BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: CLAIMANT, vs. FAR NORTHERN REGIONAL CENTER, Service Agency.	OAH No. 2017060776

DECISION

This matter was heard before Administrative Law Judge Susan H. Hollingshead, State of California, Office of Administrative Hearings (OAH), in Redding, California, on October 12, 2017.

Phyllis J. Raudman, Attorney at Law, represented the Service Agency, Far Northern Regional Center (FNRC).

Claimant represented himself with support from his mother and Connie Weber, North American Mental Health Services (NAMHS).

Oral and documentary evidence was received. Submission of this matter was deferred pending receipt of additional school records. The additional records were submitted on October 25, 2017. The record was closed and the matter submitted for decision on October 25, 2017.

ISSUES

Is claimant eligible to receive regional center services and supports because he is an individual with an intellectual disability, or based on the "fifth category" because he 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 friendly 31-year-old man who referred himself to FNRC for diagnosis and an eligibility determination based on a suspicion of a developmental disability. He has been diagnosed with Anxiety Disorder, Unspecified Bipolar Disorder, Social Communication Disorder, Borderline Intellectual Functioning, and Attention Deficit Hyperactivity Disorder-Combined Type (ADHD). He lives in the family home with his parents.

2. Claimant represented himself at the hearing and struggled with anxiety that manifested, at times, in a rapid, forceful and somewhat elevated speech pattern and would also cause him to get distracted. With encouragement he was able to represent himself quite well.

3. Claimant originally sought regional services on the basis of a possible Autism Spectrum Disorder (ASD). Clinical Psychologist Reid McKellar, Ph.D., completed an autism evaluation on April 20, 2017, and concluded that claimant is not an individual with autism.

4. The FNRC Multi-Disciplinary Eligibility Review Team determined that claimant was not eligible for regional center services. A Notice of Proposed Action (NOPA) was issued on May 24, 2017, informing claimant as follows:

> Reason for action: [Claimant] does not have intellectual disability and shows no evidence of epilepsy, cerebral palsy,

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

autism, or disabling condition found to be closely related to intellectual disability or to require treatment similar to that required for individuals with intellectual disability. Psychological records show evidence of Generalized Anxiety Disorder, Social Communication Disorder and Unspecified Bi-Polar Disorder but they are not qualifying conditions for regional center services. Eligibility Review (multi-disciplinary team) determined [claimant] was not eligible for FNRC services based on medical dated 1/25/17-2/8/17 by NAMHS. Psychological dated 5/12/17 by Dr. McKellar, Ph.D. Intake Summary/medical history dated 1/24/17 by Kathleen Hamill. Parental input received on 1/24/17 by Kathleen Hamill. IEP dated 11/8/04 by Shasta County SELPA. Department of Rehab. Report dated 5/9/17 by B. Glavaris.

5. Claimant appealed FNRC's decision on or about June 12, 2017, and this fair hearing ensued.

6. On June 28, 2017, an informal meeting was held at FNRC to discuss the results of Dr. McKellar's autism evaluation and the reasons for the eligibility review team determination that claimant was not eligible for regional center services. At that meeting, claimant voiced disagreement with Dr. McKellar's evaluation and requested a second opinion. FNRC recommended an additional evaluation by Dr. Monica Silva and agreed to defer the eligibility decision pending completion of this additional assessment.

Dr. Silva completed her evaluation on August 30, 2017, and also concluded that claimant is not an individual with autism.

After considering all the available information, FNRC Executive Director, Laura Larson, upheld the decision of the Eligibility Review Committee that claimant is not eligible for regional center services.

7. Claimant still contends that he may be eligible for regional center services. He is not contesting the conclusion that he is not an individual with an ASD. Instead, the issue for this hearing was whether he might be eligible under the fifth category or possibly as an individual with an intellectual disability.

