

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

and

SAN DIEGO REGIONAL CENTER,

Service Agency.

OAH No. 2015071373

DECISION

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California heard this matter on January 25, 2016, in San Diego, California.

Ron House, Attorney at Law, represented San Diego Regional Center (SDRC).

Wendy Dumlao, Attorney at Law, represented claimant at the January 25th hearing.¹ After the January 25th hearing, the record was left open to allow claimant to testify and claimant's expert to testify on rebuttal. A telephone conference was held on January 29th to schedule this additional hearing date. At the phone conference claimant said that she decided to represent herself; she did not wish to have an additional hearing date; and she understood she was waiving her right to testify and present additional evidence. The matter was submitted, accordingly, on January 29, 2016.

¹ Claimant left during the hearing and did not return.

ISSUE

Is claimant eligible for regional center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code § 4400 et seq.) based on a disabling condition closely related to an intellectual disability or that requires treatment similar to that required for individuals with intellectual disability?

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. Claimant is a 50-year-old woman who receives Supplemental Security Income (SSI) benefits and Medi-Cal. She has Turner Syndrome, a congenital medical condition, and Type II diabetes. Claimant graduated from high school and has an associate's degree. Claimant lives alone; has a driver's license; and owns a car.
2. By letter dated June 29, 2015, SDRC advised claimant that it reviewed her records and determined that she did not have a developmental disability as defined by the Lanterman Act and was not eligible for regional center services. SDRC previously denied claimant for regional center services in 2009. Claimant did not appeal the 2009 determination.
3. On July 28, 2015, claimant submitted a Fair Hearing Request appealing SDRC's decision and requesting a hearing.

CLAIMANT'S RECORDS AND EVIDENCE

1984 Individualized Education Program And School Records

4. Records from claimant's school district from 1981 to 1984 documented that claimant struggled in junior high and high school and senior high primarily due to her slow speed of functioning. Her mother became concerned about her level of functioning and claimant was found to be eligible for special education services. Due to depressed scores in

expressive and receptive language areas, claimant received speech therapy. Claimant was also placed in appropriate remedial classes with a changed schedule and school guidance, but she still struggled at school. A transcript from claimant's high school showed that claimant passed and completed the classes she took with grades ranging from A to C. For graduation claimant took driver's education; First Aid; and she was found proficient in math, writing, and language.

1981 Psychological Assessment

5. On February 27, 1981, Patricia Moulton, Ph.D., a pediatric clinical psychologist evaluated claimant. Claimant was referred to Dr. Moulton by claimant's pediatrician because of claimant's struggles in school. Dr. Moulton noted that claimant was spending two hours a night on homework and was only able to achieve C's and D's on her report card. In her evaluation Dr. Moulton administered the Wide Range Achievement Test; the Slosson Intelligence Test; the Bender Visual Motor Gestalt Test. Dr. Moulton also interviewed claimant and her mother; and had claimant perform a sentence completion test and self-drawing.

The results of this testing showed that claimant functioned within the low average range of cognitive abilities. According to the Slosson Intelligence Test, claimant functioned in the low average range of intelligence. In the Wide Range Achievement Test, claimant obtained a reading recognition grade rating of 7.3 with the standard score being 98 and an arithmetic grade rating of 4.6 with the standard score being 77. The reading score suggested to Dr. Moulton that claimant was achieving above her expected potential while her arithmetic skills were below her expected potential. Dr. Moulton noted that claimant had a strong need for scholastic achievement and was frustrated with her inability to achieve better grades and have more friends at school.

Dr. Moulton recommended that claimant receive a complete psychoeducational assessment at school to determine her appropriate placement and meet on a regular basis

to discuss her feelings regarding her scholastic and/or medical needs.

2004 Medical Psychology Assessment Center Consultation Report

6. On April 9 and 20, 2004, Holly Edge-Booth, Ph.D., and Bill Stein, Ph.D., at UCLA's Neuropsychiatric Hospital Medical Psychology Assessment Center (MPAC) evaluated claimant when she was 37 years old. Claimant sought this neuropsychiatric evaluation to measure her intellectual functioning given recent research findings concerning cognitive problems in Turner Syndrome patients. Claimant was specifically concerned about her cognitive deficits in the areas of problem solving, language, math and non-verbal skills, concentration and awareness, and sensory functioning.

