was heard by Humberto Flores, Administrative Law Judge, Office of Administrative Hearings, State of California, on September 10, 2015, in Los Angeles.

Claimant was represented by his authorized representative Janet Aldapa Araujo, who is also a Deputy Public Defender. Bella R. Dilworth, Deputy Public Defender, assisted Ms. Araujo. Claimant was not present at the hearing.¹

South Central Los Angeles Regional Center (Service Agency or SCLARC) was represented by Judith A. Enright, Enright & Ocheltree, LLP.

Oral and documentary evidence was received, and argument was heard. The record was closed and the matter was submitted for decision on September 10, 2015.

ISSUE

Is claimant is eligible for regional center services based on an intellectual disability (formerly referred to as mental retardation) or from a disabling condition found to be

¹ Claimant is not identified to protect his privacy.

closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation (also known as the fifth category)?

FACTUAL FINDINGS

1. Claimant is a 24-year-old male. He is presently incarcerated in the Los Angeles County Jail. Ms. Araujo is also the Deputy Public Defender assigned to his criminal case.

2. Claimant has requested that he be provided services from SCLARC based on his contention that he suffers from intellectual disability or that he suffers from a disabling condition closely related to intellectual disability or that requires treatment similar to that required for individuals with an intellectual disability.

3. By letter dated November 12, 2014, the Service Agency notified claimant's counsel of its determination that claimant was not eligible for regional center services. The Service Agency's interdisciplinary team determined that claimant does not meet the definition of a developmental disability that qualifies for regional center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act).

4. On December 3, 2014, claimant's counsel filed a fair hearing request, on claimant's behalf, to appeal the Service Agency's decision. In the fair hearing request, claimant's counsel described the reason for requesting a fair hearing: "[Claimant] was denied services per SCLARC as having not met the criteria for paid services. The disciplinary team determined that he does not meet the definition of a developmental disability per § 4512/4644 of WIC. It is my belief as his attorney that the team failed to recognize that [claimant] does meet the criteria for disability per WIC." Counsel wrote what was needed to resolve the complaint: "The team should have the input of his counsel who has known him for approx. 2 years. I can assist the SCLARC in demonstrating his disability." (Exhibit 2.)

5. On March 9, 2014, the Service Agency held an informal meeting with

claimant's counsel. At this meeting, the parties discussed claimant's current functioning and reviewed additional documents. The Service Agency's interdisciplinary team did not change its position that claimant was not eligible for regional center services.

6. In January 1995, when claimant was three years and 11 months, Deborah Rangel-Friedman, Ph.D., performed a psychoeducational evaluation to assess claimant's academic achievement level. Dr. Rangel-Friedman noted in her report that claimant scored in the borderline range in reading and in mathematics, and in the low average range in written language (dictation and pre-writing skills), science (identification of body parts), and humanities (identification of artist tools, musical instruments and colors). He scored in the average range in social studies, in that he could identify clothing apparel, household furnishings, personal grooming tools and eating utensils. (Exhibit 9.)

SCHOOL RECORDS

7. Claimant was placed in special education classes when he entered school. Claimant's 1999 Individualized Education Plan (IEP) states that the basis for claimant's eligibility for special education is a learning disability. The comment section states that claimant was "diagnosed as ADD and is on medication. Foster parents have legal and educational guardianship. Problems in regular class relate to ADD much more than learning disabilities." (Exhibit 11, page 0051.) The IEP notes that claimant has a severe discrepancy between ability and achievement, which is due to disorders in attention, auditory processing, cognitive expression and conceptualization, visual processing, and sensory motor skills. The IEP further states that the discrepancy is not due to mental retardation (now referred to as intellectual disability). (Exhibit 11, page 0051.) A close review of the testing administered to claimant showed that he was at grade level in math, reading and spelling dictation, and appeared age/grade appropriate in verbal communication skills. Regarding his behavior, the IEP stated that claimant "often has

inappropriate behavior. [Claimant] makes noises, taps and flips his pencils, grabs thing away from other students and then taunts them and deliberately disrupts the class." The IEP also notes that claimant would argue with his teacher and hit and provoke other students. (Exhibit 11, pages 0054-58.)