8. FNRC contends that claimant does not meet the requirements for an intellectual disability. Nor is he eligible under the "fifth category" because his deficits in adaptive functioning are not attributable to global cognitive deficits, thus he does not have a condition closely related to intellectual disability. FNRC opined that claimant does not require treatment similar to that required by persons with intellectual disability.

9. 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 disability[2] or to require treatment similar

[2] 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.

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.

10. California Code of Regulations, title 17, section 54000, further defines the term "developmental disability" as follows:

(a) "Developmental Disability" means a disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation.

(b) The 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.

11. 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.

12. 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

13. Dr. Reid McKellar completed his "Psychological Testing Evaluation" of claimant on April 20, 2017. The reason for the referral was for an Autism Spectrum Disorder evaluation. Dr. McKellar's summary and conclusions included the following pertinent information:

> During the evaluation, [claimant] was initially difficult to engage due to his pressured speech, loud speaking voice and tendency to accentuate the last word of each statement (traits that are shared by [claimant's] mother). In addition, [claimant] seemed to feel a need to describe all of his symptoms of Autism, many of which were not suggestive of Autism. [Claimant] exhibited clear signs of Social Communication Disorder, yet he also evinced signs of Bipolar-II Disorder. In addition, testing data and collateral data suggest the presence of Generalized Anxiety Disorder, with the co-morbid presence of a Bipolar Disorder.
>
> **DSM-5[3] Diagnoses:**
>
> **300.02 Generalized Anxiety Disorder**
>
> **315.39 Social Communication Disorder**

[3] The Diagnostic and Statistical Manual of Mental Disorders: Fifth Edition.

296.80 Unspecified Bipolar Disorder (evaluate for Bipolar II Disorder)

Recommendations:

The information contained in this report will be reviewed by the Far Northern Regional Center Eligibility committee which is responsible for making decisions regarding eligibility for services.

1. [Claimant] may benefit from speech therapy to address his difficulty with volume control and prosody of speech.
2. [Claimant] should be evaluated for the presence and treatment of Bipolar II Disorder.

14. As part of his evaluation, Dr. McKellar administered the Adaptive Behavior Assessment System – Third Edition (ABAS-III). The ABAS-III is an individually administered, norm-referenced, 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 Below Average to Extremely Low range.

GENERAL ADAPTIVE COMPOSITE

	Composite Score	Percentile Rank
General Adaptive	62	1
Composite Conceptual	53	0.1
Social	58	0.3
Practical	66	1

15. Clinical Neuropsychologist Tammy Grabeck, Ph.D., completed a Psychological Assessment of claimant on August 21, 2017. Claimant was referred to Dr. Grabeck "by the Department of Rehabilitation to determine if he meets the criteria for autism spectrum disorder and for a psychological assessment to assess his current cognitive abilities. In addition, this psychological assessment will assess his capacity to be educationally and/or vocationally competitive and self-sustaining."

As part of the evaluation, Dr. Grabeck administered the Wechsler Adult Intelligence Scale, Fourth Edition (WAIS-IV) to assess claimant's intellectual functioning. The following scores were reported:

Index	Standard Score	Range
Verbal Comprehension	81	Mild Deficit
Perceptual Reasoning	88	Low Average
Working Memory	83	Mild Deficit
Processing Speed	79	Mild Deficit
Full Scale	79	Mild Deficit

Dr. Grabeck utilized the ABAS-II to assess claimant's adaptive functioning. His mother was again the informant. From her reporting, Dr. Grabeck concluded, "she endorsed items suggesting that [claimant's] overall adaptive functioning falls in the extremely low range (GAC=61). Social functioning fell in the extremely low range with the skill area of Leisure and Social falling in the extremely low range. Practical functioning fell in the extremely low range with the skill areas of Self-Care, Health & Safety, Community Use, and Home Living falling in the borderline range. Conceptual functioning fell in the extremely low range with the skill area of Communication and Self-Direction falling in the

extremely low range and the skill area of Functional Academics falling in the borderline range."