Drs. Edge-Booth and Stein administered a wide range of testing including the Wechsler Adult Intelligence Test, the Stroop Color Word Interference Test, the Wechsler Memory Scale, Wechsler Test of Adult Reading, Wide Range Achievement Test, Wisconsin Card Sort Test, and the Woodcock Johnson Test of Achievement. They documented the results of these tests and their recommendations to claimant in a detailed report dated June 1, 2004.

According to the Wechsler Adult Intelligence Scale, claimant's overall intellectual functioning was in the average range. Claimant obtained a verbal I.Q. of 97, which was at the 42nd percentile; she obtained a Performance I.Q. of 90, which was at the 25th percentile; and a Full Scale I.Q. of 94, which was at the 34th percentile, average range. Claimant scored in the average range on the composite indexes of Working Memory, Verbal Comprehension and Perceptual Organization. She performed in the average range on tests of mental calculation; auditory attention; verbal abstraction; and verbal/social comprehension. Claimant performed in the low average range in vocabulary skills; verbal task requiring mental set shifting and sequencing of numbers and letters; and on the information subtest that

measures academic or general verbal knowledge. Claimant similarly performed in the average to low average range in nonverbal abstract reasoning and visuo-construction. Claimant had difficulty on a task that required her to identify the missing component of a picture with a performance score in the low average range. The evaluators noted that claimant had difficulty in the rapid processing of nonverbal symbols.

In the domain of reading, spelling, and arithmetic, the evaluators found claimant's achievement score to be in the low high school range. On measures that tested claimant's attention and concentration, claimant performed in the low average range, the 9th percentile, on a timed simple attention task; she performed in the low average range, the 18th percentile, on a simple sequencing task that required attention, visual scanning skills and motor speed. According to the Stroop Task, claimant performed in the borderline range, the 3rd percentile, on the Color trial, and in the impaired range, the 1st percentile, on the Word trial. Other measures of attention were in the average to low average range. The evaluators again noted that her performance on these tests was negatively impacted by diminished speed of processing.

Claimant also displayed relative weakness in speech and language functioning, which the evaluators attributed to her history of developmental speech and language weaknesses. The evaluators found that claimant had "remarkable" difficulties with articulation and response. Regarding verbal learning and memory, the test results suggested that claimant had intact learning for information presented through a meaningful context such as in the form of a story but she had impaired organizational encoding and recall for more rote or unstructured verbal information such as list learning.

With respect to executive functioning, due to claimant's slow ability to

process information, claimant performed in the borderline impaired range on tests of semantic and phonemic fluency, the 3rd and 4th percentile. These tests require rapid word retrieval the evaluators noted. Other tests of executive functioning were in the average to low average range. In the area of claimant's motor and psychomotor skills, test results were in the low average to average range.

Based on her performance on these tests, the evaluators diagnosed claimant with a cognitive disorder, not otherwise specified. They found that claimant had cognitive weakness in speed of information processing; language functioning; motor functioning; working memory; and organization of complex visuospatial information; and she performed in the low average to average range in the areas of problem solving and mental set shifting. They emphasized that claimant's diminished speed of processing negatively impacted her verbal and non-verbal performance. The evaluators noted that claimant's performance fell within the expected range given her measured general intellectual abilities and her performance on achievement measures was not indicative of a specific learning disability.

The evaluators commented that claimant had a good support system; had a positive outlook regarding school and work environments. They also stressed that her interest in learning about her cognitive abilities spoke well of her motivation and desire to return to the school and work settings.

The evaluators recommended that for claimant to have a successful return to the work and school settings, claimant should start with the minimum number of classes; study in the least distracting setting; audio-tape lectures; and use note-taking services. Claimant should also slowly increase her course/work load. The evaluators further recommended that claimant use a daily planner or palm pilot to record important instructions, appointments, and to do lists. They added that claimant should structure her daily and weekly routine in order to enhance encoding

and recall of information.

March 3, 2015, Neuropsychological Assessment Report

7. On March 3 and 17, 2015, psychologists Pia Panerjee, Ph.D., and Robert Bilder, Ph.D., at MPAC conducted neuropsychological and neurobehavioral testing of claimant. Claimant's psychiatrist referred her to Drs. Panerjee and Bilder for evaluation due to her Turner Syndrome and to provide specific recommendations for treatment and rehabilitation planning.