8. The IEP contains a summary of results of certain tests administered to claimant three months prior to the IEP meeting (Exhibit 11, page 0068). The results of the Wide Range Achievement Test-3rd Edition indicate that claimant scored an 83, which reflects a grade equivalent of 1.8. Claimant scored a 94 on the spelling portion of the test, reflecting a performance better than 34 percent of his peers. Claimant obtained a score of 88 in the math portion of the test, reflecting a performance better than 21 percent of his peers. Claimant was also administered that Bender Visual Motor Gestalt Test, which required him to view and copy geometric designs of increasing difficulty. Claimant had difficulty with this test as his visual motor skills were two and one-half years delayed. Claimant scored a 56 in the Test of Visual Perceptual Skills, which is in the 0.2 percentile rank in relation to his peers. His Auditory Perceptual skills were also weak in that claimant scored a 74, which is in the 4th percentile in relations to his peers.

9. Claimant's 2000 IEP states that claimant "is functioning at early third grade level in most academic areas. He is quite bright and has a great memory. [Claimant] however has a difficult time staying focused on his work. He tends to act out for attention and reaction from his peers. This keeps him from making progress that he is capable of. [Claimant] gets along with his peers but in time of conflict he does not solve the problems in an appropriate way. He tends to yell, shout or tantrum. ... It is the consensus of this IEP team that [claimant] continues to meet the special education criteria as a student with a specific learning disability." (Exhibit 12, pages 0074-75.)

10. Claimant's 2001 1EP indicates that claimant was working at appropriate 4th grade level in reading and in written language. The IEP states that "[claimant] enjoys

reading aloud and participating in many of the group discussions during reading class. Regarding his writing skills, the IEP states that “[claimant] is very creative and enjoys writing stories. [Claimant] is currently working on identifying topic sentences and writing topic sentences and detail sentences in paragraphs.” This IEP also indicates that claimant began to fall back in the math, as he scored in the 3.9 grade level in math computation and in the 3.6 level in math application. (Exhibit 13, pages 0085-86.)

11. In April 2002, when claimant was 11 years and three months, Jolene Bowman, a school psychologist, performed a psychoeducational evaluation to assess claimant’s academic achievement level. Ms. Bowman administered the Wide Range Achievement Test-3 (WRAT-3), a Visual Motor Integration Test, a test of Visual Perceptual Skills, and a test of Auditory Perceptual Skills. In the WRAT-3, claimant scored a 96 in reading (39th percentile rank), a 101 in spelling (54th percentile rank), and an 84 in the math (14th percentile rank). Claimant scored in the 23rd percentile rank in the Visual Motor Integration Test (age equivalent 8.1). Claimant scored in the significantly below average range (73- 1st percentile) in the Auditory Perceptual Skills Test. His score of 68 in the Visual Perceptual Skills Test was also in the significantly below average range (2nd percentile).

Regarding claimant’s cognitive functioning, Ms. Bowman stated in her report that claimant’s “ability to learn, apply knowledge, generalize, utilize abstract concepts and evaluate appear to be within the average range of potential. Performance on the Test of Auditory Perceptual Skills-Lower Level, shows average potential in the area of thinking and reasoning skills. [Claimant] can organize, understand, interpret and relate to information he has perceived (auditory). Also supportive of [claimant’s] average potential is his reported adequate store of general information, age congruent social interests, and good solid adaptive behavior skills.” In her report summary, Ms. Bowman stated, “Alternative assessment indicates there is a severe discrepancy between [claimant’s]

cognitive potential and his achievement in math, which appears to be due to his deficits in his auditory and visual processing as well as his difficulties with attention. This discrepancy is not the result of unfamiliarity with the English language, mental retardation, health, social maladjustment. . ." (Exhibit 14.)

12. Claimant's 2002 EIP shows that claimant continued to do well in reading and spelling, but significantly lagged behind in math. The reason set forth in this IEP for the discrepancies between claimant's academic achievement and his potential continued to be a learning disability.

CRIMINAL COURT HISTORY AND COURT ORDERED PSYCHOLOGICAL ASSESSMENTS

13. In 2013, claimant was charged with certain crimes in the Superior Court of California, County of Los Angeles. In May 2013, claimant was admitted to Patton State Hospital (Patton) after questions arose regarding claimant's competence to stand trial for the alleged criminal offenses. Dr. David Stone conducted an evaluation of claimant for the superior court. Dr. Stone determined that claimant showed "below average vocabulary, simplicity/concreteness of concepts, impoverished global knowledge, and childlike affect." During his stay at Patton, claimant was placed on involuntary medication administration. During the evaluation, claimant exhibited unpredictable behavior and was not entirely cooperative. He appeared agitated and shouted at deputies and kicked the door. Claimant was described as "childlike in manner but does not seem overtly retarded." (Exhibit 8 page 24.) On May 28, 2013, claimant was discharged from Patton with a diagnosis of Schizophrenia, Paranoid Type 4. On July 26, 2013, claimant was found competent to stand trial and deemed able to assist counsel in the conduct of his defense in a rational manner. (Exhibit 8, page 0026.)

