BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: CLAIMANT, vs. REDWOOD COAST REGIONAL CENTER, Service Agency.	OAH No. 2017080242

DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on January 3, 2018, in Lakeport, California.

Claimant's mother advocated at the hearing on claimant's behalf. Claimant was not present.

Lauren Gardner, Attorney at Law, represented service agency Redwood Coast Regional Center (RCRC).

The matter was submitted on January 3, 2018.

ISSUE

Does claimant have a developmental disability that qualifies her for services from RCRC under the Lanterman Developmental Disabilities Services Act (Lanterman Act, Welf. & Inst. Code, § 4500 et seq.)?

FACTUAL FINDINGS

1. In early 2017, claimant's mother contacted RCRC to request that RCRC evaluate claimant's eligibility under the Lanterman Act for RCRC's services. RCRC did, and determined that claimant does not meet Lanterman Act eligibility criteria. Upon receiving RCRC's notice proposing to close claimant's case, claimant timely requested a hearing regarding RCRC's eligibility determination.

CLAIMANT'S EARLY CHILDHOOD

2. Claimant was born in November 2000. She entered foster care as an infant in mid-2001 because her birth parents had neglected her. Soon after entering foster care, claimant and two of her elder brothers began to live with a foster family who also had fostered the elder brothers before claimant's birth.[1]

3. Claimant spent between three and four years in this foster home, during which time her foster parents obtained the evaluation described in Findings 25 through 28, below.

4. According to a written report from that evaluation, these foster parents reported that claimant met developmental milestones for sitting, crawling, walking, and language development within "expected limits." They described claimant, as an infant and a toddler, as energetic, impulsive, and prone to tantrums involving screaming, hitting, kicking, and banging her own head. They said that her "desire to interact with peers and siblings leads to frequent difficulties with her reaction when situations do not meet her expectations."

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[1] Claimant's brothers had returned to live with their birth mother while their birth mother was pregnant with claimant. The foster parents maintained contact with the birth mother and the boys during the birth mother's pregnancy with claimant.

5. Claimant attended preschool while living in this foster home. Her teacher described her as "energetic and approximately on target for cognitive skills," but "developmentally immature in regard to social interactions." She could "respond very well to structure, redirection, and prompts to use appropriate behavior," but struggled to identify and initiate such appropriate behavior without adult intervention. Claimant also attended a childcare classroom each week at her family's church, and her teacher there described her in similar terms.

6. Beginning in July 2005, when she was four years old, claimant lived with a different foster family. Neither of her brothers lived with claimant in her second long-term foster placement. Although the evidence did not establish precisely why claimant left her first long-term foster placement, an evaluation report to the Central Valley Regional Center (CVRC) noted that she had moved because of unspecified "violations of her personal rights."

7. The foster care agency sought services for claimant from CVRC. After the evaluation described in Findings 29 through 32, below, CVRC found claimant to be ineligible for Lanterman Act services.

8. This foster father described claimant at age five as "very anxious as well as extremely active and overly friendly." He said that she had "difficulty playing with his two youngest sons" and "difficulty accepting boundaries and limits." She was sometimes aggressive with other children, and had regular tantrums including falling to the ground, kicking, and spitting.

9. Claimant attended kindergarten while living in this foster home. Her kindergarten teacher described her as "on grade level" academically, but as having "behavioral problems," such as difficulty following directions, playing cooperatively with others, and controlling her impulses.

CLAIMANT'S LATER CHILDHOOD AND ADOLESCENCE

10. Claimant's mother and father became claimant's third long-term foster parents when claimant was six years old, in mid-2007, after claimant's second long-term foster parents decided not to adopt claimant. Claimant's mother understood that these foster parents had decided not to adopt claimant because she was very difficult to control and had caused great distress in their family.[2] Claimant's mother and father adopted claimant.