Drs. Panerjee and Bilder administered a wide range of tests on claimant including the Beck Anxiety Inventory, Beck Depression Inventory; Boston Diagnostic Aphasia Examination; Boston Naming Test; California Verbal Learning Test; Controlled Oral Word Association; DSM-5 Cross-Cutting Assessment; Finger Tapping Test; Grooved Pegboard; Minnesota Multiphasic Personality Inventory; Rey Complex Figure Test; Stroop Golden; Trial Making Test; the Wechsler Abbreviated Scale of Intelligence; the Wechsler Adult Intelligence Scale; and World Health Organization Disability Assessment Schedule 2.0. They documented the results of these tests and their recommendations to claimant in a detailed report. The evaluators also interviewed claimant and reviewed the 2004 assessment report of Drs. Edge-Booth and Stein.

The evaluators noted that claimant's cognitive profile was not substantially changed from the 2004 assessment. They noted, however, certain changes to claimant's cognitive functioning. She had "substantially" improved immediate and delayed verbal memory and she demonstrated proficient learning and excellent retention over a long delay. They noted that her visual recognition and gross motor abilities in her non-dominant hand declined. The evaluators also noted, based on her self-report, that she had elevated levels of depression; moderate difficulty with communication, and social and occupational activities; and mild difficulty with

household activities; societal participation and getting along with others.

The evaluators found claimant's overall intellectual functioning in multiple cognitive areas within the average range. They noted that her full scale I.Q. was 94; her attention and working memory and immediate and delayed visual and verbal memory were consistent with the "expectation based on her level of general intellectual functioning."

In other cognitive areas, the evaluators found that claimant's performance was variable or below expectation based on her level of general intellectual functioning. Claimant had weaknesses in processing speed; language; visuospatial perception; executive functioning; visuo recognition memory; motor abilities; and social cognition. They noted specifically that claimant's reading comprehension and ability to follow commands were within expectation but she had difficulty with complex commands; in the area of executive functioning claimant had difficulty with set-shifting, and mild difficulty with phonemic fluency; and in the area of social cognition claimant had particular difficulty with social perspective taking, facial affect and recognition, and body language interpretation.

The evaluators diagnosed claimant with Cognitive Disorder, NOS and Major Depression. For her treatment and rehabilitation planning, they made a number of recommendations to claimant. Among their recommendations, they felt that claimant would benefit from social skills training and in particular Applied Behavioral Analysis; cognitive rehabilitation to identify compensatory strategies; in-car driving evaluation and in-car driving training with an occupational therapist due to her deficits with visuospatial perception; and they encouraged her to remain active in social activities to build social support and practice social skills.

Letter Dated January 18, 2016, To Claimant's Attorney From Robert Bilder, Ph.D.

8. Dr. Bilder wrote a letter to claimant's attorney dated January 18, 2016, "in support" of Dr. Gale's testimony. Dr. Bilder stated that he believed that claimant was eligible for regional center services because of her significant weaknesses in expressive and receptive language; ability to learn; self-direction; and her capacity for independent living and self-sufficiency. He stated that the WAIS FSIQ score of 94 that claimant obtained was not indicative of the degree of her impairment.

In this letter Dr. Bilder also addressed why he did not recommend claimant for regional center services in his assessment report. He explained that "as a first step" he recommended Dr. Gale to claimant and based on Dr. Gale's assessment of claimant he now believed that regional center services were clearly indicated for claimant. Dr. Bilder did not explain under what category he believed claimant qualified for regional center services.

Summary Of Function Report From Bruce Gale, Ph.D., And Dr. Gale's Testimony

9. In March 2015, UCLA's MPAC referred claimant to clinical psychologist Bruce M. Gale, Ph.D., for skills intervention. Dr. Gale has extensive experience as a licensed clinical psychologist and has a private practice where he assesses individuals with a wide range of psychological issues and provides social skills training. He has published numerous articles in the psychology field. Dr. Gale interviewed claimant; he reviewed MPAC's assessment of claimant; and he talked to Dr. Bilder. Dr. Gale also administered an additional test, the Adaptive Behavior Assessment System. This assessment involved responses from two raters who have known claimant for a long time and the scaled scores from their responses in ten specific adaptive skills areas. These scaled scores showed that claimant's social skills

were mostly “weak[]”; “poorly developed”, “poorly developed and below average.”

Dr. Gale prepared a detailed report summarizing his conclusions and recommendations and he testified at the hearing regarding his findings.

Based on information he obtained from these sources, Dr. Gale found that claimant exhibited multiple deficits in basic areas of cognition and functioning and her “fluid reasoning abilities” were “quite impaired” “consistent with the level of mild intellectual disability.” In his hearing testimony, however, Dr. Gale emphasized that claimant does not have an intellectual disability.