ASSESSMENT BY DR. KALECHSTEIN

14. In 2014, Ari Kalechstein, Ph.D., was appointed by the Superior Court to

evaluate claimant to determine whether he was competent to stand trial for alleged criminal offenses. Dr. Kalechstein evaluated claimant on March 20, May 22, and on July 15, 2014, and issued a written report. The assessment was conducted in the Los Angeles County Jail.

15. Dr. Kalechstein noted in his report that, based on his review of claimant's records, claimant had reported that he was raised in foster homes, though he spent a significant time with one family. He was primarily transient before his arrest but maintained contact with his biological family. Claimant also reported that he likes to keep to himself in the unit to have fewer problems. Claimant reported numerous suicide attempts (approximately 30 times). His last suicide attempt was in 2012 when he was told that he could not take the GED test while in prison. Claimant has a long history of fighting and bullying. Finally, claimant reported treatment by psychiatrists since he was a child for "behavior problems and Bipolar." (Exhibit 7, pages 0021-22.)

16. Dr. Kalechstein noted a prior diagnosis of Psychotic Disorder-NOS in 2009. In his written report, Dr. Kalechstein stated that this diagnosis "portrays an individual who is experiencing psychotic symptoms, but not of sufficient severity to meet the diagnostic criteria for schizophrenia or another more severe version of a psychotic disorder. Such a condition might affect competency status on a short time basis, but would be expected to resolve following the administration of anti-psychotic medication." Claimant refused medications while in prison and reported that "God talks to him in his head and Satan is his cousin." Claimant was also diagnosed with Depressive Disorder-NOS and Adjustment Disorder. (Exhibit 7, page 0022.)

17. Claimant was uncooperative with the examiner during the first session held on March 20, 2014. As a result of claimant's recalcitrance, Dr. Kalechstein terminated the evaluation.

18. Dr. Kalechstein returned to the county jail for a second session with

claimant on May 22, 2014. Upon entering the examination room, claimant immediately began discussing the issue of Satan. Dr. Kalechstein determined that claimant was faking symptoms of psychosis. Dr. Kalechstein then administered a Test of Memory Malinger. Claimant scored a 17/50, which is consistent with someone who is intentionally selecting the wrong answer. During this session, Dr. Kalechstein determined that claimant was malingering by faking symptoms of psychosis and not putting forth his best effort in cognitive testing. Dr. Kalechstein terminated the evaluation.

19. Dr. Kalechstein returned a third time to the county jail to assess claimant on July 15, 2014. Dr. Kalechstein administered the following testing instruments: (1) The Dot Counting Test (DCT); (2) the Wechsler Adult Intelligence Scale-Fourth Edition (WAIS-IV); (3) the Selective Reminding Test (SRT); (4) the Woodcock-Johnson Test of Academic Achievement (Woodcock-Johnson); and (5) the MacArthur Competence Assessment Tool (MCAT). The results of the evaluation, as stated in Dr. Kalechstein's report, were as follows:

- (a) The Dot Counting test showed that claimant was not malingering.
- (b) The WAIS-IV measured claimant's intellectual functioning. Claimant's Full-Scale IQ score was 69, which is in the impaired range. He scored in the low average range in working memory; he scored in the borderline impaired range in linguistic skills, and in the impaired range on measure of visual perception. Finally, claimant scored in the borderline-impaired range on a test of his vocabulary.
- (c) The Woodcock-Johnson evaluated claimant's reading skills and comprehension. Claimant's capacity to read single words was at the 9th grade level. Claimant's "passage comprehension" or the ability to read a narrative and identify the missing word was equivalent to that of a 2nd grade student.
- (d) The SRT, which tested claimant's verbal learning and memory, placed claimant

in the borderline-impaired range.

