

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

CENTRAL VALLEY REGIONAL CENTER,

Service Agency.

OAH No. 2017010203

DECISION

This matter was heard before Administrative Law Judge Susan H. Hollingshead, State of California, Office of Administrative Hearings (OAH), in Visalia, California, on January 19 and March 5, 2018.

Tamara Salem, Appeals and Compliance Coordinator, represented the Service Agency, Central Valley Regional Center (CVRC).

Claimant was represented by her mother.

Oral and documentary evidence was received. The record was closed and the matter submitted for decision on March 5, 2018.

ISSUES

Is claimant eligible to receive regional center services and supports because she is an individual with an intellectual disability, or based on the "fifth category" because she has a condition closely related to intellectual disability, or that requires treatment similar to

that required for individuals with an intellectual disability pursuant to Welfare and Institutions Code section 4512?¹

FACTUAL FINDINGS

1. Claimant is a 47-year-old woman who was referred to CVRC for a determination of eligibility for regional center services. She has been diagnosed with Bipolar disorder, depression, and Turner syndrome. Claimant's medical history shows that she also has multiple health impairments including cardiac valvular disease, the presence of an artificial heart valve, and Type II Diabetes Mellitus. She takes numerous medications daily. Claimant lives in the family home with her parents. She receives Supplemental Security Income (SSI) from the Social Security Administration

2. A CVRC Intake Assessment dated August 24, 2016, noted claimant was referred by Mary Weber, MHCMIU, at Visalia Adult Mental Health, who specifically requested an assessment to rule out intellectual disability. The following "Referral Concerns" were noted: Impaired thought process; impaired judgment; poor impulse control; needs assistance to complete ADLs;² difficulty expressing and comprehending.

3. After review, the CVRC Multi-Disciplinary Eligibility Review Team determined that claimant was not eligible for regional center services. The Eligibility Team Review concluded:

¹ Unless otherwise indicated, all statutory references are to the California Welfare and Institutions Code.

² Activities of Daily Living.

Team Input: The Multidisciplinary Team acknowledges [claimant's] overall health and treatment, intellectual ability, communication, self-care, and self-direction abilities and difficulties. The MDT considered behavioral reporting and observation, developmental, social and environmental factors and history, mental health history, educational history, and psychological testing. No clear evidence of an eligible condition prior to age 18 was establish. [S/c]

TEAM DECISION: [Claimant] is not eligible for regional center services. There is no evidence of qualifying developmental disability prior to age 18.

4. A Notice of Proposed Action (NOPA) was issued on November 16, 2016, informing claimant as follows:

Proposed action: Close case; not eligible.

Reason for action: Low average verbal and nonverbal intelligence, with low adaptives.

5. Claimant appealed CVRC's decision on or about January 3, 2017, stating the following reasons for requesting a fair hearing, and what is needed to resolve her complaint:

[Claimant] is very slow to comprehend instructions as stated by CVRC's test administrator. [Claimant] requires high level of instruction to simplify the actions requested. [Claimant] has trouble expressing herself to a degree of frustration even

to herself, she repeats over and over. [Claimant] is so willing to please that she can put herself in harmful situations.

This is the third time I requested help. First time tested. Help to help [claimant] be happy in succeeding in getting things accomplished to feel she can do something. The attempts of working and being let go have made her depressed each time more. She would greatly benefit from CVRC services and deserves a chance to exceed [sic].

6. CVRC held an informal meeting with claimant to discuss her appeal of eligibility. By letter dated January 17, 2017, Shelley Celaya, CVRC Program Manager for Legal Services, further explained:

Testing was conducted by the Sullivan Center for Children on 10/7/16. The results of this assessment did not yield a regional center eligible diagnosis. IQ scores on the Wechsler Adult Intelligence Scale: Fourth Edition (WAIS-IV) did not indicate intellectual disability. There is no record of Autism, Epilepsy or Cerebral Palsy. There is a history of a diagnosis of Bipolar Disorder. It should be noted that there are no records of a qualifying diagnosis prior to the age of 18. [Claimant] received a high school diploma and achieved an Associate's degree. She reported that she has worked as a temp in department stores, without assistance, and obtained a driver's license. If there is impaired functioning, due to a psychiatric disorder such as bipolar disorder, it would not be a regional center eligible condition.

Based on the information available, [claimant] does not have a developmental disability as defined in the Welfare & Institutions Code or Title 17 of the California Code of Regulations Section 54000.