In this regard Dr. Gale discounted claimant’s scores on the Wechsler Full Scale I.Q. Assessment (Wechsler FSIQ), which showed her intellectual functioning in the average range. Dr. Gale testified that “the high verbal scores” claimant achieved on the Wechsler FSIQ “(gave) a false impression,” were “false” like an “egg shell,” and Wechsler FSIQ scores in general are not valid for persons with Turner Syndrome because the Wechsler FSIQ assessment ignored the lack of practical skills persons with Turner Syndrome have. At the same time, Dr. Gale agreed with Dr. Bilder, in a letter Dr. Bilder wrote to claimant’s attorney, that “there is enormous variability” among people with Turner Syndrome and there is no “typical” or “average” person with this condition.

Dr. Gale further found that claimant is frequently prone to misunderstanding social situations; she is excessively dependent upon her family members and is not truly independent as a result; she is extremely rule oriented and simultaneously has challenges in social and facial cue recognition; she has marked executive function deficits with social and work conflicts; she is prone to frequent misunderstanding of social situations; her reading abilities are impaired but while she can review financial contracts she is reluctant to seek out advice outside of immediate family with the result that she is “at potential catastrophic risk for financial ruin.” He explained in his

testimony that claimant had trouble learning how to do things at work and, as an example of this, she was unable to process time cards at her job. Dr. Gale noted that the MPAC assessment, "while appearing to have produced valid results," was written in a manner to "soften" the impact of these deficits since it would be reviewed by claimant. He did not explain either in his report or in his testimony what in the MPAC report was written to "soften" the impact on claimant.

Dr. Gale testified that he believed that claimant was eligible for regional center services under the Fifth Category. As recommendations for treatment and rehabilitation, Dr. Gale said that his social skills training program can help her in the areas of executive functioning, language, social competency; social skills; vocational readiness; and environmental awareness.

TESTIMONY OF HARRY EISNER, PH.D.

10. Harry Eisner, Ph.D., is a licensed clinical psychologist who has worked at SDRC for 27 years. He has participated in thousands of eligibility determinations while at SDRC and was part of the team in 2009 and 2015 that assessed claimant's eligibility for regional center services. Dr. Eisner reviewed the relevant assessments and reports relating to claimant's application for services; claimant's school records; the social summary of claimant's living situation that was prepared as part of claimant's application; and he interviewed claimant's brother and father.

Dr. Eisner concluded from the information he reviewed that claimant did not qualify for regional center services under the Fifth Category. This category consists of two parts: whether the person has a condition closely related to an intellectual disability, or whether the person requires treatment similar to that required for individuals with an intellectual disability. If a person meets either part, he or she is eligible for regional center services. Dr. Eisner testified that claimant does not meet either Fifth Category prong.

In reaching this conclusion Dr. Eisner found it noteworthy that claimant was

diagnosed with Cognitive Disorder NOS, which he said is inconsistent with a person having a substantial disability. According to the DSM 5, a Cognitive Disorder is a “modest impairment in cognitive performance” that “does not interfere with capacity in everyday activities, i.e., paying bills, managing medications.”

Claimant’s intellectual functioning, as measured in performance scores, was also inconsistent with a person with a substantial disability, according to Dr. Eisner. Claimant had a full scale I.Q. score of 94, which was in the average range, and other testing results done at MPAC were within normal limits in the average to low average range.²

With these scores noted, Dr. Eisner explained that a score is a hypothesis and the way one makes sense of any intellectual functioning score is to assess what the person is doing in the real world. By this measure, Dr. Eisner said that claimant has gotten “quite far” with her strengths, though he said that she does have social deficits. But, Dr. Eisner said that these social deficits were not related to an intellectual disability.

In general, claimant’s social functioning did not suggest to Dr. Eisner that she had a substantial disability. He noted that claimant’s school records show that she did not need a lot of help in school. She had a tutor and was not in a special day class. Claimant did reasonably well according to her grades and graduated from high school at 18 years old. She obtained an associate’s degree in four years.

Dr. Eisner, in addition, noted that claimant worked in the food industry for six years; her longest period of employment was three years; and she did not need a job coach. Claimant has a driver’s license; she lives independently; she does her own clothes shopping; and she takes care of her finances and a car. She can use an online direction

² Dr. Eisner acknowledged, to a degree, Dr. Gale’s concerns regarding the value of the Full Scale I.Q. scores to measure claimant’s intellectual functioning. He noted that a score is not the whole measure of a person’s intellectual functioning, but it is a measure.

finding program to get driving directions.