Dr. Grabeck provided the following conclusions:

Diagnosis

F41.1 Generalized Anxiety Disorder

R41.83 Borderline Intellectual Functioning

F90.2 Attention-Deficit/Hyperactivity Disorder, Combined presentation, Moderate

Recommendations

1. [Claimant] is already attending regular psychotherapy and it is strongly recommended that he continue. However, [claimant] reported that his current therapy is focused on a provisional diagnosis of autism spectrum disorder. It is recommended that [claimant's] therapy focus on his significant symptoms of anxiety and learning strategies/techniques to manage his anxiety. In addition, [claimant] appears to struggle with self-esteem/acceptance.
2. [Claimant] expressed an interest in pursuing training in computer science, with a possible emphasis in networking. While computer networking may be a good fit according to the results from the Holland Code test, his symptoms of anxiety are significant and affect his ability to function in his activities of daily living as well as his interactions with others. In addition, education in computer science typically requires a significant amount of math and reading which may be difficult for [claimant] at this time due to poor stress-tolerance and high level of anxiety. Until [claimant] is able to more effectively manage his anxiety, it is

recommended that other employment or training opportunities are examined with him.

3. While [claimant's] FSIQ of 79 falls in the mild deficit range, he performed within normal limits on tasks of reading comprehension and math. He would likely be able to complete a vocational training program or certificate program with some accommodations for extra time and multiple choice tests once his anxiety is better managed. In addition, he would benefit from an academic tutor or peer mentor with any vocational training or education/certificate program.
4. [Claimant] should continue to follow up with his medical provider to rule out any medical issues that may contribute to his symptoms of anxiety.
5. [Claimant] should continue to follow up with his primary prescriber for medication management.

16. Clinical Psychologist Monica Silva, Ph.D., completed claimant's Psychological Evaluation on August 30, 2017. The purpose of this evaluation was "for assessment of Autism Spectrum Disorder and to determine [claimant's] level of intellectual and adaptive functioning."

To assess adaptive functioning, Dr. Silva also administered the ABAS-III, "a comprehensive, norm-referenced assessment of adaptive skills needed to effectively and independently care for oneself, respond to others and meet environmental demands at home, school, work, and in the community." Claimant's mother completed the ABAS-III Adult Form with the following scores reported:

	GENERAL ADAPTIVE COMPOSITE		
	Standard Score	Percentile Rank	Adaptive Level
General Adaptive Composite	52	0.1	Extremely Low
Conceptual	54	0.1	Extremely Low

Social	56	0.2	Extremely Low
Practical	56	0.2	Extremely Low

Dr. Silva explained:

> As rated by his mother on the ABAS-III, [claimant] presents with delays in his day-to-day adaptive abilities. She described him as an immature adult who in her opinion, presents in a manner more typical to an adolescent, rather than similarly aged individuals. [Claimant's mother] revealed a history of difficulties functioning typically throughout the years and the need for extensive adult supports in light of notable executive dysfunction resulting in challenges functioning independently. [Claimant's mother] lamented [claimant's] challenges have exacerbated in the past few years, as symptoms of anxiety have increased.

Dr. Silva concluded as follows:

> [Claimant] presents as a complex individual. Based on a careful review of records, interview with [claimant's mother], this examiner's interactions with [claimant] and the results of the current assessment, [claimant] does not meet DSM-5 Criteria for Autism Spectrum Disorder. While it is outside the scope of the current evaluation to assess any mental health conditions, [claimant] presented during the current assessment with notable characteristics of Attention-Deficit/Hyperactivity Disorder (ADHD) and this diagnostic impression will be listed

by history. In addition, he presents with significant symptoms of Generalized Anxiety Disorder, which merits a diagnostic impression by history as well. It will be important for mental health professionals who work with [claimant] to continue to monitor for symptoms of a Mood Disorder, as he has presented with increasing irritability, a history of impulsivity in his actions, and challenges sleeping. One needs to bear in mind the impact of an early history of trauma and his placement in foster care at a young and vulnerable age.[4] Furthermore, [claimant] has presented with immaturity in his abilities and mild deficits in his reasoning abilities. The aforementioned combination of factors can result in "autistic-like" characteristics, though his social presentational in general, nonverbal communication and lack of compelling symptoms of Autism in the early developmental period rule out a clinical diagnosis of Autism Spectrum Disorder (ASD).