Family and Social Life

11. Claimant's family lived in Bakersfield, Tracy, and Williams before moving to Lakeport. Her father died when she was about 11. Claimant's mother holds an M.S.W. degree. She was a medical social worker for many years and now works as an adoption social worker.

12. Claimant's mother has observed throughout claimant's childhood that claimant has little understanding of personal boundaries. She is aggressive in seeking physical and psychological connection with people, even strangers; and she becomes unhappy and angry when they do not reciprocate. Claimant's parents attempted to involve claimant in numerous age-appropriate social activities (including church, athletic programs, and a local Boys & Girls Club), but claimant consistently was unable to regulate her own behavior well enough to participate in these activities.

13. In her home, in a supportive and predictable environment, claimant is calmer and more attentive than she is at school or in public. As their relationship

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[2] When claimant came to live with her parents, claimant was taking Risperdal, a psychotropic medication sometimes used to calm aggressive or irritable children. Claimant discontinued this medication shortly after joining her parents.

deepened, claimant's mother became able to calm and redirect claimant in circumstances where teachers or other authority figures could not.

14. As a teenager, claimant has participated in a local community theater program. Claimant's mother described claimant's participation as difficult, but noted that claimant has performed in public in at least one of the program's productions.

15. Claimant has never resisted bathing, although her mother must remind her frequently to brush her teeth and to bathe, and assists her in washing her hair. She changes her clothing regularly, and always has preferred soft, nonrestrictive clothing without tags. Claimant continues to need assistance in choosing clothing that is appropriate for the weather and the occasion.

16. Claimant's parents never felt as if they could leave claimant alone, unsupervised. Even before claimant's father died, her parents employed a full-time nanny to care for claimant when her parents were busy or at work. At the time of the hearing, claimant's household comprised claimant, her mother, and claimant's nanny.

17. Even though claimant is now 17, her mother's refusal to leave claimant unsupervised is reasonable, not overprotective. At least three times within the last two years, claimant has left her home to spend days at a time among homeless drug users in Lakeport and Santa Rosa. On one of these occasions, claimant's mother found her because she telephoned to ask her mother to let her boyfriend (a man more than twice her age) live with them.[3] She has suffered sexual violence and exploitation and has consumed alcohol, marijuana, and methamphetamine.

18. Overall, claimant's mother reported credibly that the behavioral differences between claimant and her peers have become more significant as claimant

[3] Claimant's mother reported this man's unlawful sexual contact with her daughter to local law enforcement authorities.

has aged. At 17, claimant looks like an adult, uses an adult's vocabulary, and has aspirations similar to those of other young adults preparing to graduate from high school. In many respects, however, and particularly in her social interactions with other people, claimant continues to behave like a young, vulnerable child.

Educational Experience

19. Until high school, claimant attended public schools. She often was disruptive in her classroom, and failed to develop or sustain relationships with her classmates. When claimant was in elementary school, she would avoid unstructured interactions with other students in settings such as lunch and recess, going so far as to urinate deliberately in her clothing so that she would have an excuse to go to the school office.

20. In at least one school district, claimant had a plan to address and accommodate perceived disabilities (a "504" plan). She never had an Individualized Education Plan to address intellectual or learning disability.

21. When claimant was in eighth grade, she bit another student at school. Claimant could not explain to her mother why she had done so. The other student told claimant's mother that he believed claimant had bitten him because "she just got over-zealous."

22. Claimant began high school in fall 2015, in ninth grade, but attended for only about two weeks. The evidence did not establish whether claimant withdrew or was expelled, but claimant's mother testified that claimant stopped attending the school after she and her mother were called to a meeting with a multi-disciplinary team of school personnel to discuss claimant's behavior. Claimant's mother did not explain what behavior in particular had prompted this meeting.

23. For the next two academic years, claimant attended an on-line high school program through California Virtual Academies. She worked one-on-one at home with

her nanny. Her grades through the Fall 2016 semester were in evidence, and reflected mastery of course material.

