

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

vs.

SOUTH CENTRAL LOS ANGELES
REGIONAL CENTER,

Service Agency.

OAH NO. 2017021135

DECISION

Carmen D. Snuggs, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on September 20, 2017, and November 9, 2017 in Los Angeles, California.

Julie A. Ocheltree, Attorney at Law, represented South Central Los Angeles Regional Center (SCLARC or Service Agency).

Claimant's¹ legal guardian, who is also Claimant's Educational Rights Holder, represented Claimant, who was present.²

Oral and documentary evidence was received. The record was closed and the

¹ Family and party titles are used to protect the privacy of Claimant and her family.

² Claimant was present for only the start of the hearing on September 20, 2017, and was present for the entire hearing on November 9, 2017.

matter submitted for decision on November 9, 2017.

ISSUE

Is Claimant eligible for services and supports from the Service Agency under the Lanterman Developmental Disabilities Services Act (Lanterman Act)?

EVIDENCE RELIED UPON

Documents. Service Agency's exhibits 1-18; Claimant's exhibits A-I.

Testimony. SCLARC witnesses Sandra Watson, Psy.D. and Shirley Korula, M.D.; Claimant's witnesses Emily Dixon, Claimant's Court Appointed Special Advocate, Claimant, and Claimant's legal guardian.

FACTUAL FINDINGS

PARTIES AND JURISDICTION

1. Claimant is an 18 year-old female. Claimant's legal guardian asked the Service Agency to determine whether Claimant is eligible for regional center services and supports under a diagnosis of cerebral palsy and suspected intellectual disability.
2. By a letter dated February 13, 2017, the Service Agency notified Claimant's legal guardian of its determination that Claimant is not eligible for regional center services because Claimant does not meet the eligibility criteria set forth in the Lanterman Act.
3. On February 17, 2017, Claimant's legal guardian, on Claimant's behalf, filed a fair hearing request to appeal the Service Agency's decision. Claimant's legal guardian disagreed with the Service Agency's decision and asserted that Claimant has cerebral palsy and a learning disability, and is therefore unable to care for herself. Claimant's legal guardian also contended that Claimant "is on medication to help her deal with

everyday life and unable to live on her own.” (Ex.1.) Claimant’s legal guardian further asserted that Claimant would benefit from SCLARC services because Claimant’s “issues can[not]” be resolved with just one source of treatment [and Claimant’s] disabilities are life-altering.” (*Ibid.*) This hearing ensued.

CLAIMANT’S BACKGROUND

4. Claimant was exposed to drugs in utero and placed in foster care upon her discharge from the hospital after birth. She was placed with her legal guardian at the age of three. Claimant also lives with her biological sister and brother, as well as her legal guardian’s adult son.

5. Claimant’s medical records show that she was diagnosed as a child with cerebral palsy³ which resulted in right hemiplegia⁴ with hemihypertrophy⁵ of the left side of her body relative to the right. She has had three surgeries to correct right foot muscle stiffness and improve flexibility. Previously, Claimant had been a regional center client under the Early Start Program until the age of three.⁶ Although Claimant was

³ Cerebral palsy is a non-progressive motor disorder caused by an intracranial bleed or other brain anomaly.

⁴ Weakness or paralysis affecting one side of the body.

⁵ A condition in which one side of the body or a part of one side of the body is larger than the other to an extent considered greater than the normal variation.

⁶ “Early Start” is the name used in California to refer to a federal program for children under age three who are at risk for certain disabilities. The governing law for Early Start is The Individuals with Disabilities Education Act (IDEA), Subchapter III, Infants

eligible to receive Early Start services, this factor did not automatically render her eligible to receive regional center services after the age of three. Such eligibility is governed by the Lanterman Developmental Disability Services Act (Lanterman Act),⁷ which contains different eligibility requirements than Early Start. Claimant also has a history of seizures that occurred prior to the age of three, but she has not suffered a seizure since that time. She is currently ambulatory and able to move all of her extremities.

6. In 2006, when Claimant was seven years old, Health Care Partners noted a diagnosis of developmental dyslexia in Claimant's medical record.

7. Claimant has had an Individualized Educational Program (IEP) since she began attending school. Under an April 2017 IEP, Claimant was deemed eligible for special education services as a student with an "Other Health Impairment." The IEP references Claimant's cerebral palsy and notes that she experienced pain at the end of day, which was suspected to be caused by using the stairs at school. As an accommodation, the IEP provides that Claimant would be given an elevator pass to use during the school year. The IEP also states that Claimant's previous seizure activity and missed school due to various appointments may impact her participation and progress in her educational program. It also notes that her Other Health Impairment impairs her

and Toddlers with Disabilities (20 U.S.C. §§ 1431-1445) and the applicable federal regulations found in Title 34, Code of Federal Regulations (C.F.R.), section 303, et seq. The California Early Intervention Services Act is found at Government Code section 95000, et seq. California also adopted regulations to implement the statutory scheme. (Cal. Code Regs., tit. 17, sections 52000-52175.)

