BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: CLAIMANT, vs. VALLEY MOUNTAIN REGIONAL CENTER, Service Agency.	OAH No. 2016090077

DECISION

This matter was heard before Administrative Law Judge Joy Redmon, Office of Administrative Hearings (OAH), in Stockton, California, on December 14, 2016.

The Service Agency, Valley Mountain Regional Center (VMRC), was represented by Anthony Hill, Assistant Director of Case Management.

Erica Wright, claimant's social worker and in-patient therapist from his current placement, appeared as claimant's authorized representative.[1]

[1] At the time the matter was filed, claimant's father was his authorized representative. At hearing, VMRC presented a document signed by claimant on October 4, 2016, designating Ms. Wright as his authorized representative. A copy of that designation was admitted as VMRC's Exhibit B. Claimant's parents are currently in Mexico and did not attend the hearing. Ms. Wright declined to testify in this matter.

Oral and documentary evidence was received. The record was closed and the matter submitted for decision on December 14, 2016.

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ISSUES

Is claimant eligible to receive regional center services and supports as an individual with intellectual disability pursuant to Welfare and Institutions Code section 4512?[2]

In the alternative, is claimant eligible under the "fifth category" because he has a condition closely related to intellectual disability, or that requires treatment similar to that required for individuals with intellectual disability?

FACTUAL FINDINGS

1. Claimant is 42 years old and has not previously applied or been deemed eligible for regional center services. He currently resides at St. Francis Hospital, a psychiatric treatment facility in San Francisco. This is a voluntary placement and is intended as temporary until an appropriate residential facility can be located. Claimant is his parents' only child. He lived at home with them throughout most of his educational years. As an adult, he lived in a group home for 12 years.

2. Claimant attended Holy Name, a Catholic school in San Francisco, from kindergarten through sixth grade. His elementary school cumulative record shows that he repeated second grade. His academic grades ranged from A's to C's until the fifth grade when he received his first D. Claimant was eligible for special education services during elementary school. Initially, he was eligible for services due to a speech and language impairment.

[2]Unless otherwise indicated, all statutory references are to the California Welfare and Institutions Code.

3. Claimant's first cognitive scores are reported by Holy Name when he was in the 3rd grade. His standard scores were: 81 verbal; 90 quantitative; and 91 nonverbal. A full scale IQ score was not reported. Claimant exhibited academic deficits in reading and began to manifest atypical behavior during elementary school. For example, the records indicate he lit two fires in wastebaskets at school. When questioned at the time, he said that he was playing with matches and that his peers made fun of him because of his speech. The principal suggested to his parents that claimant be evaluated for mental health services. Claimant was evaluated by Dr. Mayer, a psychiatrist at Kaiser; however no report is included.[3] In October 1987, when Claimant was in the 6th grade, Dr. Mayer referred claimant to San Francisco Hearing and Speech Center for an additional evaluation. The evaluation confirmed that claimant continued to have reading and speech issues. Ten speech and language sessions were recommended. He also presented with auditory system weakness and possible hearing loss in one ear.

4. In 1988, in the 7th grade, claimant transferred to A.P. Giannini Middle School within the San Francisco Unified School District. The records are incomplete; however, it appears that his primary special education eligibility category was changed to specific learning disability and he was placed in a special day class. He had a difficult time transitioning to middle school and initially skipped classes. A partial psychoeducational assessment from October 1988 was admitted into the record. The assessor noted that in addition to his academic challenges, claimant was "expressionless" during testing, and that he exhibited, "poor eye contact," and that his "…speech was so soft that the examiner had to ask him to repeat quite often. Verbal communication was punctuated oftentimes by a long pause…" The testing also confirmed claimant had an auditory processing deficit.

5. In 1989, Claimant transferred to Washington High School in San Francisco.

[3] Dr. Mayer's first name was not provided in the record.

In February of 1990, he was evaluated by San Francisco Community Mental Health for county mental health services. A report, prepared by therapist Vince Heinz and reviewed and approved by P. Villanueva, M.D., was included in the record. As part of his assessment, Mr. Heinz reviewed claimant's educational records, psychoeducational reports prepared by school psychologist Moss Fujii, and conducted interviews with Barbara Lorrain (claimant's counselor and special day class teacher), claimant, and his father.