7. Pursuant to the Lanterman Act, Welfare and Institutions Code section 4500 et seq., regional centers accept responsibility for persons with developmental disabilities. Welfare and Institutions Code 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 intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to intellectual disability³ or to require treatment similar to that required for individuals with an intellectual disability [commonly known as the “fifth category”], but shall not include other handicapping conditions that are solely physical in nature.

8. California Code of Regulations, title 17, section 54000, further defines the term “developmental disability” as follows:

³ Effective January 1, 2014, the Lanterman Act replaced the term “mental retardation” with “intellectual disability.” California Code of Regulations, title 17, continues to use the term “mental retardation.” The terms are used interchangeably throughout.

(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 Development 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:

(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.

9. Welfare and Institutions Code 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.

10. California Code of Regulations, title 17, section 54001, 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.

ASSESSMENTS AND EVALUATIONS

11. CVRC referred claimant to the Sullivan Center for Children for a Psychological Eligibility Evaluation that was conducted on October 7, 2016, by Rachel Elizabeth Canning, M. Psy. under the supervision of Emon Abdolsalehi-Najafi, Ph.D. Ms.

Canning obtained background information through a review of records and interviews with claimant and her mother. The following tests were also administered:

- Wechsler Adult Intelligence Scale: Fourth Edition (WAIS-IV)
- Adaptive Behavior Assessment System: Third Edition (ABAS-III)
- Adaptive Behavior: Street Survival Skills Questionnaire (SSSQ)

12. Ms. Canning reported that claimant “was cooperative and interested in engaging with the testing. However, in the intake interview, she “had difficulty clearly explaining herself and evidenced tangential comments.” Ms. Canning included the following observations:

[Claimant] was responsive to this evaluator and was reinforced by positive praise. She required frequent explanation of instructions and repetition of questions. She also appeared to have low frustration tolerance, quickly deciding that she did not know the answer to questions. When encouraged by this evaluator, she would periodically guess the answer. [Claimant] frequently spoke out loud to herself, repeating the questions or working out the answer aloud. [Claimant’s] mother indicated her behavior during testing was consistent with her typical presentation. Her mother noted she often has a low frustration tolerance, but will exert significant effort into completing tasks, although it may take her an extended period to complete them. It is important to consider that [claimant] required significant support, including prompting, explanation of instructions, repetition of instructions, and encouragement to complete test measures. It appears that with these high levels of

support, [claimant] is able to achieve at the level she did on testing. Subsequently, the results of this evaluation may be an over representation of [claimant's] cognitive and adaptive abilities.

13. The WAIS-IV was administered as a measure of claimant's cognitive functioning, with the following results:

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INDEX	Standard Score	Subtest	Scaled Score
Verbal Comprehension (VCI)	80	Similarities	6
		Vocabulary	7
		Information	6
Perceptual Reasoning (PRI)	81	Block Design	9
		Visual Puzzles	5
		Matrix Reasoning	6
Working Memory (WMI)	66	Digit Span	3
		Arithmetic	5
Processing Speed (PSI)	71	Coding	4
		Symbol Search	5
FULL SCALE IQ (FSIQ)	71		

14. Ms. Canning explained:

On the WAIS-IV, [claimant's] Full Scale IQ score was 71, placing her cognitive abilities within the borderline range. [Claimant's] cognitive profile evidences significant variability between indices, including a 15-point difference between the Verbal Comprehension Index, which constituted a relative

strength, and Working Memory Index, which constituted a relative weakness. Further, she evidence significant variability within subtests, ranging from a high of 9 on Block Design to a low of 3 on Digit span. Despite this variability, the majority of [claimant's] subtest scores fell in the borderline to very low range. [Claimant's] scores on Perceptual Reasoning and Working Memory scales indicate that she has the capacity to understand and learn, but processes information very slowly and has difficulty with the application of information. As previously specified, [claimant] required frequent encouragement, repetition of instructions, and simplification of instructions during the administration of the WAIS-IV in order to understand the tasks.

15. The Street Survival Skills Questionnaire (SSSQ) was "designed to provide an objective and reliable method of assessing adaptive behaviors in nine skill areas."⁴

Claimant received the following scores on the SSSQ:

Component	Scaled Score
Basic Concepts	9

⁴ The examiner did not explain her reason for choosing to administer this test. The test publisher, McCarron-Dial Systems, describes, "the content of the SSSQ was selected to assess fundamental community living and prevocational skills of adolescents and adults with mild to moderate mental retardation. Objective and reliable information is obtained by use of a multiple-choice pictorial format that permits sampling of several aspects of adaptive behavior which facilitate living and working in the community."