⁷ Welfare and Institutions Code section 4500 et seq.

ability to write a grade level essay, comprehend text, and solve grade level mathematical equations, among other things.

8. Claimant aspires to be a youth therapist. She currently attends community college, and is taking 12 semester units consisting of classes in math, English, and child development. She is receiving educational accommodations for test taking, note taking, and accessing student queues so that she does not have to wait in line. She receives transitional youth services through the Department of Children and Family Services in the form of weekly counseling for emotional and social needs, and independent living coordination services twice per month to assist Claimant with daily functioning. Claimant is also currently being treated by a psychiatrist once per month for anxiety, for which she takes Prozac.

9. There is no evidence in the record that Claimant has ever received a diagnosis of epilepsy or autism.

10. It is undisputed that Claimant has a qualifying diagnosis of cerebral palsy. The present dispute relates to whether Claimant's cerebral palsy is substantially disabling. Claimant contends, by and through her legal guardian, that she also has a qualifying diagnosis of intellectual disability or a "fifth category"⁸ eligibility.

⁸ The fifth category of eligibility under Welfare and Institutions Code section 4512 is listed as "Disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with intellectual disability."

CLAIMANT DOES NOT SUFFER FROM INTELLECTUAL DISABILITY OR A CONDITION
CLOSELY RELATED TO IT

Evaluation by Melissa Bailey, Psy.D.⁹

11(a). On April 27, 2016, May 16, 2016, May 25, 2016, and July 15, 2016 Melissa Bailey, Psy.D., a licensed clinical psychologist, performed a psychoeducational evaluation of Claimant. Dr. Bailey was contacted by the Los Angeles Unified School District (LAUSD) upon the request of Claimant's legal guardian who was concerned that Claimant did not comprehend appropriate to her age and grade level. She administered tests in the areas of general intelligence (Wechsler Adult Intelligence Scale – Fourth Edition [WAIS-IV]), academic achievement (Wechsler Individual Achievement Test – Third Edition [WIAT-III]), neurological functioning (Comprehensive Trail –Making Test (CTMT), auditory processing (Test of Auditory Processing Skills – Third Edition (TAPS-3), visual perception (Beery-Buktenia Developmental Test of Visual-Motor Integration [Beery VMI]), and social-emotional (Behavior Assessment System for Children – Third Edition, Teacher Report [BASC-3]).

11(b). Dr. Bailey reported that Claimant objected to the testing because she would be "missing her school work" during the testing and that she was upset that her legal guardian was requiring her to participate in the testing. (Ex. C, p. 7.) She described Claimant as agitated and noted that she became increasingly agitated as Dr. Bailey tried to establish rapport. Dr. Bailey further reported that Claimant became increasingly frustrated as the tests' tasks became more complicated and she was distressed at her inability to complete many tasks.

11(c). Claimant's Full Scale IQ of 77 with a 90% confidence interval that her true

⁹ Dr. Bailey did not testify at the hearing.

score lies between 74 and 81, placed her in the borderline range of functioning on the WAIS-IV. With respect to the WIAT-III, Dr. Bailey noted that Claimant was very agitated and struggled with many of the tests' components. Therefore, Dr. Bailey was only able to administer some of the subtests in their entirety. Claimant attained a standard score of 76 in reading comprehension and fluency, which is in the low range and the equivalent of grade 2.3 and an individual aged 7 years, 8 months. She attained a standard score of 85 in math problem solving, which is in the low average range and the equivalent of age 11 years, 8 months and grade 6.7. Claimant's score of 74 in numerical operations was in the low average range, and has a grade equivalent of 4.5 and age equivalent of 9 years, 8 months. Claimant attained a score of 30 on the on the CTMT, placing her in the mildly to moderately impaired range, and Claimant's scores on the BASC-3 were in the average range with the exception of her adaptability and leadership scores, which were in the low range. Claimant's score on the Beery VMI for Motor Coordination was in the very low average range.

11(d). Dr. Bailey concluded that while Claimant's performance was influenced by the structured environment or her mood, and she previously scored in the average range¹⁰ on the Cognitive Assessment System-Second Edition (CAS) administered by LAUSD, Claimant performed in the delayed to borderline range of intellectual functioning. She predicted that even if Claimant were less agitated, her test scores on the WAIS would be in the borderline range, and that Claimant's borderline intellectual functioning was indicated by Claimant's cerebral palsy, history of seizures, and Claimant's legal guardian's reporting of Claimant's activities of daily living, communication skills and social skills being in the delayed range. Based on Claimant's past testing and the testing conducted by Dr. Bailey, Dr. Bailey diagnosed Claimant with

¹⁰ Claimant's exact score is not contained in the record.