6. Claimant presented to Mr. Heinz with low self-esteem, limited attention span, atypical anxiety and depression, poor social and interactive skills, low frustration tolerance, and poor self-expression. Mr. Heinz quoted Mr. Fujii's prior psychoeducational report noting,

> … Much of his academic shortcoming are due to his deficits in the major psychological processes…In summary, his learning disabilities are in the area of auditory and visual processing. His cognitive abilities are well within the normal limits. There is clearly a significant discrepancy between achievement and ability.

Ultimately, Mr. Heinz concluded that claimant was experiencing social and emotional needs that interfered with his ability to meet his educational goals. He was found eligible for county mental health services. Multiple types of therapy were recommended.

7. Approximately one month after Mr. Heinz' evaluation, claimant had his first psychotic break when he was 15 years old. During the episode, he exhibited homicidal tendencies toward his father. He was hospitalized at Mt. Zion Crisis Clinic Children's Emergency Service where he was evaluated. It was reported that claimant was "undergoing psychotic decompensation with paranoid delusional thinking for several weeks," before the

incident with his father. He was transferred to Belmont Hills Hospital (Belmont) on a 5150 hold.[4] Claimant was placed on anti-psychotic medication and stabilized. After this incident, claimant's parents were advised to seek an out-of-home placement for claimant.

8. After his release from Belmont, San Francisco Unified School District conducted another psychological evaluation in April 1990, while claimant was still in the 9th grade. The school assessor concluded that an out-of-home placement would be "very traumatizing" to claimant at that time. A secondary special education eligibility category of emotionally disturbed was added. Although the records submitted were incomplete; it was reported that claimant graduated with a regular high school diploma.

9. In 1994, just before claimant's 20th birthday, he was admitted to Sequoia Hospital District on a 5150 hold. In his report, Gerald Bausek M.D. describes claimant as a, "19 year old developmentally disabled man." The majority of the report describes only claimant's mental heath condition. The basis of Dr. Bausek's opinion that claimant was "a

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[4] Section 5150 provides, in relevant part:

> When a person, as a result of a mental health disorder, is a danger to others, or to himself or herself, or gravely disabled, a peace officer, professional person in charge of a facility designated by the county for evaluation and treatment, member of the attending staff, as defined by regulation, of a facility designated by the county for evaluation and treatment, designated members of a mobile crisis team, or professional person designated by the county may, upon probable cause, take, or cause to be taken, the person into custody for a period of up to 72 hours for assessment, evaluation, and crisis intervention, ...

developmentally disabled man" is unclear as this description is not contained in any previous records nor explained in Dr. Bausek's report. Claimant was stabilized. The discharge report indicates that claimant suffered from "chronic or subacute paranoid schizophrenia." Upon discharge, he was prescribed Haldol, Klonopin, Benadryl, and Lithium Carbonate.

10. Claimant posits he qualifies for regional center services as either intellectually disabled or, alternatively, as having a condition closely related to intellectual disability, or that requires treatment similar to that required for individuals with an intellectual disability.[5] Claimant's current diagnosis is schizoaffective disorder. Claimant asserts that his psychosis has been well controlled in his current setting. Once stabilized, his treatment team, including his psychiatrist, noted that claimant exhibits characteristics consistent with an intellectual disability. No testimony or documentary evidence was offered on claimant's behalf regarding his current intellectual functioning. Additionally, no recent cognitive assessments were introduced substantiating this claim. Despite the lack of current evidence, there is no dispute that he is clearly impaired in his adaptive functioning and lacks the ability to live independently.

11. VMRC contends that claimant did not have a developmental disability as he was not intellectually disabled and did not meet the requirements for "fifth category" eligibility before he reached the age of 18. Additionally, VMRC asserts that his deficits in adaptive functioning are not attributable to global cognitive deficits, thus he does not have a condition closely related to intellectual disability. The agency opined that currently claimant does not require treatment similar to that required by persons with intellectual disability. Finally, VMRC asserts that claimant's adaptive functioning limitations are solely related to psychiatric disorders or his learning disabilities (both exclusionary criteria for

[5] The latter is commonly referred to as the "fifth category" under section 4512.

regional center eligibility) and that he requires treatment appropriate for an individual with psychiatric and learning concerns.