24. Claimant currently attends an alternative public high school. She is the only student in her class, which she attends for three hours per day on weekdays. Her nanny accompanies her from home to school and back home. Claimant is on track to complete high school at the end of this academic year.

PRIOR PSYCHOLOGICAL EVALUATIONS

25. In January 2004, when claimant was three, her foster parents took her for evaluation at the Fetal Alcohol Spectrum Disorders Clinic at the University of California, Los Angeles, Neuropsychiatric Institute and Hospital. They reported to clinic staff members that they had seen claimant's birth mother drink alcohol during her pregnancy with claimant, and that they believed she also had used methamphetamine.[4]

26. Clinic staff administered the Wechsler Preschool and Primary Scale of Intelligence, Third Edition (WPPSI-III), a cognitive abilities test for young children. Claimant's overall score on this test was "solidly in the low average range of functioning across verbal, non-verbal, and overall cognitive scales."

27. Clinic staff also asked claimant's foster parents to describe her abilities using the Vineland Adaptive Behavior Scales. Her foster parents' answers to these questions described adaptive functioning "below the range expected for [claimant's age], as well as below the range expected given her cognitive functioning as measured on the WPPSI-III." Her "communication," "socialization," and "motor" abilities, as described by her foster parents, were consistent with her cognitive abilities; but her

[4] Claimant's mother believes that claimant's birth mother also used heroin during her pregnancy, although the evidence did not clarify why claimant's mother holds this belief.

"daily living skills" were not as strong as the evaluators would have expected given her WPPSI-III results.

28. Clinic staff members reported that claimant showed "significant difficulties with articulation and language, mild cognitive delays, and significant problems with inattention and impulsivity that are indicative of probable central nervous system dysfunction." These problems, in combination with claimant's physical features and with her foster parents' credible reports that claimant's birth mother used alcohol while pregnant with claimant, led the clinic's team to diagnose Fetal Alcohol Syndrome (FAS) in claimant.

29. In early 2006, when claimant was five, she received a psychological examination by Nancy N. Doi, Psy.D., at the Sullivan Center for Children, in Fresno.

30. Dr. Doi again administered the WPPSI-III. Claimant's overall score was "solidly in the average range of cognitive abilities compared to other children her age."

31. Dr. Doi asked claimant's foster father to describe her abilities using the Adaptive Behavior Assessment System, Second Edition (ABAS-II). Despite claimant's apparently average cognitive ability, her foster father's answers on the ABAS-II placed claimant in the "significantly delayed range of adaptive behaviors." Her "self care" and "communication" abilities, as described by her foster father, were average; but her skills in "functional academics," "self-direction," "leisure" activities, "social" activities, "community use," and "health and safety" were poor.

32. Dr. Doi described claimant as "overly social and cooperative," but struggling to maintain "attention and focus." She diagnosed "a fairly severe attention difficulty," as well as perhaps an "underlying emotional disorder." Dr. Doi did not diagnose a developmental disability, noting that claimant "demonstrated no unusual behaviors that would warrant a Pervasive Developmental Disorder diagnosis."

RECENT PSYCHOLOGICAL EVALUATIONS

33. In the last two years, three psychologists have evaluated claimant and provided reports about her psychological and developmental functioning.

Jonathan Gonick-Hallows, Ph.D.

34. In September 2016, at the request of claimant's mother and claimant's primary care physician, Jonathan Gonick-Hallows, Ph.D., evaluated claimant.

35. Dr. Gonick-Hallows administered the Wechsler Intelligence Scale for Children, Fourth Edition (WISC-IV), a cognitive abilities test for school-age children. Claimant's overall score on this test placed her in the "high average" range. According to Dr. Gonick-Hallows, claimant's testing performance overall showed her to have "above average and well-balanced intellectual ability."