- (e) On the MCAT, which assessed claimant's competency to stand trial, Dr. Kalechstein noted that claimant's understanding of the legal system was in the minimal impairment range. For example, claimant was unable to offer even a basic definition of the role of a jury. Dr. Kalechstein opined that claimant "lacks knowledge of the rudiments of the criminal justice system and struggles to learn and retain information for even a brief period of time, i.e., 5 to 10 seconds." In a presentation of hypothetical, claimant was able to select the relevant facts but was unable to offer a coherent explanation to support each choice. Dr. Kalechstein stated in his report, "This inability to explain the rationale for his selections occurred consistently throughout the Reasoning subsection of the test. His score was in the clinically significant impaired range. This score reflects [claimant's] inability to understand, remember, and make sense of relatively simple information." (Exhibit 7, pages 0033.)

20. Dr. Kalechstein made the following diagnoses: Axis I – Developmental Disability NOS; Axis II - R/O Mild Mental Retardation; Axis III - Defer to appropriate medical specialist; Axis IV - Incarceration pending legal matter; and Axis V - 35.

21. In the Opinion section of his report, Dr. Kalechstein stated that claimant suffers from impaired intellectual functioning with a Full Scale IQ of 69. Claimant's verbal intellectual impairment will impede particular elements of his capacity to assist his attorney in the preparation of this case. Claimant showed impaired reasoning on simple hypothetical situations with only two or three facts. Claimant was unable to reason through relatively simple situations during the one-to-one session in which the examiner presented information at a relatively slow pace and rephrased the questions on multiple occasions.

22. Dr. Kalechstein opined that claimant "would not likely understand the

information presented in a trial where participants are expected to manage multiple sets of information, quickly process the information, and assist their attorney with respect to the legal strategies based on that information. . . . [Claimant] demonstrated impaired language skills such that he comprehends English at a level that is consistent with the average 2nd grade student. . . . [Claimant] demonstrated impaired performance on measures of verbal learning and memory. This finding is reasonable given that [claimant] has been diagnosed with a learned (*sic*) disability. The defects in [claimant's] memory manifested during the administration of the competency measure. On that test, [claimant] did not recollect two simple facts that were presented in a quiet setting on a 1:1 basis or basic definitions of participants in the criminal justice system. . . . His inability to recall information will severely limit his capacity to assist his attorney during the course of the trial Taken together, the data portray an individual whose capacity to reason is impaired. As a consequence of his manifold cognitive impairments, [claimant] cannot assist his attorney in a rational manner. Hence, from this examiner's perspective, [claimant] is incompetent to stand trial." (Exhibit 8, pages 33 through 37.)

23. Dr. Kalechstein testified at the hearing that claimant suffers from an intellectual disability. He further opines that claimant's condition was present before the age of 18. Dr. Kalechstein testified that claimant's IEPs do not state that he suffered from an intellectual disability while in school because it is the policy of the Los Angeles Unified School District (LAUSD) not to make a determination of mental retardation or intellectual disability. However, according to Dr. Kalechstein, claimant's scores in testing at a very young age indicate significant cognitive delays. In support of his opinion, Dr. Kalechstein notes that claimant's Full-Scale IQ score of 69 is consistent with the results of the IQ test administered by Dr. Ann L. Walker, as set forth below. However, in her report, Dr. Walker noted a caveat regarding claimant's cognitive abilities because of the distracting auditory hallucinations he experienced during the evaluation.

24. Dr. Kalechstein's testimony that claimant suffers from an intellectual disability that originated before the age of 18 is not persuasive. Claimant's IEPs that are discussed in Factual Findings 6 through 12 describe an individual with learning disabilities that affected his academic performance. Further, claimant's cognitive functioning was found to be in the average range by the school psychologist. Finally, claimant's IEPs as well as the school psychologist report noted claimant's academic deficiencies were not caused by mental retardation. Rather, the discrepancies between his cognitive potential and his academic achievement resulted from his learning disabilities caused in part by significant delays in his auditory perceptual and visual perceptual skills.

ASSESSMENT BY DR. ANN L. WALKER

25. On October 14, 2014, Ann L. Walker, Ph.D., evaluated claimant at the Los Angeles County Jail. In her report, Dr. Walker noted that claimant was very cooperative and sustained good eye contact. He attempted every task presented and did not seem distracted by a loud interview that was taking place in the testing room. Claimant reported that he experienced auditory hallucinations and voices throughout the evaluation and that the voices were distracting to him. Dr. Walker administered a number of testing instruments including the Vineland Adaptive Behavior Scales- Second Edition (Vineland-II); the Wechsler Adult Intelligence Scale-Fourth Edition (WAIS-IV); the Wide Range Achievement Test - Fourth Edition (WRAT IV); the "B Test"; Mental Status Exam; and a Clinical Interview. The results of the evaluation were as follows:

- (a) On the WAIS-IV, claimant scored in the significantly below normal range in his overall cognitive abilities (Full- Scale IQ of 67). He showed strength in in his immediate verbal memory and speed in a timed visual/motor coordination task. Dr. Walker opined that the evaluation may have underestimated claimant's present level of intellectual functioning because he was

experiencing distracting auditory hallucinations throughout the evaluation.