Specific Learning Disorder, with impairment in math, Specific Learning Disorder, with impairment in reading, and Borderline Intellectual Functioning. Dr. Bailey further rendered a diagnosis of Reactive Attachment Disorder, persistent, under the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5),¹¹ based on Claimant's past history and Claimant's legal guardian's reporting of Claimant's behaviors at home.

11(e). Dr. Bailey recommended that Claimant's legal guardian present her report to her local regional center, in this case SCLARC, because she met the criteria for regional center services related to cerebral palsy and/or the fifth category. Dr. Bailey opined that the regional center would provide "home-based services" and possibly behavior therapy. Dr. Bailey expressed concern that Claimant's skill set and her ability to carry out activities of daily living may decrease if she is not in a structured environment like high school, and that Claimant's IQ may "continue" to decrease. (Ex. C, p. 16.)

Service Agency's Evaluation of Claimant

12(a). On October 13, 2016, Claimant and her legal guardian met with SCLARC's Service Coordinator Moritz Cortes, for a psychosocial evaluation. Ms. Cortes wrote a report regarding that evaluation. (Ex. 4.)

12(b). Claimant's legal guardian shared concerns with Ms. Cortes regarding Claimant. Specifically, Claimant's legal guardian stated that in the area of self-care, Claimant could read street signs and knew how to cross the street, but that Claimant tended to get distracted, "zone out" and often expressed that she was not thinking. Ms.

¹¹ The DSM-5 defines Reactive Attachment Disorder as "[a] consistent pattern of inhibited, emotionally withdrawn behavior toward adult caregivers, manifested by both the following: The child rarely or minimally seeks comfort while distressed. The child rarely or minimally responds to comfort when distressed."

Cortes reported that while Claimant has difficulties with fasteners and can only comb her hair into a pony tail, Claimant can perform the daily living activities of feeding, toileting, personal hygiene, bathing and simple grooming. Claimant does not want to make purchases because she does not like to talk to people and because she has difficulty calculating change. When Claimant's legal guardian's reported that Claimant disliked going out in public, Claimant explained that she does not like rejection. She can do her own laundry, but leaves her wet clothes in the washing machine. Ms. Cortes notes that Claimant receives weekly psychotherapy to improve anxiety, irritability, and depressive symptoms and defiant behaviors. Claimant's legal guardian reported that Claimant is not aggressive or self-injurious.

12(c). Ms. Cortes noted Claimant's previous diagnosis of developmental Dyslexia and learning disability. She further noted Claimant's cerebral palsy and reported that Claimant was ambulatory, has right side weakness, and an unsteady gait. Claimant reported to Ms. Cortes that she experienced pain and numbness in her foot and leg and would soon receive physical therapy through California Children's Services (CCS). Claimant also reported that her hands shake. Ms. Cortes described Claimant as cooperative, able to answer questions and compose a paragraph describing her favorite activities and her goals.

13. Based on this evaluation, Ms. Cortes recommended that Claimant undergo a psychological evaluation to determine the presence of an intellectual disability and a medical assessment determination based on cerebral palsy, for determination of eligibility and to obtain recommendations.

14(a). The service agency referred Claimant to Aurielle Mason, Psy.D., licensed psychologist, for a psychological evaluation. Dr. Mason assessed Claimant on October 20, 2016 for a suspected developmental delay. Dr. Mason later rendered an undated report in which she concluded Claimant had a Specific Learning Disorder, with

impairment in written expression, mild, and Reactive Attachment Disorder, by history.
(Ex. 3.)

14(b). Dr. Mason administered tests to determine Claimant's cognitive ability (Wechsler Nonverbal Scale of Ability [WNV]), academic achievement (Wide Range Achievement Test – Fourth Edition [WRAT-4]), and adaptive functioning (Adaptive Behavior Assessment System, Third Edition [ABAS-III]: Parent/Caregiver Rating Form).

14(c). Claimant's Full Scale IQ of 87 as determined under the WNV placed Claimant in the low average range. Claimant's scores on the WRAT-4's subtests of 57 in spelling, 79 in word reading, and 84 in math computation were in the lower extreme, low, and below average ranges, respectively. Claimant's legal guardian was the informant for the ABAS-3. Claimant was determined to function in the extremely low range in reading, writing, mathematics, measurements, and telling time. Her ability to make independent choices, exercise self-control, and take responsibility when appropriate was in the low range. Claimant's ability to move within the community and shop was in the extremely low range, whereas her ability to clean, prepare food, perform chores, and take care of her personal possessions was in the below average range. Also in the below average range was Claimant's ability to protect her physical well-being, show caution, use medication, and prevent injuries. Finally, Claimant's ability to perform daily activities such as eating, dressing, and personal hygiene was in the below average range.