DIAGNOSTIC IMPRESSIONS

- **Attention-Deficit/Hyperactivity Disorder (ADHD) (By History)**
- **Generalized Anxiety Disorder (By History)**
- **Borderline Intellectual Functioning (By History)**

[4] It was reported that, at a young age, claimant and his two sisters were removed from the family home and placed in foster care for a few years while his parents were incarcerated and completing a sobriety program.

RECOMMENDATIONS

The following recommendations are suggested interventions to address concerns that arose as a result of the evaluation.

1. The eligibility team will review this report and previous records to determine if [claimant] qualifies for services from the Regional Center.
2. [Claimant] would greatly benefit from continued supports from the Department of Vocational Rehabilitation. He would benefit from continued vocational and independent living skills support services.
3. [Claimant] would greatly benefit from continued mental health support services commensurate with his needs. In light of the significance of his mental health needs at this time, he would benefit from intensive support service.
4. [Claimant] would benefit from enrollment in a supportive and supervised recreational program commensurate with his needs.
5. [Claimant's] family would benefit from support, training, and advocacy in meeting his needs.

EDUCATIONAL RECORDS

17. Claimant was reportedly diagnosed with ADHD in the third grade and was also diagnosed with a learning disorder. He initially qualified for special education services in October 1996 based on a qualifying condition of Specific Learning Disability. It appears he was in a full inclusion classroom throughout his education with resource support, and graduated high school with a diploma.

18. A Shasta County Special Education Local Plan Area (SELPA) Individualized Education Program (IEP) dated November 8, 2004, listed claimant's Primary Disability Category as Specific Learning Disability. His approved Primary Service Consideration was Resource Specialist. Claimant graduated from high school with a diploma the following June 2005.

19. Claimant's mother testified that he qualified for special education under the designation of Specific Learning Disability and Other Health Impairment due to ADHD. She believes he was subsequently placed in a Special Day Class (SDC) as his needs intensified. There was no evidence of an SDC placement. The parties agreed at hearing to allow the record to remain open to allow claimant the opportunity to provide any additional educational records that would be important for determining regional center eligibility.

Claimant subsequently submitted a transcript from Anderson High School with supporting documentation. The transcript confirmed that claimant graduated on June 2, 2005, with a standard high school diploma and that his placement had been in the Resource Specialist Program based on a Specific Learning Disability (SLD).

20. Claimant was never identified as an individual with intellectual disability.

MENTAL HEALTH RECORDS

21. Records indicate that claimant has been receiving services from NAMHS since January 2017. He has been provided with medication management and counseling. Medications noted included Clonidine, Fluoxetine HCI (Prozac) and Gabapentin. It was noted that Ritalin was tried as a child and was "not found helpful for focus and concentration." Wellbutrin was also "not helpful for mood or ADHD symptoms."

TESTIMONY

22. Robert Boyle, Ph.D. is a FNRC Staff Psychologist with extensive experience assessing and diagnosing individuals with developmental disabilities. Dr. Boyle testified that, in his capacity as an FNRC staff psychologist, one of his responsibilities is participating in the eligibility review process. He was a member of claimant's Multi-Disciplinary Eligibility Review Team.

Dr. Boyle testified that claimant demonstrates deficits in adaptive functioning, however having adaptive impairments does not establish that an individual has a

qualifying disability making him 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, and solely psychiatric disorders and/or learning disabilities are specifically excluded. FNRC concluded that the evidence failed to establish regional center eligibility. Although claimant has deficits in adaptive skills, he does not have an eligible condition causing those deficits.