Functional Signs	11
Tools	6
Domestics	9
Health and Safety	9
Public Services	5
Time	7
Money	6
Measurements	3
Survival Skills Quotient (SSQ)	85

The examiner described the results as follows:

On the SSSQ, [claimant] received a SSQ of 85, placing her adaptive functioning within the normal range. However, there were notable discrepancies between her scores. The majority of her scores fell within the borderline or extremely low range. [Claimant] demonstrates strengths in Basic Concepts, Functional Signs, Domestic, Health and Safety. However, the remainder of her profile fell within the borderline or low range.

16. The ABAS-III is an adaptive behavior measure used to assess adaptive skills functioning utilizing rating forms. Claimant's mother was the informant. Based on her responses, claimant obtained scores that were within the Extremely Low range.

Domain	Composite Score	Skill Area	Scaled Score
Conceptual	65		
		Communication	4
		Functional Academics	2

//			Self-Direction	5
	Social	70	Leisure	4
			Social	5
	Practical	69	Community Use	3
			Home Living	7
			Health & Safety	2
			Self-Care	5
	GAC	59		

[Claimant] obtained a General Adaptive Composite (GAC) of 59, placing her adaptive functioning in the extremely low range, according to her mother's report. All of her scores fell within the extremely low range. This examiner believes that the scores reported on the ABAS-III, by [claimant's] mother, more accurately describe [sic] [claimant's] adaptive functioning, than scores obtained on the SSSQ.

17. In concluding her report, Ms. Canning noted her impressions prior to offering her diagnoses and recommendations. Of particular interest were the following impressions:

It is this evaluator's strong belief that if not for the consistent additional support provided by family, [claimant] would not have been able to achieve the academic milestones that she did. Additionally, [claimant] has periodically held

employment but often is removed from these positions because of failure to complete tasks and use good judgment.

It is important to consider that the administration of the WAIS-IV was unstandardized as this evaluator was required to repeat instructions in order to help [claimant] understand the instructions. She also required significant amounts of support, needing prompting and encouragement throughout the assessment.

It is this examiner's belief that [claimant's] true adaptive abilities are more consistent with her mother's report on the ABAS-III. The discrepancy between these two measures may in part be because [claimant] is able to understand general concepts, but struggles to apply these concepts practically.

It is of concern that [claimant] was not diagnosed earlier in order to receive early intervention⁵. Claimant has notable strengths, which likely have been the result of extreme support and tutoring by family. This support has aided [claimant's] ability to complete high school and an Associate's Degree. However, given [claimant's] deficits in

⁵ Claimant's mother informed this examiner "she was aware of claimant's deficits in both cognitive and adaptive functioning, but did not pursue services after being provided referrals because of the stigma associated with a diagnosis of intellectual disability."

adaptive functioning and a significant variability on intellectual testing, a diagnosis of Unspecified Neurocognitive Disorder is warranted. [Claimant] would significantly benefit from intervention at this time.

Dsm -5⁶ Diagnoses:

F41.9 Unspecified Neurocognitive Disorder

Bipolar I Disorder, by history

Q96.9 Turner Syndrome (with associated medical conditions, including cardiac valvular disease and Type II Diabetes Mellitus)

Recommendations:

1. Consider a referral for treatment of adaptive functioning specifically in the areas of daily tasks of living.
2. Consider a mental health referral to manage emotional difficulties and possible treatment.
3. Consider a referral for a social skills group to provide [claimant] with opportunities to improve her social skills with other adults.

⁶ The Diagnostic and Statistical Manual of Mental Disorders: Fifth Edition (DSM-5) is the current standard for diagnosis and classification. The DSM-5 changed the diagnosis of Mental Retardation to Intellectual Disability (Intellectual Development Disorder).

4. Follow up with regular appointments with primary care physician to address the status of her medical illnesses and to monitor her medications.
5. Consider a referral to the Department of Rehabilitation to obtain job training and help with job placement.
6. Consider a referral for home and living options.

18. Claimant began an assessment with Synchrony of Visalia, Inc. Psychological and Behavioral Health Services on October 16, 2017. The assessment battery was completed on November 20, 2017, and a report was issued on January 10, 2018. Patricia Asuncion, M.A. completed the evaluation under the supervision of Edwyn Ortiz-Nance, MAOB, Psy. D.

Claimant's mother informed the examiner that claimant was seeking an evaluation to determine her intellectual and adaptive functioning. CVRC had determined she was not eligible for regional center services and she desired to appeal the eligibility determination.