36. Dr. Gonick-Hallows also conversed with claimant and her mother. He described claimant as presenting "with disinhibition of emotion and impulsivity." This behavior made claimant seem "winning, charming, and quirky" in the controlled setting of his office; but Dr. Gonick-Hallows also noted that this same disinhibition in other contexts would make claimant "unruly and unmanageable," and vulnerable to victimization by others.

37. Dr. Gonick-Hallows offered no clear diagnosis for claimant.[5] His evaluation report references "high functioning autism," "attention deficit hyperactivity disorder," "bipolar spectrum disorder," and "posttraumatic stress disorder," but they do not state definitively his conclusion that any of these diagnoses is appropriate for claimant.

[5] His report summarizes his primary diagnosis as "Atypical Disorder of Adolescence," an apparently meaningless phrase.

38. Dr. Gonick-Hallows made two specific recommendations for claimant. First, his report states that claimant would likely benefit in a classroom setting from having a full-time personal aide. Second, Dr. Gonick-Hallows believes that residential treatment would be appropriate to address claimant's "severe overall deficits in terms of her ability to interact successfully with peers across settings, even very supported settings."

Larissa D. Terry, Psy.D.

39. At RCRC's request, Larissa D. Terry, Psy.D., examined and evaluated claimant in June 2017. Dr. Terry reviewed prior evaluators' records regarding claimant and interviewed both claimant and claimant's mother, using structured interview protocols for part of her discussion with each of them.

40. With claimant, Dr. Terry used the Autism Diagnostic Observation Schedule, Second Edition (ADOS-2), a "semi-structured standardized assessment of communication, social interaction, play/imaginative use of materials, and restricted and repetitive behaviors." Dr. Terry chose Module 4, which includes questions and observation cues appropriate for older adolescents and adults who speak fluently. Dr. Terry concluded that claimant's presentation during the ADOS-2 did not indicate an autism spectrum disorder.

41. In particular, Dr. Terry noted that claimant "was always attentive, nodding her head and smiling or making other responsive expressions as the examiner spoke." She also "made frequent clear social overtures to the examiner and was always responsive to the examiner's overtures."

42. With claimant's mother, Dr. Terry used the Social Communication Questionnaire, a 40-item questionnaire that seeks information regarding social interaction, communication, and restricted or repetitive behavior. Dr. Terry asked claimant's mother to describe claimant as a teen and also as a young child; she also

examined reports about claimant's behavior in earlier foster families for consistency or inconsistency with claimant's mother's description. Dr. Terry concluded that claimant's mother's description of claimant's past and current behavior did not indicate an autism spectrum disorder.

43. In particular, Dr. Terry noted that many observers since claimant's early childhood, including claimant's mother, have described claimant's inability to make friends, not because she failed to pay attention to other people but because she was "overly affectionate with teachers, peers, and strangers." As a child, she "played cooperatively in games that required joining in with a group of children for brief periods, although other kids would often leave because she would not follow the rules, be too impulsive, or start doing her own game." She also "talked with others just to be friendly."

44. Dr. Terry concluded overall that claimant does not have an autism spectrum disorder.

a. With respect to deficits in "social emotional reciprocity," Dr. Terry concluded that claimant "has clear social immaturity, impulsivity, and poor judgment." In Dr. Terry's opinion, however, these weaknesses are "more consistent with issues related to [FAS], possible in-utero drug exposure, impulsivity, repeated sexual and other abuse, etc., rather than autism."

b. With respect to deficits in "nonverbal communicative behaviors used for social interaction," Dr. Terry concluded that claimant "has clearly developed 'dissociative' features such as staring off at times when asked questions about her trauma history, and making odd faces, in a way that is not typically associated with autism."

c. With respect to deficits in "developing, maintaining, and understanding relationships, Dr. Terry concluded that claimant's "well-documented peer

relationship difficulties … are more consistent with attachment disorder and ADHD type symptoms that are likely related to her in-utero exposure to substances and on-going trauma history, rather than autism."

d. With respect to "[r]estricted, repetitive patterns of behavior, interests, or activities," Dr. Terry concluded that claimant did not display and had never displayed stereotyped or repetitive motor movements, inflexible adherence to rituals or routines, or narrowly circumscribed and unusual interests. Dr. Terry noted that claimant "does have some issues with being over-stimulated at times," but concluded that claimant's sensory hypersensitivity was mild.