12. Claimant was initially referred for regional center services by his parents. As part of the initial intake, Debbie Winchell, VMRC intake coordinator, interviewed claimant's parents in their home and requested his educational and medical records. She was particularly interested in obtaining records up to his 18th birthday. Ms. Winchell received and reviewed the records containing the information detailed above. She then requested that VMRC staff psychologist John Chellsen, Ph.D., also review the records as part of the eligibility review process. The multi-disciplinary eligibility review team reviewed all available records, including Ms. Winchell's interview with claimant's parents, and determined that claimant did not have a developmental disability in any of the five eligibility categories before turning 18. The determination of non-eligibility was sent to claimant and his parents on August 15, 2016. Claimant's father, as his authorized representative, timely appealed the decision on August 25, 2016.

13. Thereafter, VMRC received additional records requiring further inquiry into possible eligibility under the category of epilepsy due to noted seizures when claimant was 19 years old. VMRC physician Umer Malik, M.D., FACP,[6] reviewed the medical records. The eligibility review team again concluded that claimant did not meet eligibility under any of the five categories.[7] An amended eligibility review determination, dated October 5, 2016, confirmed the team's prior conclusion that claimant was not eligible for regional center services. Claimant continued to dispute the eligibility denial on the bases of intellectual disability and fifth category.

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[6] FACP stands for Fellow of the American College of Physicians.

[7] Ms. Wright confirmed that claimant is not asserting eligibility based upon epilepsy. Accordingly, that eligibility category is not considered in this decision.

14. Barbara Johnson, Psy.D., is a VMRC staff psychologist who routinely performs assessments and reviews those performed by her colleagues, for the purpose of determining the existence of developmental disabilities. Dr. Johnson reviewed all available records and consulted with the VMRC eligibility review team. Dr. Johnson was knowledgeable about and experienced in determining and treating developmental disabilities. She was qualified as an expert in this matter.

15. As discussed more fully below, Dr. Johnson persuasively testified that after reviewing claimant's records and consulting with the other team members she agreed with VMRC's finding that claimant was not intellectually disabled nor did he have a condition similar to intellectual disability prior to his 18th birthday. She established that his available educational and medical records told a story throughout his childhood and adolescence regarding a learning disability and mental health needs. According to Dr. Johnson, claimant started with speech and language delays and later developed a specific learning disability due, in part, to an auditory processing disorder, the result of which produced a severe discrepancy between his intellectual disability and academic achievement. As he approached adolescence, a co-morbid mental health condition began to emerge that culminated in his first psychotic break at 15 years old.

INTELLECTUAL DISABILITY

16. Dr. Johnson testified to the diagnostic criteria for "Intellectual Disability". She explained that the Diagnostic and Statistical Manual of Mental Disorders: Fifth Edition (DSM-V) released in May 2013 changed the diagnosis Mental Retardation to Intellectual Disability (Intellectual Development Disorder)[8].

[8] The DSM-V further clarifies that the terms intellectual disability and mental retardation, as well as intellectual developmental disorder, are used interchangeably.

The DSM-V sets forth the following diagnostic criteria for Intellectual Disability:

> Intellectual Disability (Intellectual Developmental Disorder) is a disorder with onset during the developmental period that includes both intellectual and adaptive functioning deficits in conceptual, social, and practical domains. The following three criteria must be met:

A. Deficits in intellectual functions, such as reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience, confirmed by both clinical assessment and individualized, standardized intelligence testing.
B. Deficits in adaptive functioning that result in failure to meet developmental and socio-cultural standards for personal independence and social responsibility. Without ongoing support, the adaptive deficits limit functioning in one or more activities of daily life, such as communication, social participation, and independent living, across multiple environments, such as home, school, work, and community.
C. Onset of intellectual adaptive deficits during the developmental period.

17. The DSM-V offers the following pertinent diagnostic features:

> The essential features of intellectual disability (intellectual developmental disorder) are deficits in general mental abilities (Criterion A) and impairment in everyday adaptive functioning, in comparison to an individual's age-, gender-, and socioculturally matched peers (Criterion B). Onset is during the developmental period (Criterion C). The diagnosis of intellectual disability is based on both clinical assessment

and standardized testing of intellectual and adaptive functions.