23. Dr. Boyle opined that the family is seeking eligibility based upon a contention that claimant's condition is intellectual disability (ID) or fifth category, because of the impairments under which he struggles. He testified that the evidence did not demonstrate intellectual functioning at the level of or similar to ID.

Claimant's recent FSIQ of 79 falls in the mild deficit range, and there was no evidence to support even borderline intellectual functioning prior to age eighteen. Claimant graduated high school with a regular diploma. While he was diagnosed with a Specific Learning Disability and received resource support, he was never diagnosed with intellectual disability. Claimant has been able to maintain full time employment but his psychological issues continued to increase over time. Dr. Boyle suggested that claimant's adaptive skills deficits result from other sources. He struggles with significant anxiety and ADHD. To have a condition which requires treatment similar to that required by an individual with ID is not simply determining whether the services provided to such persons would benefit claimant. It is whether claimant's condition requires such treatment. Claimant continues to receive mental health services through NAMHS, which appears to be the most beneficial treatment to meet his needs.

Claimant exhibits adaptive deficits that are best explained by his psychological diagnoses such that services required would most appropriately be provided from the treatment perspective of mental health rather than intellectual disability. He doesn't require treatment similar to an individual with intellectual disability.

24. Claimant testified that he struggles with anxiety and mood instability and has had social difficulties. He enjoys his personal space, has few friends and likes to be alone in his room on his computer or playing video games. He does not like it when he is disturbed.

Claimant described himself as having "poor judgment" and regrets making what he called "poor decisions." He enrolled in Shasta College courses and was not able to keep up with the workload when he chose leisure activities with friends over attending class.

Since graduating high school, claimant has worked with the Department of Vocational Rehabilitation. He was employed by Walmart for approximately three years, stocking shelves. He explained that he made another "poor decision" when he chose to socialize instead of showing up for his shift. He was fired as a result. Walmart rehired claimant and he worked there for two additional years. He was again fired for missing a shift. Claimant testified that he has difficulty identifying the consequences of his actions and is "easily led." He said, "I don't think that if I don't go to work, I'll get fired." He worked for a year at a Walgreen's distribution warehouse, though again missed a shift and was fired.

Claimant stated that he would like to be employed but he was also concerned that, with his increased symptoms of anxiety, it might be difficult to maintain employment. He also described that he is "easily distracted – off in La La Land."

Claimant testified that he has poor time and money management skills and relies on his mother's help with in these areas and with other reminders for personal hygiene, food, medication management, and chores. He needs constant validation and "can't really do things on my own." He said that he has difficulty understanding other people's actions and can easily be taken advantage of.

While claimant has a driver's license, he is currently choosing not to drive due to significant symptoms of his anxiety. He stated that he has trouble focusing while driving

because he becomes anxious with sounds and other cars on the road. He also chooses not to use public transportation because it "causes anxiety."

Claimant is dependent on his mother and becomes easily overwhelmed with responsibility. He maintains a good relationship with his mother; not so much with his father who he described as being diagnosed with anxiety and having "massive anxiety attacks."

Currently, claimant reported medically managing symptoms with Ativan, Lexapro, and Trazodone for sleep when his "mind is going at night." He meets with his therapist weekly and medications are managed monthly. Anxiety interferes with most aspects of his life.

Claimant testified that he is interested in the FNRC college/careers program and may need help with supportive living services in the future. He would like to "have someone say hey focus!"

25. Connie Weber, EMRA, RN, offered support to claimant throughout the hearing. Ms. Weber has been newly tasked with developing a dual-diagnosis program through NAMHS for individuals diagnosed with both mental health and co-morbid conditions. Ms. Weber testified that claimant was currently being treated for a generalized anxiety disorder. She was going to be supporting his efforts to obtain appropriate services.