Ms. Asuncion completed a review of records, clinical interviews with claimant and her mother, and the following tests were administered:

Slosson Intelligence Test, Revised (SIT-R3)

Comprehensive Test of Nonverbal Intelligence-Second Edition
(CTONI-2)

Vineland Adaptive Behavior Scales, Second Edition (Vineland-II)

Neuropsychological Assessment Battery (NAB)-Memory and
Executive Functions Modules

19. Ms. Asuncion noted the following in her Test Taking Observations:

[Claimant's] presentation during testing was consistent with her previous evaluation, as she would become easily frustrated and gave up quickly with difficult items, this

examiner would prompt [claimant] to continue testing. She was provided with encouragement to ensure testing elements were completed for the integrity of the testing results. [Claimant] needed frequent support and repetition of questions. Measurements were administered utilizing scoring procedures, however this examiner deviated from standard administration due to appointments being scheduled an hour at a time. Overall, the following results represent a valid picture of [claimant's] current intellectual capacities and adaptive levels, however due to the significant prompting and encouragement may be an overrepresentation of her abilities.

20. The examiner explained, "in order to assess [claimant's] intellectual capacities at this time, the SIT-R3 and the CTONI-2 were administered. The SIT-R3 was designed to assess an estimate of general verbal crystalized intelligence. Crystalized intelligence is the ability to use skills, knowledge, and experiences." Claimant's SIT-R3 results were:

Total Standard Score	68
Mean Age Equivalent	12.3
T-Score	30
Percentile Rank	2

Claimant's overall estimated verbal abilities fell within the Borderline range. This suggests [claimant] has limited cognitive capacities and performed significantly below her same aged peers.

21. To assess claimant's nonverbal cognitive abilities, the CTONI-2 was administered. "This is a nonverbal testing instrument where the respondent looks at figures

and determines the correct choices by pointing at available responses.” The results were as follows:

Full Scale Composite	Percentile Rank	Descriptive Level
72	3%	Poor

Ms. Asuncion explained:

[Claimant’s] nonverbal abilities are considered to be in the Poor range of her normed age group. Her abilities to reason and problem solve, using non-language based processing, are significantly below her same aged peers. She is less likely [than] the average person to see logical and abstract relationships, reason without words, solve mental puzzles, and form meaningful associations between objects and designs. Overall [claimant’s] performance on the CTONI-2 and her SIT-R3 score are consistent with the results from the WAIS-IV results from her previous psychological evaluation.

22. The examiner administered modules from the NAB to assess claimant’s memory and executive functioning “due to the difficulties [claimant] and her mother expressed regarding retaining information and applying information learned, in addition to the neurocognitive diagnosis given in her previous evaluation.” Her results were:

Module Index	Standard Score	Percentile Rank	Interpretive Category
Memory Index (MEM)	67	1	Moderately Impaired
Executive Functions	64	1	Moderately Impaired

[Claimant’s] MEM score suggests a moderate impairment of her overall memory functioning. Performance in this area is an indication of an individual’s verbal explicit learning, visual

explicit learning, verbal delayed free recall, visual delayed recognition memory, and delayed recall and recognition of information likely to be encountered in daily living. In regard to her EXE score, this suggests a moderate impairment in behavior and skills which allow her to be successful in carrying out activities, such as planning, engaging with others, problem solving, and successfully interacting with her environment to get her needs met.

23. The Vineland-II was administered to "assess claimant's adaptive behavior and social competence." Claimant's mother was the reporter. The following scores were obtained:

Domain	Standard Score	Percentile Rank	Adaptive Level
Communication	21	<1	Low
Daily Living Skills	57	<1	Low
Socialization	43	<1	Low
Adaptive Behavior Composite	38		
	Scaled Score	Level	
Maladaptive Behavior Index	22	Clinically Significant	
Internalizing Behavior	20	Clinically Significant	
Externalizing Behavior	24	Clinically Significant	

The examiner reported, "[claimant's] overall adaptive behavior was found by her mother to be significantly lower than her same aged peers and would be classified as a Moderate deficit in functioning. Her Communication, Daily Living, and Socialization skills fell within the low range. These scores are indicative of a limitation related to practical skill needed to function and meet the daily demands of one's environments, specifically skills

necessary to effectively interact with other people. This was consistent with her adaptive scores during her first evaluation.