14(d). Dr. Mason concluded that impairment in learning and acquiring information was indicated and that Claimant displayed difficulty in learning. She recommended that Claimant follow-up with her school district for educational support, and that Claimant would benefit from psychotherapy.

15. On January 24, 2017, the Service Agency's interdisciplinary team reviewed the assessments and reports prepared by Dr. Mason and Ms. Cortes and determined

that although Claimant has cerebral palsy her condition is not substantially handicapping, and that Claimant does not have a substantial disability that is closely related to an intellectual disability or to a disability that requires treatment similar to that required for individuals with intellectual disability.

16. On March 23, 2017, the Service Agency notified Claimant's legal guardian that following an informal meeting on March 22, 2017, with Monique Watts, the Service Agency's Fair Hearing Manager, Claimant, and Claimant's legal guardian, and a second review of all of Claimant's records and documents, including several medical records from CCS and Health Care Partners and Talbert Medical Group, Claimant's IEP, the Service Agency's decision regarding Claimant's eligibility for supports and services remained unchanged. The Service Agency determined that Claimant did not meet the DSM-5 criteria for a diagnosis of Intellectual Disability or moderate to severe cerebral palsy, nor did she have fifth category eligibility.

17. Sandra Watson, Pys.D., testified on behalf of the Service Agency. She received her doctorate in clinical psychology in 2003 and has been licensed to practice clinic psychology in California since 2005. She currently works as a consultant for SCLARC and was on the eligibility team that made the decision denying Claimant's request for services. Dr. Watson reviewed all of the documents provided by Claimant. Dr. Watson's testimony established, based on Dr. Watson's education and experience, that Claimant does not suffer from intellectual disability, nor does she present as a person suffering from a condition similar to intellectual disability. Dr. Watson explained that a person with an intellectual disability does not have the capacity to obtain varying test scores on academic or achievement tests because the disability is immutable. The individual's Full IQ Score would remain stagnant at a flat line rate and would not be affected by the individual's mood or the testing environment. Dr. Watson further testified that a person with an intellectual disability typically consistently attains a Full IQ

Score of 70 or below. Claimant's Full IQ Score on the cognitive ability test, the WNV, administered by Dr. Mason was 87, or low average. In 2015, Claimant scored in the average range on the cognitive testing administered by LAUSD, as referenced in Factual Finding 11(d). Dr. Watson further explained and established that although Claimant suffers adaptive deficits, based on her current test scores, the impairment was not due to intellectual disability.

18. Shirley Korula, M.D., also testified on behalf of the Service Agency. She has been licensed as a medical doctor in California since 1982. She is Board Certified in pediatrics and clinical genetics, which is the study of inherited disorders. In her practice, she works with a lot of children with birth defects, developmental disabilities and other genetic disorders. She has worked as a consultant for the Service Agency for 20 years. Prior to that, she worked as the Medical Director at San Gabriel Pomona Regional Center, where she was previously a genetic consultant. In all, she has worked on an eligibility team for the regional center system for 30 years. She currently works as a consultant for the California Department of Education's diagnostic center, where she consults on referrals from the Department of Special Education for children with different disorders. Until January 2017, she worked in the cranial facial clinic at the Orthopedic Institute for Children in Los Angeles. Her testimony regarding cerebral palsy demonstrated her expertise regarding the condition.

19. Dr. Korula reviewed all documents provided by Claimant in support of her request for eligibility and Dr. Korula was a part of SCLARC's eligibility team that made the decision regarding Claimant's eligibility for services. She testified that Claimant has fine motor skill problems but hardly any observable effects of cerebral palsy, according to the records from Health Care Partners and CCS. She further explained that cerebral palsy can impair cognitive ability if there is a massive bleed in the brain, but there is no evidence in the records that Claimant suffered such an event. Dr. Korula opined that

Claimant does not have an intellectual disability nor does she have a condition that is closely related to intellectual disability. Dr. Korula's opinion is based on the fact that Claimant's cognitive skills are not in the range of an individual with an intellectual disability since her test scores are in the average and low average range. Her testimony also established that Claimant's seizure activity prior to the age of three has not caused Claimant's problems with learning or intellectual disability, as she explained that if Claimant's cognitive ability had been affected by the seizures, there would be evidence of permanent damage in the way of declining cognitive ability. Claimant, however, has consistently tested in the low average to average range, and in Dr. Korula's opinion, is not close to being intellectually disabled, and her scores on the tests administered by Dr. Bailey were affected by Claimant's mood. Dr. Korula further explained that individuals whose cognitive ability is affected by seizures are those whose seizures have not come under control and they experience a decline in cognitive ability caused by the number of seizures they suffer per day (100 to 200).