- (b) On the Vineland-II, claimant was given an Adaptive Composite Score of 55, which is in the significantly below normal (SBN) range. Claimant scored in other areas as follows: 54 in communication skills (SBN range); 52 in socialization (SBN range); and 61 in motor skills (SNB range). Dr. Walker indicated in her report that claimant dresses and bathes independently. He can sweep, wash dishes, and place telephone calls. However, claimant cannot cook or do his laundry and was unable to tell time on an analog clock. Claimant reported that he has never worked and has never taken public transportation independently.
- (c) The WRAT IV tested claimant's academic skills. Claimant's word reading and reading comprehension were at a second grade level and his math skills were at a first grade level. Both scores were in significantly below normal range.
- (d) The B test was administered to claimant to measure claimant's effort during the evaluation. This instrument is designed to determine if an individual is trying to perform poorly or less than his true potential (malingering). Dr. Walker opined that claimant made a good effort and demonstrated his true potential, with no signs of malingering.
- (e) During the administration of the mental status exam, claimant exhibited clear and lucid speech but presented with flat affect. However, his thinking was confused, disorganized and tangential. Further, Dr. Walker noted that claimant experienced auditory hallucinations during the examination. He heard voices and appeared to be responding to the auditory hallucinations throughout the evaluation. He would not tell Dr. Walker what the voices said.

26. Dr. Walker diagnosed claimant with Schizophrenia, noting claimant's auditory hallucinations during the evaluation, his confused and disorganized thinking,

and his flat affect. Dr. Walker further opined that claimant does not suffer from intellectual disability because the evidence did not show that claimant functioned at significantly below average range before the age of 18. In support of her opinion, Dr. Walker cited a May 9, 2002 IEP, which included an assessment of cognitive skills. The IEP reported that claimant's cognitive ability at age 11 was in the "average range." Finally, Dr. Walker noted that "The present evaluation is likely to have underestimated [claimant's] true abilities since he was distracted by auditory hallucinations during the evaluation. For all of these reasons, the diagnosis of mild Intellectual Disability is not recommended." (Exhibit 6, page 0015.)

ASSESSMENT BY DR. ARMANDO DE ARMAS

27. On August 14, 2015, claimant was assessed by Armando de Armas, Ph.D. Dr. de Armas utilized the Vineland Behavior Scales-Second Edition (Vineland-II) to measure claimant's personal and social skills in communication, daily living skills, socialization, and motor skills. Claimant's functioning in the communication domain was in the 1st percentile as he scored low in both expressive and receptive areas. Claimant's functioning in the daily living skills domain was also quite low (1st percentile). Claimant ranked in the 2nd percentile in the socialization domain. Claimant's composite score for adaptive functioning was 52, which means that he scored higher than less than one percent of his peers in the norm sample.

28. Owen Fudim, Ph.D., testified as an expert witness for the regional center. Dr. Fudim stated that the records in this case simply do not support a finding of intellectual disability. Further, he noted that Dr. Walker in her assessment of claimant discounted the cognitive testing because claimant was experiencing distracting hallucinations during the testing. Finally, Dr. Fudim opined that claimant suffered from mixed learning disability.

LEGAL CONCLUSIONS

1. For the reasons discussed below, claimant's appeal shall be denied. Although he meets the definition of "substantial disability," his disability is not due to one of the five categories of eligibility for regional center services. Thus, claimant is not eligible for regional center services.

2. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, § 4500 et seq.) A state level fair hearing to determine the rights and obligations of the parties, if any, is referred to as an appeal of the service agency's decision. Claimant properly and timely requested a fair hearing and therefore jurisdiction for this case was established.

3. Throughout the applicable statutes and regulations (Welf. & Inst. Code, §§ 4700 - 4716, and Cal. Code Regs., tit. 17, §§ 50900 - 50964), the state level fair hearing is referred to as an appeal of the regional center's decision. Where a claimant seeks to establish eligibility for services, the burden is on the appealing claimant to demonstrate that the regional center's decision is incorrect.