24. **Diagnostic Impression:**

R41.83	Borderline Intellectual Functioning
F89	Unspecified Neurodevelopmental Disorder
	Bipolar I Disorder, per history
	Turner Syndrome
Z62.820	Parent-Child Relational Problem
Z56.9	Other Problem Related to Employment

Ms. Asuncion included the following observations in her Summary:

[Claimant] requires significant support and encouragement when given tasks to complete. Her overall estimated verbal abilities fell within the Borderline range and [she] has limited cognitive capacities and performed significantly below her same aged peers. Her nonverbal abilities are considered to be in the Poor range of her normed age group. Her abilities to reason and problem solve, using non-language based processing, are significantly below her same aged peers. Additionally, her level of adaptive functioning impedes her from completing daily tasks. Overall performance was consistent with results from her previous psychological evaluation.

Her memory ability and her executive functioning were also assessed. [Claimant's] performance suggests she has a moderate impairment in each of these areas. She has

difficulties with verbal and visual explicit learning, as well as delayed recognition, which may impact her daily living.

Additionally, she appears to have impairment in skills which allow her to carry out activities, such as planning, engaging with others, problem solving, and successful interacting with her environment to get her needs met with ease.

Furthermore, while [claimant's] abilities are in the Borderline Functioning range, her mental health history and symptoms appear to be exacerbating her difficulties in cognitive and adaptive functioning. She has a history [of] high level of anxiety and depression that affect her motivation and concentration in daily activities. Additionally, her rigid view and behaviors make it difficult for [claimant] to adjust to changes in daily life.

RECOMMENDATIONS:

1. [Claimant] would benefit from continuing her individual therapy to assist with her symptoms that may be affecting her daily functioning. Additionally, it is recommended her frequency of treatment be increased and for treatment goals to include exploring impact of relational issues. It could be beneficial for [claimant] to attend family therapy with her parents due to communication issues and to establish boundaries.

2. Additionally, [claimant] would benefit from therapy oriented to helping her better understand social and interpersonal interactions as well as learning verbal and non-verbal social cues. Consider the use of role play/social scripts to develop their ability to perceive social cues and imagine interpersonal scenarios from the perspective of others. It may be beneficial for [claimant] to engage in a social skills group to help advance her social skills.

3. [Claimant] is encouraged to continue consulting with her medical provider in order to continue medication management to address her medical issues and her symptoms related to her Bipolar diagnosis.

4. It is recommended that [claimant] seek assistance from the Department of Rehabilitation, or other job assistance programs, in order to gain assistance in seeking appropriate job placement to meet her skills.

EDUCATIONAL RECORDS

25. Claimant's educational records were extremely limited and, due to her age, additional records were not available. A Visalia Unified School District Pupil Permanent Record for Grades K-8, noted that claimant began kindergarten on September 2, 1975 (1975/76 school year) and completed 8th grade June, 1985 (1984/85 school year.) The record showed that she repeated the first grade. A comment during claimant's 6th grade year noted "Below grade reading/writing, sp."

There was no evidence of claimant participating in special education while in school. She did report difficulty in school, specifically with retaining and applying information, and

she testified that she was able to pass her classes with significant help from her parents and family members. Claimant's mother testified that claimant required a high level of tutoring and support throughout her school years, and her family, especially her father, provided extensive support in completing homework and assignments.

26. Claimant received her high school diploma from Golden West High School, Visalia Unified School District, in June 1989. Her family testified that claimant continued to require a high level of assistance to attain that result.

27. Claimant attended College of the Sequoias for five years, from 1989 until 1994. She received her Associate in Science degree on May 27, 1994. In her first two years in college, she failed five classes, which she was able to repeat for higher score. Claimant's mother testified that claimant required extensive tutoring and support over the five-year period to complete her degree.

MENTAL HEALTH RECORDS

28. Tulare County Health and Human Services Agency provided some limited mental health records. An ISNA Annual Update from the Visalia Adult Clinic, Assessment dated: June 19, 2017, provided this updated case formulation:

[Claimant] has been receiving psychiatric medication and case management services at this clinic. Consumer's current diagnosis as given by her psychiatrist is schizoaffective disorder, bipolar type. Per psychiatrist's note, consumer reports "auditory hallucinations of hearing the word 'hell' instead of heaven' while listening to the rosary on the Catholic channel," and has "distressing episodes when she feels 'someone has been in my house, my CDs get scratched.'" Consumer is currently prescribed numerous

psychiatric medications, including Cogentin, Topomax, Remeron, Abilify, Ativan, and Halcion. At the time of this assessment, consumer was not experiencing any symptoms of depression, mania, or psychosis. She did state that in the past she sometimes heard the word "heaven" replaced with the word "hell" when watching Catholic television. Consumer's current diagnosis as given by her psychiatrist will be continued here.