The assessment that claimant is able to take care of her own affairs and manage her life was corroborated in conversations Dr. Eisner had with claimant's father and brother. According to claimant's father, claimant is able to manage her diabetes and make her medical appointments; she drives to see her doctor in Los Angeles. She brought her own car and takes care of the car. Claimant's father does not worry about her ability to pay her bills or take care of her condominium. He was not worried that she could be taken advantage of and sell her condominium inappropriately. Claimant's father noted that claimant writes very good letters to him. Her father believed that she has a couple of friends. Claimant's father told Dr. Eisner that claimant worked in the commissary and she worked in payroll for about three months. According to him, claimant caught some errors while she worked in the payroll department. Dr. Eisner commented that working in payroll even for three months is not typical for Fifth Category consumers.

According to claimant's younger brother, claimant is able to take care of herself but she has had trouble holding a steady job, though he said she works part time. Claimant's brother said that she has a relationship with him and she has taken a plane to visit him in Texas where he lives. Claimant's brother also told Dr. Eisner that claimant keeps her condominium spotless and takes care of her pet cats. He added that she cooked a whole Christmas dinner and is known in the family for her pumpkin bread.

Regarding the second prong of the Fifth Category test, Dr. Eisner felt that there were no suggestions in the record that claimant required treatment similar to that required for a person with an intellectual disability. Claimant did not require a simplified work environment or needed to be limited to repetitive work tasks. Dr. Eisner said that claimant also did not need to be in a workshop. He found it especially significant that the MPAC evaluators did not recommend that claimant needed to work in a simplified work environment, work shop, or be limited to repetitive work tasks. MPAC recommended

psychotherapy and cognitive compensatory strategies. Dr. Eisner additionally stressed that MPAC did not recommend that claimant apply for regional center services. MPAC's lack of recommendations in these respects strongly suggested to Dr. Eisner that while claimant needs support, she does not qualify for regional center services under the Fifth Category.

LEGAL CONCLUSIONS

THE BURDEN AND STANDARD OF PROOF

1. In a proceeding to determine whether an individual is eligible for regional center services, the burden of proof is on the claimant to establish that he or she has a qualifying diagnosis. The standard of proof required is preponderance of the evidence. (Evid. Code, § 115.) A preponderance of the evidence means that the evidence on one side outweighs or is more than the evidence on the other side, not necessarily in number of witnesses or quantity, but in its persuasive effect on those to whom it is addressed. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

THE LANTERMAN ACT

2. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4500, et seq.) The purpose of the Act is to rectify the problem of inadequate treatment and services for the developmentally disabled and to enable developmentally disabled individuals to lead independent and productive lives in the least restrictive setting possible. (Welf. & Inst. Code, §§ 4501, 4502; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.) The Lanterman Act is a remedial statute; as such it must be interpreted broadly. (*California State Restaurant Association v. Whitlow* (1976) 58 Cal.App.3d 340, 347.)

3. An applicant is eligible for services under the Lanterman Act if he or she is suffering from a substantial disability that is attributable to an intellectual disability,

cerebral palsy, epilepsy, autism, or what is referred to as the fifth category – a disabling condition closely related to an intellectual disability or requiring treatment similar to that required for intellectually disabled individuals. (Welf. & Inst. Code, § 4512, subd. (a).) A qualifying condition must also start before the age 18 and be expected to continue indefinitely. (Welf. & Inst. Code, § 4512.)

4. California Code of Regulations, title 17, section 54000, defines “developmental disability” and the nature of the disability that must be present before an individual is found eligible for regional center services. It states:

(a) Developmental Disability means a disability that is attributable to mental retardation³, 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:

(1) Originate before age eighteen;

(2) Be likely to continue indefinitely;

(3) Constitute a substantial disability for the individual as defined in the article.

(c) Developmental Disability shall not include handicapping conditions that are:

[¶] . . . [¶]

(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

³ Although the Lanterman Act has been amended to eliminate the term “mental retardation” and replace it with “intellectual disability,” the California Code of Regulations has not been amended to reflect the currently used terms.

mental retardation, educational or psycho-social deprivation, psychiatric disorder, or sensory loss.

- (3) Solely physical in nature. These conditions include congenital anomalies or conditions acquired through disease, accident, or faulty development which are not associated with a neurological impairment that results in a need for treatment similar to that required for mental retardation."