26. Claimant's mother testified to the adaptive difficulties claimant has had throughout his life. She explained her concern that others will take him advantage of him. She has seen a decline in his functioning in the past few years, and stated that he requires prompts and reminders to complete tasks. He exhibits a higher than average level of distractibility, impulsivity and a short attention span. She believes he requires assistance and support to live independently.

Claimant's mother opined that he has "never had life skills" and "doesn't have the skills of a 31-year-old." She believes that he "can't function on his own." She is very

concerned for his welfare as she and claimant's father have health concerns and are aging. She noted that she is claimant's sole support system as her husband, claimant's father, also has high anxiety.

Claimant's mother believes that he qualifies for regional center services; he has needs similar to regional center consumers, and could benefit from the services FNRC could provide.

ELIGIBILITY BASED ON INTELLECTUAL DISABILITY

27. The diagnostic criteria for Intellectual Disability as set forth in section 4512 is defined in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) as follows:

> Intellectual Disability (intellectual developmental disorder)[5] 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.

[5] 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 clarify relationships with other classification systems."

B. Deficits in adaptive functioning[6] 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.

28. The DSM-5 offers the following pertinent diagnostic features:

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

[6] 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.

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.

29. 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-5 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. The evidence presented at hearing did not establish that claimant presented with the necessary global deficits confirmed by both clinical assessment and standardized intelligence testing to support a diagnosis of intellectual disability. Consequently, claimant does not qualify for regional center services under the category 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)

30. 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.

31. 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.

32. 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 his condition may be closely related to mental retardation. He also believes he requires treatment similar to that required for individuals with mental retardation.

FIFTH CATEGORY ELIGIBILITY-CONDITION CLOSELY RELATED TO MENTAL RETARDATION

33. Claimant contends that he is eligible for regional center services based upon a condition being closely related to mental retardation due to his 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 he 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.

34. Claimant's general intellectual functioning, based on his IQ score on a standardized, intelligence test, did not meet the definition of significantly subaverage intellectual functioning under the DSM. Thus, claimant does not have this "essential feature" of mental retardation. The fact that claimant may have deficits in adaptive

functioning alone, without global intellectual impairment, does not establish that he has a condition closely related to mental retardation.

35. Over the years, claimant has been diagnosed with a variety of conditions, including; Anxiety Disorder, Unspecified Bipolar Disorder, Social Communication Disorder, Borderline Intellectual Functioning, and Attention Deficit Hyperactivity Disorder-Combined Type (ADHD). Any of these conditions, individually or together, could cause his adaptive functioning difficulties.

For example, the DSM-5 describes the functional consequences of ADHD, in part, as follows:

> ADHD is associated with reduced school performance and academic attainment, social rejection, and, in adults, poorer occupational performance, attainment, attendance, and higher probability of unemployment as well as elevated interpersonal conflict. Children with ADHD are significantly more likely than their peers without ADHD to develop conduct disorder in adolescence and antisocial personality disorder in adulthood . . .
>
> Inadequate or variable self-application to tasks that require sustained effort is often interpreted by others as laziness, irresponsibility, or failure to cooperate. Family relationships may be characterized by discord and negative interactions. Peer relationships are often disrupted by peer rejection, neglect, or teasing of the individual with ADHD. On average, individuals with ADHD obtain less schooling, have poorer vocational achievement, and have reduced intellectual scores than their peers, although there is great variability. In its severe

> form, the disorder is markedly impairing, affecting social, familial, and scholastic/occupational adjustment.
>
> Academic deficits, school-related problems, and peer neglect tend to be most associated with elevated symptoms of inattention, whereas peer rejection and, to a lesser extent, accidental injury are most salient with marked symptoms of hyperactivity or impulsivity.