Consumer and her mother report regular familial conflict due to consumer's extreme rigidity around schedules; she often gets angry when dinner is late or when her parents deviate from the regular household routing. This occasionally results in consumer requesting to go to the hospital on a psychiatric hold, which last occurred in May 2017. Consumer was not admitted due to not meeting criteria. Consumer and her mother are pursuing assessment for the Regional Center due to consumer's diagnosis of Turner Syndrome and her intellectual difficulties. They are waiting for an assessment appointment to become available at Synchrony. CVRC seems to be an appropriate referral and they may be able to provide more effective services for client, particularly housing resources and supportive vocational opportunities.

Primary Diagnosis:

Schizoaffective disorder, bipolar type

ICD9: 295.70

ICD10: F25.0

DSM4: 295.70M

DSM5: Schizoaffective disorder, bipolar type

SNOMED: 38368003

Rule Out:

Intellectual disability primary

29. This update identified the "Current areas of impairment: Daily activities, Family support system, Living Situation, Social network." The following description was given to answer the question, "How are problems/symptoms impairing functioning?"

Daily Activities: Likely due to her learning disabilities, consumer needs help with basic ADLs; her mother gives consumer her medications, does the shopping, and does most meal preparation.

Family/Living Situation: Family arguments, disagreements with father. At time, consumer calls 911 during conflicts with her family; in May she requested to be psychiatrically hospitalized but did not meet criteria. She does have some coping skills, and states, 'I've been to prison, I've taken anger management, I've gone to the mental hospital. I've learned outlets for my anger-take walks, listen to music.'

Socialization/Social Support: Consumer and her mother report that consumer does not socialize with anyone outside of the family.

Work: Consumer is unable to work.

30. Claimant also reported being arrested approximately ten years prior to this update for attempting to set her room on fire. She went to jail and then to a Transitional Living Center until it was safe for her to return to the family home. She remained on probation for two years after this incident.

31. Latif Ziyar, M.D., Visalia Adult Clinic Medication Support Services, saw claimant during 2000. She was seen for a follow-up visit and it was noted that she was reportedly hospitalized two years prior for suicidal ideation. In describing her objective state, he described her on various visits as "alert, oriented, cognitive functions within normal limits," and "alert and oriented, cognitive functions fairly normal."

TESTIMONY

32. Kao Yang, Ph.D. is a CVRC Staff Psychologist with extensive experience assessing and diagnosing individuals with developmental disabilities. Dr. Yang testified that, in her capacity as a CVRC staff psychologist, one of her responsibilities is participating in the eligibility review process. She was a member of claimant's Multi-Disciplinary Eligibility Review Team.

Dr. Yang stated that claimant demonstrates deficits in adaptive functioning, however having adaptive impairments does not establish that she has a qualifying disability making her eligible for regional center services and supports. Adaptive deficits can exist without a developmental disability. They must be attributable to one of the five eligible conditions. Solely psychiatric disorders and/or learning disabilities, or conditions that are solely physical in nature, are specifically excluded. CVRC concluded that the evidence failed to establish regional center eligibility. Although claimant has deficits in adaptive skills, Dr. Yang opined that she does not have an eligible condition causing those deficits.

Dr. Yang testified that claimant does not have an intellectual disability and the evidence did not demonstrate intellectual functioning at the level of or similar to ID. She

argued that claimant had some variability in her subtest scores that did not support a finding of impaired cognitive functioning. Claimant was not identified as a student with intellectual disability and ID has never been diagnosed. Dr. Yang testified that claimant does not have impaired cognitive functioning but does have struggles with various psychiatric diagnoses and health concerns, and that her adaptive skills deficits could be related to those diagnoses.

33. Claimant's mother testified to the difficulty her daughter has had throughout her life and the level of encouragement and support required for her to accomplish tasks. She described the struggles she had in school and opined that the reason claimant had the academic success she had was due to with her family constantly supporting her and assisting with her school work. Claimant was able to attain her Associate's Degree after extensive assistance over a five-year period and repetition of several failed classes. Repetition is essential and claimant requires constant encouragement and prompting to achieve results.

Her mother stated that claimant was referred for CVRC services as an adolescent, which she did not pursue because of stigma associated with receiving services at that time. When she sought services for claimant when she became an adult, services were denied. She was visibly upset testifying to her regret not pursuing eligibility when claimant was a child and the family "had all of her records"

Claimant has difficulty in maintaining a job. Her mother testified that she was often "let go" due to difficulty understanding and following directions. Claimant needs directions broken down so she can complete one step at a time. Her mother is extremely concerned with claimant's functioning and ability to take care of herself, complete tasks of every day life and manage her medications. She questions how claimant will live when she and claimant's father are no longer able to care for her.