Criterion A refers to intellectual functions that involve reasoning, problem solving, planning, abstract thinking, judgment, learning from instruction and experience, and practical understanding. Critical components include verbal comprehension, working memory, perceptual reasoning, quantitative reasoning, abstract thought, and cognitive efficacy. Intellectual functioning is typically measured with individually administered and psychometrically valid, comprehensive, culturally appropriate, psychometrically sound tests of intelligence. Individuals with intellectual disability have scores of approximately two standard deviations or more below the population mean, including a margin for measurement error (generally +5 points. On tests with a standard deviation of 15 and a mean of 100, this involves a score of 65-75 (70 ± 5). Clinical training and judgment are required to interpret test results and assess intellectual performance.

[¶] . . .[¶]

IQ test scores are approximations of conceptual functioning but may be insufficient to assess reasoning in real-life situations and mastery of practical tasks. For example, a person with an IQ score above 70 may have such severe adaptive behavior problems in social judgment, social

understanding, and other areas of adaptive functioning that the person's actual functioning is comparable to that of individuals with a lower IQ score. Thus, clinical judgment is needed in interpreting the results of IQ tests.

Deficits in adaptive functioning (Criterion B) refer to how well a person meets community standards of personal independence and social responsibility, in comparison to others of similar age and sociocultural background. Adaptive functioning involves adaptive reasoning in three domains: conceptual, social and practical. The *conceptual (academic) domain* involves competence in memory, language, reading, writing, math reasoning, acquisition of practical knowledge, problem solving and judgment in novel situations, among others. The *social domain* involves awareness of others' thoughts, feelings and experiences; empathy; interpersonal communication skills; friendship abilities; and social judgment, among others. The *practical domain* involves learning and self-management across life settings, including personal care, job responsibilities, money management, recreation, self-management of behavior, and school and work task organization, among others. Intellectual capacity, education, motivation, socialization, personality features, vocational opportunity, cultural experience, and coexisting general medical conditions or mental disorders influence adaptive functioning.

> Adaptive functioning is assessed using both clinical evaluation and individualized, culturally appropriate, psychometrically sound measures. Standardized measures are used with knowledgeable informants (e.g., parent or other family member; teacher; counselor; care provider) and the individual to the extent possible. Additional sources of information include educational, developmental, medical, and mental health evaluations. Scores from standardized measures and interview sources must be interpreted using clinical judgment . . .
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> Criterion B is met when at least one domain of adaptive functioning—conceptual, social or practical—is sufficiently impaired that ongoing support is needed in order for the person to perform adequately in one or more life settings at school, work, at home, or in the community. To meet diagnostic criteria for intellectual disability, the deficits in adaptive functioning must be directly related to the intellectual impairments described in Criterion A. Criterion C, onset during the developmental period, refers to recognition that intellectual and adaptive deficits are present during childhood or adolescence.

18. Dr. Johnson testified that the eligibility team considered the DSM-V criteria in reaching a decision regarding intellectual disability. The DSM-V was not the manual in existence when claimant was 18 years old and younger. When asked about whether he would have met the definition of intellectually disabled at that time, she unequivocally said

"no." Dr. Johnson acknowledged that she did not know the exact definition of intellectual disability according to the applicable DSM in the 1970's through the 1980's. She credibly testified, however, that intellectual disability (formerly mental retardation) and specific learning disability have always been mutually exclusive diagnoses. Once an individual obtains a valid IQ score below a certain point (generally an IQ score of 65-75 (70 ± 5), their classification changes to intellectually disabled. Therefore, even with prior versions of the DSM, a person (like claimant) had an IQ either in the intellectually disabled range or above. If above, and there was a significant discrepancy between their ability and achievement, as with claimant, the individual had a specific learning disability. Claimant's lowest reported score measuring his cognitive ability was a verbal score of 81 when he was in the 3rd grade. While in middle school, Mr. Fujii described claimant's cognitive abilities as "well within normal limits." There is no indication in any medical or academic record that claimant's cognitive ability ever met the criteria of intellectual disability prior to his 18th birthday.

19. Even if claimant currently exhibits a cognitive ability that meets the definition of intellectually disabled, as opined by his treating psychiatrist, that is not indicative of his functioning 25 years ago. Dr. Johnson credibly testified that a long-term effect of chronic mental illness, such as schizoaffective disorder, can diminish one's intellectual ability.