There was no persuasive evidence presented that any of these conditions required significantly subaverage intellectual functioning or were shown to be closely related to intellectual disability. There was no evidence presented that claimant qualified for special education as a student with intellectual disability nor has he ever been diagnosed with intellectual disability.

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

36. Fifth category eligibility may also be based upon a condition requiring treatment similar to that required by individuals with mental retardation. "Treatment" and "services" do not mean the same thing. Individuals without developmental disabilities may benefit from many of the services and supports provided to regional center consumers. Section 4512, subdivision (b) defines "services and supports" as follows:

> "Services and supports for persons with developmental disabilities" means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of the developmental disability or toward the social, personal, physical, or economic habilitation or

> rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives.

Regional center services and supports targeted at improving or alleviating a developmental disability may be considered "treatment" of developmental disabilities. But regional center services and supports go beyond treatment, focusing on improving an eligible individual's social, personal, physical or economic status or assisting the individual in living an independent, productive and normal life. Thus, section 4512 elaborates further upon the services and supports listed in a consumer's individual program plan as including "diagnoses, evaluation*, treatment,* personal care, day care, domiciliary care, special living arrangements, physical, occupational and speech therapy, training, education, supported and sheltered employment, mental health services . . . ." (Welf. & Inst. Code, § 4512, subd. (b). (Emphasis added). The designation of "treatment" as a separate item is clear indication that it is not merely a synonym for services and supports, and this stands to reason given the broader mission of the Lanterman Act:

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

37. Fifth category eligibility must be based upon an individual requiring "treatment" similar to that required by individuals with mental retardation. The wide range of services and supports listed under section 4512, subdivision (b), are not specific to mental retardation. One would not need to suffer from mental retardation, or any developmental disability, to benefit from the broad array of services and supports

provided by ACRC to individuals with mental retardation. They could be helpful for individuals with other disabilities, or for individuals with mental health disorders, or individuals with no disorders at all. The Legislature clearly intended that an individual would have a condition similar to mental retardation, or would require *treatment* that is specifically required by individuals with mental retardation, and not any other condition, in order to be found eligible.

38. In *Samantha C.*, no attempt was made to distinguish treatment under the Lanterman Act as a discrete part or subset of the broader array of services provided to those seeking fifth category eligibility. Thus, the appellate court made reference to individuals with mental retardation and with fifth category eligibility both needing "many of the same kinds of treatment, such as services providing help with cooking, public transportation, money management, rehabilitative and vocational training, independent living skills training, specialized teaching and skill development approaches, and supported employment services." (*Samantha C. v. State Department of Developmental Services, supra*, 185 Cal.App.4th 1462, 1493.) This broader characterization of "treatment" cannot properly be interpreted as allowing individuals with difficulties in adaptive functioning, and who require assistance with public transportation, child care, vocational training, or money management, to qualify under the fifth category without more. For example, such services as vocational training are offered to individuals without mental retardation through the California Department of Rehabilitation. This demonstrates that it is not necessary for an individual to have mental retardation to demonstrate a need for services which can be helpful for individuals with mental retardation.

Individuals with mental retardation might require many of the services and supports listed in Welfare and Institutions Code section 4512, which could benefit any member of the public: assistance in locating a home, child care, emergency and crisis intervention, homemaker services, paid roommates, transportation services, information and referral

services, advocacy assistance, technical and financial assistance. To extend the reasoning of *Samantha C.*, an individual found to require assistance in any one of these areas could be found eligible for regional center services under the fifth category. However, it is unreasonable to conclude that any individual that might benefit from a service or support provided by the regional center, which might also benefit an individual with intellectual disability, requires treatment similar to that required by individuals with intellectual disability. This was clearly not the intent of the Legislature.