In addition, Claimant's mother shared the difficulty over time dealing with claimant's heart condition, Bipolar disorder and diabetes. She described conflict within the family and the difficulty "controlling" claimant. It was her desire to obtain assistance for her daughter and she believes CVRC "has programs she could benefit from."

34. Claimant's father and two of her aunts supported her mother's testimony. They reiterated the support and constant direction required by claimant, and explained her difficulties with relationships and maintaining employment. Claimant was described as being unsafe alone, lacking in judgment when sharing information with others, slow in thinking and lacking the ability to "stay on topic." She has few friends, limited social interactions, and is currently unemployed. They explained that she is easily frustrated and frequently becomes upset.

35. Claimant testified that she was raised to "finish what we started." Church was the first priority, then homework and chores. She would work hard at things, even if it took much longer than it should. She shared her difficulties in school, employment, and interpersonal relationships.

ELIGIBILITY BASED ON INTELLECTUAL DISABILITY

36. The Diagnostic Criteria for Intellectual Disability in the DSM-V is set forth as follows:

Intellectual Disability (intellectual developmental disorder)⁷ is
a disorder with onset during the developmental period that

⁷ The DSM-V states, "The diagnostic term *intellectual disability* is the equivalent term for the ICD-11 diagnosis of *intellectual developmental disorders*. Although the term intellectual disability is used throughout this manual, both terms are used in the title to

includes both intellectual and adaptive functioning⁸ 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.
37. The DSM-V offers the following pertinent diagnostic features:

clarify relationships with other classification systems.”

⁸ *“Adaptive functioning* refers to how effectively individuals cope with common life demands and how well they meet the standard of personal independence expected of someone in their particular age group, sociocultural background, and community setting. Adaptive functioning may be influenced by various factors, including education, motivation, personality characteristics, social and vocational opportunities, and the mental disorders and general medical conditions that may coexist with Intellectual Disability.

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

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.

38. While the DSM-5 does not rely on IQ scores alone, it does require clinical assessment *and* standardized testing of both intellectual and adaptive functioning. The DSM-V looks to “deficits in general mental abilities.” And, “intellectual functioning is typically measured with individually administered and psychometrically valid, comprehensive, culturally appropriate, psychometrically sound tests of intelligence.” A determination cannot be based solely on claimant’s adaptive deficits, but they must be related to deficits in general mental abilities.

Claimant does have limitations in adaptive skills and cognitive functioning. However, the evidence presented at hearing did not establish a diagnosis of intellectual disability.

ELIGIBILITY BASED ON THE “FIFTH CATEGORY” (A DISABLING CONDITION FOUND TO BE CLOSELY RELATED TO INTELLECTUAL DISABILITY OR TO REQUIRE TREATMENT SIMILAR TO THAT REQUIRED FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY)

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

. ... 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.

40. Fifth category eligibility determinations typically begin with an initial consideration of whether claimant has global deficits in intellectual functioning. This is done prior to consideration of other fifth category elements related to similarities between the two conditions, or the treatment needed. Fifth category eligibility does not require strict replication of all of the diagnostic features of intellectual disability. If this were so, the fifth category would be redundant. Eligibility under the fifth category requires an analysis of the quality of a claimant's cognitive and adaptive functioning and a determination of how well that claimant meets community standards of personal independence and social responsibility in comparison to others of similar age and sociocultural background. CCR, section 54002 defines "cognitive" as "the ability of an individual to solve problems with insight to adapt to new situations, to think abstractly, and to profit from experience."

41. An appellate decision has suggested, when considering whether an individual is eligible for regional center services under the fifth category, that eligibility may be largely based on the established need for treatment similar to that provided for individuals with mental retardation, and notwithstanding an individual's relatively high level of intellectual functioning. (*Samantha C. v. State Department of Developmental Services* (2010) 185 Cal.App.4th 1462.) In *Samantha C.*, the individual applying for regional center services did not meet the criteria for mental retardation. The court understood and noted that the Association of Regional Center Agencies had guidelines which recommended consideration of fifth category for those individuals whose "general intellectual functioning is in the low borderline range of intelligence (I.Q. scores ranging from 70-74)." (*Id.* at p. 1477). However, the court confirmed that individuals may qualify for regional center services under the fifth category on either of two independent bases, with one basis requiring only that an individual require treatment similar to that required for individuals with mental retardation. Here, claimant believes that her condition is closely

related to mental retardation. She also believes she requires treatment similar to that required for individuals with mental retardation.