20(a). Claimant's contention that her seizure activity is the cause of her cognitive deficits is not persuasive as it is unsupported and contradicted by the expert testimony of Dr. Korula as set forth in Factual Finding 18. Also not persuasive is the article submitted by Claimant regarding seizures and their effects. The article states that "repeated seizures of any type . . . may pose a serious risk to quality of life and also may take a long-term toll on intellectual function" in patients with intractable epilepsy. As set forth in Factual Finding 9, Claimant has not received a diagnosis of epilepsy of any kind, and she has not had any seizures since the age of three.

20(b). Emily Dixon, Claimant's Court Appointed Special Advocate (CASA), offered her opinion at the hearing regarding Claimant's cognitive abilities. Ms. Dixon obtained her Bachelor of Science degree in Education in 1971 from the University of Wisconsin, Madison, and her Master of Arts degree in Educational Administration from California

State University, Los Angeles. She was a teacher for 34 years, and an administrator for special needs children. She received 10 years of training by LAUSD in working with special needs children and in the laws and regulations that govern that area. Ms. Dixon also possesses an administrative educational credential and a teaching credential in multiple subjects, with a specialty in science. She has served as Claimant's CASA for three years, and has been Claimant's CASA since Claimant was a sophomore in high school. At the time, Claimant was failing physical education, geometry, and English, and Ms. Dixon assisted in obtaining the supports that Claimant needed. Ms. Dixon stated that she has observed Claimant in the classroom while she was in high school and saw that Claimant was processing information at a rate slower than her classmates. Claimant was tardy for class because she had difficulty navigating the steps. She also observed that although Claimant needed assistance, the school did not acknowledge Claimant's disability in physical education during Claimant's sophomore and junior years. She noted that Claimant has a lack of self-confidence because she has a leg that looks different. Ms. Dixon also confirmed Claimant's functional limitations of not leaving the house, her inability to use the stove, take the bus, or buy her own clothes. Ms. Dixon also stated that Claimant is not comfortable socially and she is not social in college. Ms. Dixon opined that Claimant's physical limitations, which are caused by cerebral palsy, affected Claimant's cognitive growth and self-esteem. While Ms. Dixon has a wealth of knowledge in the area of special education, her opinion is outweighed by the testimony of Dr. Korula, who is an expert in area of pediatrics and developmental disorders. Dr. Korula's testimony as set forth in Factual Finding 19, established that Claimant's cerebral palsy has not affected Claimant's cognitive ability and that Claimant does not have an intellectual disability.

21. There was no evidence to establish that Claimant requires treatment¹² similar to that required for individuals with intellectual disability. She is receiving treatment related to her learning disability as set forth in Factual Finding 8, and is not being taught as someone with an intellectual disability as a current student attending community college. The testimony of Ms. Dixon established that Claimant is currently attending her community college classes under her most current IEP that addresses her learning disability and cerebral palsy. Ms. Dixon's testimony further established that Claimant will be receiving additional services under the IEP in January 2018.

CLAIMANT IS NOT SUBSTANTIALLY DISABLED DUE TO CEREBRAL PALSY

Impairments in Claimant's Important Areas of Life Functioning

22. As discussed in more detail below, eligibility for regional center services under the Lanterman Act also requires demonstrating that the eligible condition in question causes a substantial disability. In making that determination, the seven specific areas of major life activity listed below must be analyzed and a determination made regarding whether the symptoms of the eligible condition cause clinically significant impairment in social, occupational, or other important areas of life functioning.

23. *Receptive and Expressive Language.* Claimant's March 25, 2014 CCS

¹² The term "treatment" has a different and narrower meaning than "services." (Ronald F. v. Department of Developmental Services (2017) 8 Cal.App.5th 84, 98.) That is, "treatment" is separate and distinct from the broad array of services and supports provided by a regional center to a person who has an intellectual disability, i.e., cooking, public transportation, money management, etc. (Id. at pp. 98-99.) The fact that Claimant can benefit from the services does not establish eligibility.

Examination and Progress Report states that Claimant has good receptive and expressive language functions. Dr. Mason reported that Claimant responded appropriately to questions and that her language was fluent. Dr. Bailey reported that Claimant was able to express herself, and in particular, Claimant expressed her objection to taking the tests and noted she had previously taken the same tests. Dr. Bailey also observed Claimant engaging with other students in conversation in class. Based on these factors, no clinically significant impairment exists in the area of receptive and expressive language.