20. Dr. Johnson also emphasized that to meet the DSM-V diagnostic criteria for intellectual disability, deficits in adaptive functioning must be directly related to intellectual impairments. Claimant's past and current adaptive functioning deficits are attributable to his mental illness and learning disabilities and not his intellectual functioning. The evidence established that claimant did not meet the criteria of intellectual disability prior to his 18th birthday.

FIFTH CATEGORY

21. In addressing eligibility under the fifth category, the Court in *Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, 1129, stated in part:

> …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.

22. Claimant contends generally that he is qualified to receive services under the fifth category because deficits in his adaptive functioning demonstrates that he either has a condition closely related to intellectual disability or that he requires treatment similar to that required by individuals with intellectual disability.

23. According to Dr. Johnson, fifth category eligibility determinations typically determine first if a claimant had global deficits in intellectual functioning. This is done prior to considering the other fifth category elements related to similarities between the two conditions, or the treatment needed.

24. In *Samantha C. v. State Department of Developmental Services*, (2014) 185 Cal.App.4th 1462, the court confirmed that eligibility under the fifth category can be established in one of two ways: (1) a person may have a disabling condition closely related to mental retardation; or (2) a person may have a disabling condition requiring treatment similar to that of a person with mental retardation. (Id. at p. 1492) Regarding the first basis, i.e., having a condition closely related to intellectual disability, it is undisputed that claimant had impaired adaptive functioning prior to age 18. Dr. Johnson established that adaptive functioning may be influenced by various factors, including education, motivation,

personality characteristics, and the mental disorders and generic medical conditions that may coexist with intellectual disability. Claimant was diagnosed with mental health and learning disorders. Dr. Johnson opined that claimant's deficits in adaptive functioning were, and most likely are, caused by those disorders. She established that claimant's deficits in adaptive functioning are better addressed from the treatment perspective of one with mental health and learning disorders. No evidence to the contrary was presented.

25. Under the second prong, fifth category eligibility may also be based upon a condition requiring treatment similar to that required by individuals with intellectual disability. The terms "treatment" and "services" have separate meanings under the Lanterman Act. Individuals without developmental disabilities may benefit from many of the services and supports provided to regional center consumers. Section 4512, subdivision (b) defines "services and supports" as follows:

> "Services and supports for persons with developmental disabilities" means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of the developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives.

26. Dr. Johnson established that regional center services and supports targeted at improving or alleviating a developmental disability may be considered "treatment" of developmental disabilities. Thus, section 4512 elaborates further upon the services and supports listed in a consumer's individual program plan as including "diagnoses, evaluation*, treatment,* personal care, day care, domiciliary care, special living arrangements,

physical, occupational and speech therapy, training, education, supported and sheltered employment, mental health services…" (Welf. & Inst. Code, § 4512, subd. (b) (Emphasis added).) Designating "treatment" as a separate item is clear indication that it is not merely a synonym for services and supports, and this stands to reason given the broader mission of the Lanterman Act:

> It is the intent of the Legislature that regional centers assist persons with developmental disabilities and their families in securing services and supports which maximize opportunities and choices for living, working, learning, and recreating in the community. (Welf. & Inst. Code, § 4640.7, subd. (a).)

27. Fifth category eligibility under this prong must be based upon an individual requiring "treatment" similar to individuals with intellectual disability and not merely services. The wide range of services and supports listed under section 4512, subdivision (b), are not specific to intellectual disability. One would not need to suffer from intellectual disability, or any developmental disability, to benefit from the broad array of services and supports provided by VMRC. The Legislature clearly intended that an individual would have a condition similar to mental retardation, or would require *treatment* that is specifically required by individuals with mental retardation, and not any other condition, in order to be found eligible.

28. Dr. Johnson established that claimant's treatment needs were correctly viewed within the narrower context of the services and supports similar to and targeted at improving or alleviating a developmental disability similar to intellectual disability. The fact that claimant might have benefited from some of the services that could be provided by the regional center does not mean that he required treatment similar to individuals with intellectual disabilities.