45. Dr. Terry described claimant as "very friendly," with an "immature presentation, talking in a childlike way or about more immature interests." She "showed distractibility and impulsivity." While waiting alone for Dr. Terry to finish discussing her case with her mother, claimant drew pictures as gifts for Dr. Terry; Dr. Terry described them as "sweet and cute, similar to a younger child."[6]

46. Dr. Terry's evaluation report stated that claimant resembled "an individual with an intellectual[] disability, although she has scored consistently within the average range." Likewise, in correspondence with RCRC's intake coordinator, Dr. Terry stated that claimant "acts so childlike, it is surprising her IQ is average." She concluded that "despite her average intellectual functioning, [claimant] presents in many ways similar to a younger child or as someone with an intellectual disability."

47. Dr. Terry agreed with Dr. Gonick-Hallows's primary therapeutic recommendations for claimant: "one-on-one support in her education setting, constant supervision in the home and community, and significant support in learning appropriate social skills."

[6] These drawings were not in evidence.

48. Dr. Terry also recommended "[f]urther assessment by a neuropsychologist to identify [claimant's] specific set of neurocognitive issues, as well as a neurologist or other medical specialist to help identify any structural damage."

Patrick MacLeamy, Psy.D.

49. Patrick MacLeamy, Psy.D., examined claimant in September 2017, at claimant's mother's request. Dr. MacLeamy reviewed Dr. Gonick-Hallows's and Dr. Terry's reports, and knew that claimant's mother had sought his evaluation to support claimant's application for services from RCRC.

50. Dr. MacLeamy again interviewed claimant using the ADOS-2, Module 4. He reported that his scores for claimant "exceeded the 'autism' cutoff on the revised combined Social Affect and Restricted and Repetitive Behavior domains of the ADOS-2." He did not report how claimant performed on any other domain, or overall.

51. Claimant conversed easily with Dr. MacLeamy and his assistant (Sheila Katz, Ph.D.) during the ADOS-2. They believed that "she had less than expected understanding of social convention," however, because of several statements claimant made regarding her interactions with peers and her plans for her future. She showed no "motor mannerisms," but did have "an odd, stiff body posture."

52. Claimant's mother completed the Social Responsiveness Scale questionnaire. Dr. MacLeamy's report does not explain in any detail the questions or claimant's mother's answers. He summarizes claimant's mother's responses as showing "severe interference in everyday social interactions."

53. From his unstructured interview with claimant and her mother, Dr. MacLeamy reported that claimant "was able to articulate the feelings she has had prior to her elopement behavior, identify the dangers in acting on these impulses, and to state and discuss several coping skills she could use instead of running away from

home." He also stated that she was able to rate her current mood on a scale of 1 to 10, and to describe her usual mood in other circumstances, such as at church or at home.

54. Dr. MacLeamy diagnosed claimant with an autism spectrum disorder.

a. With respect to deficits in "social emotional reciprocity," Dr. MacLeamy stated that claimant experiences "[c]hallenges in interacting fluidly with others."

b. With respect to deficits in "nonverbal communicative behaviors used for social interaction," Dr. MacLeamy noted that claimant does not modulate eye contact well and uses "muted" gestures and facial expressions.

c. With respect to deficits in "developing, maintaining, and understanding relationships, Dr. MacLeamy described claimant as acting "much younger than her chronological age."

d. With respect to "[r]estricted, repetitive patterns of behavior, interests, or activities," Dr. MacLeamy highlighted claimant's tactile sensitivity, her stiff movements, and her resistance to changes in routine.