24. *Learning.* Claimant has been diagnosed with having specified learning disabilities in reading and math. The uncontroverted evidence supports a finding that Claimant's deficits are as a result of her learning disability and developmental dyslexia. Claimant is currently taking 12 units in community college consisting of math, English, and child development classes. She receives supports for her learning disability, specifically in the form of note takers and testing accommodations. There was no evidence that Claimant's deficits in learning is caused by cerebral palsy. Based on these factors, no clinically significant impairment exists in the area of learning.

25. *Self-Care.* According to California Code of Regulations, title 17, section (Regulation) 56002, subdivision (a)(42), "'Self Care' means providing for, or meeting, a consumer's own physical and personal needs in the areas related to eating, dressing, toileting, bathing and personal hygiene." Claimant testified that she forgets to brush her teeth, and the ABAS-3 administered by Dr. Mason, a tool designed to measure daily living skills, shows Claimant is currently functioning in the below average range in performing self-care. However, the cause of Claimant's deficits is not cerebral palsy. Dr. Korula's expert testimony established that because cerebral palsy affects motor skills, an individual who is substantially disabled in the area of self care as a result of cerebral palsy would be unable to feed themselves, use the toilet, or get dressed. Here, the

results of the psycho-social assessment completed by Ms. Cortes revealed that Claimant is able to complete the daily living activities of feeding, toileting, personal hygiene, bathing and simple grooming, albeit with some reminders and difficulty with fasteners. The results of the Physical Therapy Functional Assessment performed by CCS for the period covering June 5, 2013 through August 7, 2014, are that Claimant is independent in all areas of self care including feeding, dressing and hygiene. (Ex. E, pg. 3.) The report further indicates that Claimant's legal guardian "acknowledges that [Claimant] has the ability to do everything asked of her, but often refuses or 'forgets,'" and that Claimant was seeking counseling for that issue. (*Ibid.*) Based on these factors, Claimant does not have a significant limitation in the area of self-care due to cerebral palsy.

26. *Mobility.* Dr. Korula's testimony that Claimant is not significantly disabled in this area because Claimant is ambulatory, not in a wheelchair, and has the movement of all of her limbs is unpersuasive. Claimant provided uncontroverted evidence that she is unable to walk long distances and has difficulty negotiating stairs due to her cerebral palsy. Claimant's IEP sets forth that Claimant was provided an elevator pass as an accommodation at her high school, and, she is currently permitted to advance to the front of lines at her community college and take exams at different locations to accommodate her cerebral palsy. Based on these factors, Claimant suffers a significant functional limitation in mobility caused by cerebral palsy.

27. *Capacity for Independent Living.* Claimant's testimony and her scores on the ABAS-3 establish that she has a significant functional limitation in her capacity for independent living. She testified that she cannot "remember anything" she needs the assistance of sticky notes to remember how to do things, and is fearful of how her difficulty remembering things will affect her when she is older. Claimant described that when she attempted to make noodles, she forgot to add water to the pot. When she does cook, she has to write down all the ingredients and get everything at once to

ensure she does not forget anything. Claimant does not ride the bus nor does she have a driver's license. She does not go to the grocery store and she does not handle money because of her difficulty with mathematical calculations. However, as established by Dr. Korula's expert and credible testimony, Claimant's deficits are not caused by cerebral palsy, which affects body movement, muscle, control, muscle coordination and balance, and impacts motor skills. An individual with cerebral palsy who has a significant functional limitation in their capacity for independent living would not be able to perform age-appropriate living skills without the assistance of another person because motorically, they would be unable to perform the tasks or would have great difficulty motorically doing so. Dr. Korula explained that she would consider an individual with cerebral palsy who is unable to stand or is unable to physically get to a job, substantially disabled in the area of capacity for independent living. While Dr. Korula's testimony was not deemed credible in all areas in which she testified, in the area of capacity for independent living, her testimony was deemed credible based on her years of experience working with individuals with cerebral palsy and consulting the regional center on issues of eligibility. While Claimant's diagnoses of specified learning disability and Reactive Attachment Disorder do not fully explain Claimant's inability to remember things or difficulty managing multi-step domestic activities, Claimant did not establish that her deficits related to independent living are caused by cerebral palsy.

28. *Self-Direction.* Similarly, Claimant did not establish that any significant functional limitations in self-direction are caused by cerebral palsy. Claimant's ABAS-3 scores demonstrate that Claimant's ability to make independent choices is in the low range. Claimant testified that she does not like doing things. Her legal guardian testified that Claimant does not go outside the home and she does not like to be around other people. Claimant reported being self-conscious and "doesn't like people watching [her]," (Ex. E, p. 3), and Ms. Dixon testified that Claimant is socially ill-prepared. While having

cerebral palsy has undoubtedly had an emotional impact on Claimant, the evidence supports a finding that Claimant's difficulty establishing social relationships and social immaturity are not caused by cerebral palsy, but are instead psychosocial issues for which Claimant is receiving counseling, as set forth in Factual Finding 8.