29. No treatment recommendations from claimant's medical or educational records were based on conditions closely related to intellectual disability and no evidence was presented that any recommended treatments were similar to those required for an individual with an intellectual disability. For example, treatment recommendations included ways to address his auditory processing deficits. Mental health counseling was also recommended before claimant was 18 years old. While an individual with an intellectual disability may also exhibit comorbid mental health concerns, that was not proved in this case. The evidence established that claimant's deficits in adaptive functioning were appropriately addressed from the treatment perspective of one with mental health and learning disabilities. No persuasive evidence was presented to demonstrate that claimant required treatment similar to that required by an individual with intellectual disability.

30. VMRC established that claimant did not have a developmental disability prior to age 18. Therefore, he was correctly deemed ineligible for regional center services on the basis of intellectual disability and the fifth category.

LEGAL CONCLUSIONS

1. The Lanterman Act and its implementing regulations (Cal. Code Regs., tit. 17 § 50900 et seq.) do not specify which party bears the burden of proof in an eligibility hearing. California Evidence Code section 500 states that "[e]xcept as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting." Claimant bears the burden of establishing that he meets the requirements to receive services pursuant to the Lanterman Act. The standard of proof applied is a preponderance of the evidence. (Evid. Code, § 115.)

2. Pursuant to the Lanterman Act, , section 4500, et seq., regional centers accept responsibility for persons with developmental disabilities. Section 4512 defines developmental disability as follows:

> "Developmental disability" means 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…[t]his 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[9] or to require treatment similar to that required for individuals with mental retardation [commonly known as the "fifth category"], but shall not include other handicapping conditions that are solely physical in nature.

3. California Code of Regulations, title 17, section 54000, further defines the term "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:
>
> (1) Originate before age eighteen;
>
> (2) Be likely to continue indefinitely;

[9] Effective January 1, 2014, the Lanterman Act replaced the term "mental retardation" with "intellectual disability." The terms are used interchangeably throughout.

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

(c) 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.

(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.

4. Section 4512, subdivision (l), defines "substantial disability" as:

(l) The existence of significant functional limitation 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.

5. California Code of Regulations, title 17, section 54001, further provides:

(a) "Substantial disability" means:

(1) A condition which results in major impairment of cognitive and /or social functioning, representing sufficient impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential; and

(2) The existence of functional limitation, 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:

(1) Receptive and expressive language.

(2) Learning.

(3) Self-care.

(4) Mobility.

(5) Self-direction.

(6) Capacity for independent living.

(7) Economic self-sufficiency.

Handicapping conditions that consist solely of psychiatric disorders, learning disabilities or physical conditions do not qualify as developmental disabilities under the Lanterman Act.

6. Claimant contends that he exhibits deficits or impairments in his adaptive functioning, is impaired by these limitations, and would benefit from regional center services. However, regional center services are limited to those individuals meeting the stated eligibility criteria. The evidence did not prove that claimant has impairments that result from a qualifying condition which originated and constituted a substantial disability before the age of eighteen. There was no evidence to support a finding of intellectual disability or a condition closely related to intellectual disability, or requiring treatment similar to that required for individuals with intellectual disability.

7. The evidence was clear that claimant had at least two disabling conditions (specific learning disability and mental illness) and that he exhibited behaviors and adaptive functioning deficits before 18 years of age. He exhibited deficits or impairments in his adaptive functioning such that he could not effectively meet the standards of personal independence expected of one during his childhood and adolescence in his

community. However, claimant did not establish that he met the criteria for intellectual disability prior to age 18.

8. Additionally, adaptive functioning deficits alone are not sufficient for fifth category eligibility. There must be both a cognitive and adaptive functioning component. A preponderance of the evidence demonstrated that claimant's impairments in adaptive functioning prior to age 18 were most likely the result of mental health and learning disorders. The most probable inference from the evidence is that claimant's disabling condition and adaptive deficits required treatment for individuals with mental health and learning disorders. Accordingly, he did not have a substantially disabling developmental disability as defined by the Lanterman Act and is not eligible for services and supports from the regional center at this time.

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ORDER

Claimant's appeal from the Valley Mountain Regional Center's denial of eligibility for services is DENIED. Claimant is not eligible for regional center services under the Lanterman Act.

DATED: December 19, 2016

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JOY REDMON

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)