Thus, while fifth category eligibility has separate condition and needs-based prongs, the latter must still consider whether the individual's condition has many of the same, or close to the same, factors required in classifying a person as mentally retarded. (*Mason v. Office of Administrative Hearing, supra*, 89 Cal.App.4th 1119.) Furthermore the various additional factors required as designating an individual as developmentally disabled and substantially handicapped must apply as well. (*Id*. at p. 1129.) *Samantha C*. must therefore be viewed in context of the broader legislative mandate to serve individuals with developmental disabilities only. A degree of subjectivity is involved in determining whether the condition is substantially similar to mental retardation and requires similar treatment. (*Id*. at p. 1130; *Samantha C. v. State Department of Developmental Services, supra*, 185 Ca.App.4th 1462, 1485.) This recognizes the difficulty in defining with precision certain developmental disabilities. Thus, the *Mason* court determined: "it appears that it was the intent of those enacting the Lanterman Act and its implementing regulations not to provide a detailed definition of 'developmental disability' so as to allow greater deference to the [regional center] professionals in determining who should qualify as developmentally disabled and allow some flexibility in determining eligibility so as not to rule out eligibility of individuals with unanticipated conditions, who might need services." (*Id*. at p. 1129.)

39. The Lanterman Act and Title 17 Regulations do not discuss services and supports available from regional centers in the eligibility criteria. Rather, an individual's planning team discusses services and supports after that individual is made eligible. Section 4512, subdivision (b) explains:

> . . . The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, where appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option.

There is no mandate that eligibility determinations include consideration of whether an individual might benefit from an available regional center service or support. Rather, services and supports are determined by the planning team based on "needs and preferences" of the consumer. A need or preference for a specific service or support determined by the planning team is not the same as a determination by a qualified professional of what treatment is required for an individual with a specific developmental disability.

40. The evidence was not persuasive that claimant's treatment needs were targeted at improving or alleviating a developmental disability similar to intellectual disability. The fact that claimant might benefit from some of the services that could be provided by the regional center does not mean that he requires treatment similar to that

required by individuals with intellectual disability. Rather, claimant's recommended treatments included psychological services, therapy and medication management.

DISCUSSION

41. When all the evidence is considered, claimant did not establish that he qualifies for services from FNRC under the Lanterman Act. While claimant has challenges and exhibits a wide array of symptoms, his challenges and symptoms result from his mental health issues, which do not constitute a developmental disability under the Lanterman Act. Educational history shows that he functions cognitively at a higher level than an individual with an intellectual disability. His IEP focused on a specific learning disability. He was never identified as a student with intellectual ability. Claimant graduated from high school with a regular diploma. Global deficits in cognitive functioning are distinguishable from mental health and specific learning disorders.

The possibility of benefiting from regional center services also does not create eligibility. Many people might benefit from the array of services provided by the regional center, whether or not they are diagnosed as Developmentally Disabled.

42. Claimant bears the burden of establishing that he meets the eligibility requirements for services under the Lanterman Act.[7] He has not met that burden. He did not meet the diagnostic criteria for an intellectual disability, or 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. There was no evidence to show that he has epilepsy, cerebral palsy, or autism. Accordingly, claimant does not have a developmental

[7] 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."

disability as defined by the Lanterman Act. Consequently, claimant's request for services and supports from FNRC under the Lanterman Act must be denied.

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"], 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.

Claimant contends that he exhibits deficits or impairments in his adaptive functioning, is impaired by these limitations, and would benefit from regional center services. However, regional center services are limited to those individuals meeting the stated eligibility criteria. The evidence presented did not prove that claimant has

impairments that result from a qualifying condition which originated and constituted a substantial disability before the age of eighteen. There was no evidence to support a finding of intellectual disability or a condition closely related to intellectual disability, or requiring treatment similar to that required for individuals with intellectual disability.

3. Claimant did not prove that he has a developmental disability as defined by the Lanterman Act. Therefore, he is not eligible for regional center services.

ORDER

Claimant's appeal from the Far Northern Regional Center's denial of eligibility for services is denied. Claimant is not eligible for regional center services under the Lanterman Act.

DATED: November 8, 2017

_____

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).)