FIFTH CATEGORY ELIGIBILITY-CONDITION CLOSELY RELATED TO INTELLECTUAL DISABILITY

42. Claimant contends that she is eligible for regional center services based upon a condition being closely related to mental retardation as evidenced by her impairments in adaptive functioning. The DSM explains that deficits in adaptive functioning can have a number of causes. The fact that claimant has deficits in adaptive functioning alone, is not sufficient to establish that she has a condition closely related to mental retardation. To meet diagnostic criteria for intellectual disability, the DSM-V requires that the deficits in adaptive functioning must be directly related to the intellectual impairments. The evidence was persuasive that claimant has adaptive deficits that result from cognitive impairment. Thus she demonstrated that she has a condition closely related to mental retardation. Furthermore the various additional factors required as designating an individual as developmentally disabled and substantially handicapped apply as well.

FIFTH CATEGORY ELIGIBILITY-CONDITION REQUIRING TREATMENT SIMILAR TO THAT REQUIRED FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY)

43. Fifth category eligibility may also be based upon a condition requiring treatment similar to that required by individuals with mental retardation. Because claimant met the first prong analysis, treatment needs do not require further discussion.

DISCUSSION

44. Claimant presents with a complicated profile, especially in light of the age at which she is currently seeking eligibility. When all the evidence is considered, claimant established that she qualifies for services from CVRC under the Lanterman Act as an

individual with a condition closely related to intellectual disability. She is substantially disabled by adaptive and performance deficits that are related to cognitive limitations. Her adaptive skills deficits are exacerbated by her mental health and medical concerns, however there was no persuasive evidence that these deficits were solely attributed to psychiatric disorders, learning disabilities and/or are solely physical in nature. An individual with regional center eligibility may present with co-morbid conditions. Claimant functions in a manner similar to a person with intellectual disability due to substantial adaptive deficits associated with general intellectual functioning.

Taking into account the standard deviation, claimant's Full Scale IQ of 71 represents a range of 66-76. Both assessors noted that they deviated from standard test administration and that the results likely overrepresented claimant's cognitive abilities and adaptive skills. There was no evidence of significant variance in scores that would affect the validity of the FSIQ. Neither assessor attributed deficits solely to mental health concerns.

Claimant evidenced difficulty reasoning and problem solving, and requires high levels of support to achieve. She processes slowly, has difficulty with practical application and requires frequent encouragement, repetition of instructions, prompting and simplification in order to understand tasks.

There was difficulty in establishing that the onset of claimant's developmental disability occurred during the developmental period due to the lack of records, and her current age. Claimant's need for substantial support throughout her life to get through school and accomplish tasks as testified to by her witnesses, was consistent with the assistance required during her assessments, as persuasively described by her evaluators. A pattern was demonstrated of her motivation to approach a task, proceed to get frustrated and then require repetition, instructions broken down into steps, and encouragement and prompting by others to continue. The conclusion reached is that claimant's consistently low functioning evidences a consistent deficit in cognitive capacity.

45. Claimant bears the burden of establishing that she meets the eligibility requirements for services under the Lanterman Act.⁹ She has met that burden. The evidence presented proved that claimant is substantially disabled by a qualifying condition found to be closely related to intellectual disability. Accordingly, claimant has a developmental disability as defined by the Lanterman Act. Claimant's request for services and supports from CVRC under the Lanterman Act is granted.

LEGAL CONCLUSIONS

1. Eligibility for regional center services is limited to those persons meeting the eligibility criteria for one of the five categories of developmental disabilities set forth in section 4512 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 or to require treatment similar to that required for individuals with mental retardation [commonly known as the "fifth category"],

⁹ 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."

but shall not include other handicapping conditions that consist solely physical in nature.

2. The statutory and regulatory definitions of "developmental disability" (Welf. & Inst. Code, § 4512 and Cal. Code. Regs., tit. 17, §54000) exclude conditions that are solely physical in nature. California Code of Regulations, title 17, section 54000, also excludes conditions that are solely psychiatric disorders or solely learning disabilities.

3. Claimant proved that she has a developmental disability as defined by the Lanterman Act. Therefore, she is eligible for regional center services.

ORDER

Claimant's appeal from the Central Valley Regional Center's denial of eligibility for services is granted. Claimant is eligible for regional center services under the Lanterman Act.

DATED: March 19, 2018

SUSAN H. HOLLINGSHEAD
Administrative Law Judge
Office of Administrative Hearing

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).)