5. When an individual is found to have a developmental disability as defined under the Lanterman Act, the State of California, through a regional center, accepts responsibility for providing services and supports to that person to support his or her integration into the mainstream life of the community. (Welf. & Inst. Code, § 4501.)

6. A regional center is required to perform initial intake and assessment services for "any person believed to have a developmental disability." (Welf. & Inst. Code, § 4642.) "Assessment may include collection and review of available historical diagnostic data, provision or procurement of necessary tests and evaluations, and summarization of developmental levels and service needs" (Welf. & Inst. Code, § 4643, subd. (a).) To determine if an individual has a qualifying developmental disability, "the regional center may consider evaluations and tests . . . that have been performed by, and are available from, other sources." (Welf. & Inst. Code, § 4643, subd. (b).)

SUBSTANTIAL DISABILITY

7. Substantial disability is defined under California Code of Regulations, title 17, section 54001, as follows:

- (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.

ELIGIBILITY UNDER THE FIFTH CATEGORY

8. Under the "fifth category," the Lanterman Act provides for assistance to individuals with "disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals" but does "not include other handicapping conditions that are solely physical in nature." (Welf. & Inst. Code § 4512, subd. (a).) Like the other four qualifying conditions (cerebral palsy, epilepsy, autism, and mental retardation), a disability involving the Fifth Category must originate before an individual attains age 18, must continue or be expected to continue indefinitely, and must constitute a substantial disability.

9. In *Mason v. Office of Administrative Hearings* (2001) 89 CalApp.4th 1119, 1129, the California Court of Appeal held that the fifth category was not unconstitutionally vague and set down a general standard: "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."

CLAIMANT IS NOT ELIGIBLE FOR REGIONAL CENTER SERVICES UNDER THE FIFTH CATEGORY

10. The evidence did not show that claimant has a substantial disability or requires treatment similar to the treatment required of an individual with an intellectual disability.

Dr. Eisner credibly testified that claimant does not meet either part of the two part Fifth Category test, and his testimony was consistent with the evidence presented in this case. Claimant's school records; psychological testing results; and claimant's social functioning as documented in the records did not show that claimant has either a major cognitive impairment or that she has significant functional limitations in three or more areas as defined under California Code of Regulations, title 17, section 54001. Dr. Eisner further testified credibly that claimant did not require treatment similar to that required for a person with an intellectual disability. She did not require a simplified work environment; she did not need to be limited to repetitive work tasks; and she did not need to be in a workshop.

Dr. Gale's testimony appeared colored by his strong advocacy on claimant's behalf and was less credible than that of Dr. Eisner. He discounted MPAC's report due to his belief that the report was written to "soften" the impact on claimant. But, he did not explain what in MPAC's report was "softened" or the basis for his opinion. Moreover, Dr. Bilder, who wrote the MPAC assessment, did not state in his January 2016 letter to claimant's attorney that his assessment of claimant was incorrect or was modified for claimant. Similarly, Dr. Gale's opinion that claimant was at risk of being taken advantage of financially was without basis. Claimant lives independently and is able to take care of her personal affairs. Her father and brother did not express concern about her ability to take care of her own affairs. Further, the evaluators did not recommend that claimant needed to be conserved. Indeed, Dr. Gale did not recommend that she needed to be conserved. Further, Dr. Gale's total

disregard for the value of the Wechsler FSIQ measure of claimant's intellectual functioning appeared to be an overstatement and cannot be credited because, as he and Dr. Bilder acknowledged, there is no "typical" or "average" person with Turner Syndrome. Their abilities and capabilities, thus, vary widely. Dr. Gale also did not state that the skills training he recommended to claimant constituted treatment similar to that required for a person with an intellectual disability.

For the same reasons that Dr. Gale's opinion was found less credible than Dr. Eisner's opinion, Dr. Bilder's opinion in his January 18, 2016 letter to claimant's attorney did not support the conclusion that claimant is eligible for regional center services. His opinion that claimant had significant weaknesses in expressive and receptive language; ability to learn; self-direction; and capacity for independent living and self-sufficiency were not supported by the record.

This conclusion does not mean that claimant does not need help. The evaluators provided thoughtful and detailed recommendations to claimant to assist her. The fact that claimant sought these evaluations on her own says a great deal about her ability to succeed and overcome the challenges she faces.

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ORDER

Claimant's appeal from San Diego Regional Center's decision not to find her eligible for regional center services based under the Fifth Category is denied.

DATED: February 9, 2016.

_____/s/_____
ABRAHAM M. LEVY

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 ninety days.