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

[A] disability which originates before an individual attains age 18, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual, and includes mental retardation, cerebral palsy, epilepsy, autism, and disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, but shall not include other handicapping conditions that are solely

physical in nature.

5. California Code of Regulations, title 17, section 54000 defines developmental disability as follows:

- (a) "Developmental Disability" means a disability that is 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 individuals with mental retardation.
- (b) The Developmental Disability shall:
- (c) Originate before age eighteen;
- (d) Be likely to continue indefinitely;
- (e) Constitute a substantial disability for the individual as defined in the article.
- (f) Developmental Disability shall not include handicapping conditions that are:
 - (1) Solely psychiatric disorders where there is impaired intellectual or social functioning which originated as a result of the psychiatric disorder or treatment given for such a disorder. Such psychiatric disorders include psycho- social deprivation and/or psychosis, severe neurosis or personality disorders even where social and intellectual functioning have become seriously impaired as an integral manifestation of the disorder.
 - (2) Solely learning disabilities. A learning disability is a condition 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, psychiatric disorder, or sensory loss.

6. To prove the existence of a developmental disability within the meaning of Welfare and Institutions Code section 4512, a claimant must show that he has a

"substantial disability." California Code of Regulations, title 17, section 54001 states, in pertinent part:

"Substantial disability" means:

- (a) 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
- (b) 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. In California Code of Regulations, title 17, section 54002, the term "cognitive" is defined as "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 addition to proving a "substantial disability," a claimant must show that his disability fits into one of the five categories of eligibility set forth in Welfare and Institutions Code section 4512. The first four categories are specified as: mental retardation, epilepsy, autism and cerebral palsy. The fifth and last category of eligibility is listed as "Disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation." (Welf.

& Inst. Code, § 4512.) 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.

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DISCUSSION

9. In this case, claimant established that he has a "substantial disability" under Welfare and Institutions Code section 4512 and California Code of Regulations, title 17, section 54001. He has significant functional limitations in learning, receptive and expressive language, capacity for independent living, and, most likely, economic self-sufficiency. However, it was not established that claimant's "substantial disability" fits into one of the specific categories of eligibility under the Lanterman Act. There is no evidence that claimant has a diagnosis of autism, cerebral palsy, or epilepsy, and the evidence did not establish that he suffers from an intellectual disability. Dr. Walker did not diagnose claimant with intellectual disability because claimant's hallucinations affected the testing during the evaluation. In fact, Dr. Walker noted that claimant's cognitive abilities were most likely underestimated because of his auditory hallucinations during the evaluation. Dr. Kalechstein indicated in his report that mental retardation should be ruled out. Claimant has never received a diagnosis of intellectual disability. There are simply too many factors that had an effect on claimant's testing for intellectual disability, such as his previous diagnoses of Schizophrenia, Psychotic Disorder-NOS, Depressive Disorder-NOS, and Adjustment Disorder. Further, the records indicated that at certain times while in custody, claimant refused to take his medications.

10. The evidence did not establish that claimant's current disabling condition originated prior to the age of 18. Claimant's IEPs that are discussed in Factual Findings 6 through 12 describe claimant as suffering from learning disabilities that affected his

academic performance. Further, claimant's cognitive functioning was found to be in the average range by the school psychologist. Finally, claimant's IEPs, as well as the school psychologist report, noted that claimant's academic deficiencies were not caused by mental retardation. Rather, the discrepancies between his cognitive potential and his academic achievement resulted from his learning disabilities caused, in part, by significant delays in his auditory perceptual and visual perceptual skills.

11. Claimant has the burden to establish that he qualifies for services under the fifth category. For the reasons discussed in Legal Conclusions 9 and 10, it was not established that claimant's disability falls within the "fifth category." The preponderance of the evidence established that claimant's disability is the result his diagnosed schizophrenia and learning disabilities. Pursuant to California Code of Regulations, title 17, section 54000, subdivision (c), conditions that are solely psychiatric and/or solely learning disabilities are excluded from the definition of developmental disability. Therefore, cause exists to affirm the decision of the South Central Los Angeles Regional Center denying eligibility to claimant.

ORDER

The Decision of the South Central Los Angeles Regional Center denying eligibility for regional center services is affirmed. Claimant's appeal is denied.

DATED: September 23, 2015



HUMBERTO FLORES

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.