29. *Economic Self-Sufficiency.* Claimant is able to participate in vocational training without significant support, as evidenced by her current enrollment in and attendance at community college, where she is receiving minimal services and supports, to reach her goal of working with children. However, she does not like to leave the house or be around people nor does she like handling money, all of which affect Claimant's ability to obtain employment and be economically self-sufficient. But, as stated in factual Finding 28, Claimant did not establish that these deficits are caused by cerebral palsy. On the other hand, the record supports a finding that these deficits are related to Claimant's psychosocial issues and Claimant's diagnosis of Specific Learning Disability, with impairment in math. Such factors establish that Claimant is not substantially disabled in the area of economic self-sufficiency.

LEGAL CONCLUSIONS

1. As set forth in more detail below, Claimant did not establish that she suffers intellectual disability, or "fifth category" which would entitle her to regional center services under the Lanterman Act. (Factual Findings 1 through 16; Legal Conclusions 2 through 14.)

2. Throughout the applicable statutes and regulations (Welf. & Inst. Code, §§ 4700 - 4716, and Cal. Code Regs., tit. 17, §§ 50900 - 50964), the state level fair hearing is referred to as an appeal of the Service Agency's decision. A Claimant seeking to establish eligibility for government benefits or services has the burden of proving by a preponderance of the evidence that he has met the criteria for eligibility. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161[disability benefits]; *Greator v.*

Board of Admin. (1979) 91 Cal.App.3d 54, 57 [retirement benefits]; Evid. Code, § 500.)

Where a Claimant seeks to establish eligibility for regional center services, the burden is on the appealing Claimant to demonstrate by a preponderance of evidence that the Service Agency's decision is incorrect and that the appealing Claimant meets the eligibility criteria. "'Preponderance of the evidence means evidence that has more convincing force than that opposed to it.' (Citations omitted.) The sole focus of the legal definition of 'preponderance' in the phrase 'preponderance of the evidence' is on the *quality* of the evidence. The *quantity* of evidence presented by each side is irrelevant." (*Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314, 324-325; italics in original.) To meet the burden of proof by a preponderance of the evidence, respondent "must produce substantial evidence, contradicted or uncontradicted, which supports the finding." (*In re Shelley J.* (1998) 68 Cal.App.4th 322, 329.) As discussed below, Claimant has not met her burden of proof in this case.

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

a disability that originates before an individual attains 18 years of age; 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 disability or to require treatment similar to that required for individuals with an intellectual disability, but shall not include other handicapping conditions that are solely physical in nature.

4(a). To prove the existence of a qualifying developmental disability within the meaning of Welfare and Institutions Code section 4512, a Claimant must show that she has a "substantial disability." Pursuant to Welfare and Institutions Code section 4512, subdivision (l)(1):

"Substantial disability" means the existence of significant functional limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person:

- (A) Self-care.
- (B) Receptive and expressive language.
- (C) Learning.
- (D) Mobility.
- (E) Self-direction.
- (F) Capacity for independent living.
- (G) Economic self-sufficiency.

4(b). Additionally, California Code of Regulations, title 17, section 54001 states, in pertinent part:

- (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 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.

5(a). In addition to proving that she suffers from a “substantial disability,” a Claimant must show that his or her disability fits into one of the five categories of eligibility set forth in Welfare and Institutions Code section 4512. The first four categories are specified as: intellectual disability, epilepsy, autism, and cerebral palsy. The fifth and last category of eligibility is listed as “Disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with intellectual disability.” (Welf. & Inst. Code, § 4512.)

5(b). Whereas the first four categories of eligibility are very specific, the disabling conditions under this residual fifth category are intentionally broad to encompass unspecified conditions and disorders. However, this broad language is not intended to be a catchall, requiring unlimited access for all persons with some form of learning or behavioral disability. There are many persons with sub-average functioning and impaired adaptive behavior; under the Lanterman Act, the Service Agency does not have a duty to serve all of them.