RCRC'S ASSESSMENT

55. Gerald Drucker, Ph.D., is the RCRC psychologist who reviewed claimant's eligibility for services under the Lanterman Act. He collaborated in this review with John Sullivan, M.D., and with RCRC Service Coordinator Claudia Gomez.

56. Dr. Drucker has been a psychologist for RCRC for about 30 years. He participates in all RCRC's eligibility determinations. He is very familiar with Dr. Terry's work and believes that she is highly qualified to evaluate possible autism spectrum disorders, particularly in girls.

57. Dr. Drucker reviewed all of claimant's psychological evaluations. Based on this review, Dr. Drucker disagreed with Dr. MacLeamy's autism spectrum disorder

diagnosis, and agreed with Dr. Terry that claimant does not have an autism spectrum disorder.

58. Dr. Drucker placed great emphasis on the fact that claimant shows, and throughout her childhood has shown, significant and even excessive openness to other people. He concurred with the other psychologists who have examined claimant that she has a disorder affecting her ability to navigate social relationships. His opinion, however, is that claimant's difficulties are more consistent with a psychiatric disorder such as an attachment disorder than with an autism spectrum disorder.

59. According to Dr. Sullivan, FAS results from developmental failures in the nervous system. In early fetal development, the frontal portion of the brain fails to grow. Because its frontal lobe is small, the alcohol-damaged brain fails to push the skull forward properly, resulting in characteristic facial differences between infants with and without FAS. Prenatal alcohol exposure also can damage the central nervous system. People with FAS show significant deficits in forethought and judgment. They cannot plan or delay gratification; they are impulsive and inattentive; and they often are socially inept.

60. RCRC's evaluation team members all were aware that Dr. Gonick-Hallows, Dr. Terry, and Dr. MacLeamy each had described claimant's behavior as strikingly childish given her apparent cognitive strengths. Despite concluding that an autism spectrum disorder did not explain this childlike behavior, and despite claimant's FAS diagnosis in early childhood, RCRC did not pursue Dr. Terry's recommendation to request a neuropsychological evaluation of claimant.

61. RCRC's assessment team requested no outside professional opinions and drew no conclusions regarding whether claimant has significant functional limitations, as compared to other people of similar age, in self-care, receptive or expressive language, learning, mobility, self-direction, capacity for independent living, or economic

self-sufficiency. They did not do so because they concluded that claimant's average cognitive abilities (as measured most recently by Dr. Gonick-Hallows) precluded a determination that she has a disabling condition closely related to intellectual disability, or a determination that she has a condition requiring treatment similar to that required for people with intellectual disabilities.

ANALYSIS

62. As detailed in Findings 4, 5, 8, 9, 12, 18, 27, 31, 36, 45, and 46, caregivers and psychologists who have observed claimant throughout her life have described her as being notably different from her peers. Furthermore, the differences these observers have described have been consistent but have grown more pronounced since claimant's early childhood. Claimant has aged far faster than she has matured. She has a disability that began in early childhood and that is likely to continue indefinitely.

63. As detailed in Findings 5, 9, 23, 24, 26, 30, and 35, the evidence did not establish that claimant has intellectual disability.

64. The evidence did not establish that claimant has epilepsy or cerebral palsy.

65. In light of the matters detailed in Findings 4, 8, 12, 13, 32, 36, 37, 41, 43, 45, 50, 51, and 53, Dr. Drucker's and Dr. Terry's opinion that claimant does not have an autism spectrum disorder is more persuasive than Dr. MacLeamy's opinion that she does. The evidence did not establish that claimant has an autism spectrum disorder.