5(c). The Legislature requires that the qualifying condition be “closely related” to intellectual disability (Welf. & Inst. Code, § 4512) or “require treatment similar to that required” for individuals with intellectual disability (Welf. & Inst. Code, § 4512.) The definitive characteristics of intellectual disability include a significant degree of cognitive and adaptive deficits. Thus, to be “closely related” to intellectual disability, there must be

a manifestation of cognitive and/or adaptive deficits which render that individual's disability like that of a person with intellectual disability. However, this does not require strict replication of all of the cognitive and adaptive criteria typically utilized when establishing eligibility due to intellectual disability (e.g., reliance on I.Q. scores). If this were so, the fifth category would be redundant. Eligibility under this category requires an analysis of the quality of a Claimant's cognitive and adaptive functioning and a determination of whether the effect on her performance renders her like a person with intellectual disability. Furthermore, determining whether a Claimant's condition "requires treatment similar to that required" for persons with intellectual disability is not a simple exercise of enumerating the services provided and finding that a Claimant would benefit from them. Many people could benefit from the types of services offered by regional centers (e.g., counseling, vocational training, living skills training, speech therapy, or occupational therapy). The criterion is not whether someone would benefit. Rather, it is whether someone's condition requires such treatment.

6. In order to establish eligibility, a Claimant's substantial disability must not be solely caused by an excluded condition. The statutory and regulatory definitions of "developmental disability" (Welf. & Inst. Code, § 4512; 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. Therefore, a person with a "dual diagnosis," that is, a developmental disability coupled either with a psychiatric disorder, a physical disorder, or a learning disability could still be eligible for services. However, someone whose conditions originate only from the excluded categories (psychiatric disorder, physical disorder, or learning disability, alone or in some combination) and who does not have a qualifying developmental disability would not be eligible.

7. The Lanterman Act and its implementing regulations contain no definition

of the qualifying developmental disability of “intellectual disability.” Consequently, when determining eligibility for services and supports on the basis of intellectual disability, that qualifying disability has been defined as congruent to the DSM-5 diagnostic definition of Intellectual Disability.

8. The DSM-5 describes intellectual disability as follows:

Intellectual disability . . . 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 and adaptive deficits during the developmental period.

(DSM-5, p. 33.)

9. The DSM-5 notes the need for assessment of both cognitive capacity and adaptive functioning. The DSM-5 also notes that the severity of intellectual disability is determined by adaptive functioning rather than IQ score. (Id. at 37.)

- 10(a). Claimant does not meet the criteria under the DSM-5 for a diagnosis of

intellectual disability. A diagnosis of intellectual disability should not be assumed solely due to a particular genetic or medical condition such as cerebral palsy. To meet the criteria for a DSM-5 diagnosis of intellectual disability, a person must have deficits in intellectual functioning (demonstrated through clinical assessment and standardized testing), and deficits in adaptive functioning. As demonstrated by the preponderance of the evidence, Claimant's cognitive functioning has been determined to be generally in the low average range. Additionally, for a diagnosis of intellectual disability, Claimant's adaptive deficits must stem from a cognitive condition, which Claimant did not establish. Although Claimant has adaptive deficits, she does not have intellectual disability under the DSM-5 because her cognitive functioning is in the low average range and her adaptive deficits are not linked to underlying cognitive deficits. The preponderance of the evidence did not demonstrate that Claimant qualifies for regional center services under the category of intellectual disability.

10(b). Additionally, while Claimant has below average and extremely low average adaptive skills, Claimant has failed to establish that she demonstrates deficits in cognitive and adaptive functioning to such a degree and in such a manner that she presents as a person suffering from a condition similar to intellectual disability. While Claimant's test results were in the borderline or delayed range as determined by Dr. Bailey, she tested in the average range in cognitive skills on testing performed by LAUSD and Dr. Mason. Moreover, there was insufficient evidence to establish that Claimant requires treatment similar to that required for individuals with intellectual disability. She is receiving minimal supports and services related to her learning disability while she attends community college. Based on the foregoing, Claimant does not fall under the fifth category of eligibility.

11. It has been established that Claimant has a qualifying diagnosis of cerebral palsy.

12. Claimant did not establish by a preponderance of the evidence that she has significant functional limitations in three areas of major life activity. (Cal. Code Regs., tit. 17, § 54001, subd. (a)(2).) Specifically, Claimant failed to show that she did suffer significant functional limitations in three or more of the following categories: receptive and expressive language; self-care; mobility; self-direction; capacity for independent living; and economic self-sufficiency. The evidence shows that Claimant had significant functional limitations in only one area: mobility. By failing to demonstrate functional limitations in at least three areas, Claimant did not establish that her eligible condition is substantially disabling. (Factual Findings 1-28.)

13. Because Claimant established she has the qualifying developmental disability of cerebral palsy, but did not establish that her condition is substantially disabling, Claimant is ineligible for regional center services under the Lanterman Act. (Factual Findings 1-28; Legal Conclusions 1-12.)

ORDER

Claimant's appeal is denied. The Service Agency's determination that Claimant is not eligible for regional center services is affirmed.

DATED:

CARMEN D. SNUGGS
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.