66. Since claimant's early childhood, as detailed in Findings 5, 9, 27, 31, and 46, educators and psychologists evaluating her have observed a consistent and growing disparity between her apparent intelligence and her practical abilities. She can answer questions and solve puzzles such as those on the WISC-IV. At the same time, and as detailed in Findings 12, 13, 17, and 18, she is very weak in her ability to adapt to new situations or to profit from experience.

a. This evidence, in combination with the evidence of neurological defects detailed in Findings 28 and 59, suggests that claimant has a condition closely related to intellectual disability.

b. As detailed in Findings 38 and 47, the evidence also suggests that claimant would benefit from treatment similar to that required for people with intellectual disabilities.

c. Because neither claimant's mother nor RCRC pursued these leads, however, the evidence did not establish either circumstance definitively.

67. Regardless of the nature of claimant's disability, the evidence did not establish whether it causes significant functional limitations for claimant, as compared to other people of similar age, in self-care, receptive or expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency.

LEGAL CONCLUSIONS

1. Claimant is eligible under the Lanterman Act for RCRC's services only if she has a "developmental disability." (Welf. & Inst. Code, § 4501.) Claimant bears the evidentiary burden in this proceeding of demonstrating her eligibility.

2. A "developmental disability … originates before an individual attains 18 years of age [and] continues, or can be expected to continue, indefinitely." (*Id.*, § 4512, subd. (a).) As set forth in Finding 62, claimant established that she has a disability that satisfies these criteria.

3. Disabilities that qualify under the Lanterman Act as "developmental disabilities" include "intellectual disability, cerebral palsy, epilepsy, and autism." (Welf. & Inst. Code, § 4512, subd. (a).) As set forth in Findings 63, 64, and 65, claimant did not establish her eligibility with reference to any of these disabilities.

4. The Lanterman Act also covers persons with "disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability." (Welf. & Inst. Code, § 4512, subd. (a).)

5. A qualifying disability must be "substantial." (Welf. & Inst. Code, § 4512, subd. (a).) A developmental disability is "substantial" if it causes "major impairment of cognitive and/or social functioning." (Cal. Code Regs., tit. 17, § 54001, subd. (a)(1).) "Cognitive" functioning in this context "means the ability of an individual to solve problems with insight, to adapt to new situations, to think abstractly and to profit from experience." (*Id.*, § 54002.)

6. As summarized in Finding 61, RCRC concluded that a person with average WISC-IV scores cannot qualify as a person with a disabling condition closely related to, or requiring treatment similar to, intellectual disability. This conclusion is not consistent with the Lanterman Act. While relevant, a person's school grades or scores on an examination in a psychologist's office are not dispositive of that person's eligibility under the Lanterman Act for regional center services. Rather, a person with average intellectual capacity nevertheless may be eligible under the Lanterman Act for RCRC services if he or she has a major impairment in problem-solving, situational adaptation, or the ability to learn and grow from experience.

7. As set forth in Findings 60 and 66, claimant produced evidence that suggested strongly, but did not prove, that she has a cognitive disability that is closely related to intellectual disability or that requires treatment similar to that for an intellectual disability.

8. To be "substantial," a developmental disability also must cause "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." (Welf. & Inst. Code, § 4512, subd. (*l*)(1); Cal. Code Regs., tit. 17, § 54001, subd. (a)(2).) As set forth in Findings 61 and 67, RCRC did not evaluate these criteria and the evidence on them was inconclusive.

9. The matters stated in Legal Conclusions 6, 7, and 8 establish that RCRC has failed to complete its evaluation of claimant's eligibility under the Lanterman Act for RCRC's services. RCRC must evaluate whether the differences between claimant and her peers result from a disability closely related to intellectual disability or requiring treatment similar to that required for individuals with an intellectual disability, and whether any such disability is substantial for claimant.

ORDER

Claimant's appeal from RCRC's notice declaring her ineligible for services under the Lanterman Act and closing her case is granted. This matter is remanded to RCRC for further consideration and evaluation of claimant's eligibility in accordance with this Decision.

DATED: January 18, 2017

_____/S/_____

JULIET E. COX

Administrative Law Judge

Office of Administrative Hearings

NOTICE

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