

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

ALTA CALIFORNIA REGIONAL CENTER,

Service Agency.

OAH No. 2017120344

DECISION

The fair hearing in this matter was heard by Administrative Law Judge Marcie Larson (ALJ), Office of Administrative Hearings (OAH), State of California, on May 8, 2018, in Sacramento, California.

Alta California Regional Center (ACRC) was represented by Robin Black, Legal Services Manager.

Claimant was present at the hearing and represented by Salma Enan, Attorney at Law.

Evidence was received and the record remained open to allow submission of closing and reply briefs. ACRC's closing brief marked as Exhibit 18, was received on May 22, 2018. Claimant's closing brief marked as Exhibit P, was received on June 5, 2018. ACRC's reply brief marked as Exhibit 19, was received on June 11, 2018. The record was closed and the matter was submitted for decision on June 11, 2018.

SUMMARY AND ISSUES

1. Claimant was a client of the Regional Center of East Bay (RCEB) when she

was made eligible for services in 1980, based on a "neurological handicap." In 2014, claimant became a client of ACRC when she moved to Sacramento. The issue for determination is whether the original determination by RCEB that claimant was eligible for regional center services based on a "neurological handicap" was clearly erroneous?

2. If so, does claimant qualify for services from ACRC under the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500 et seq., because she is an individual with cerebral palsy, epilepsy, autism, or intellectual disability, or because she has a disabling condition that is closely related to intellectual disability or requires treatment similar to that required for individuals with an intellectual disability (fifth category)?

FACTUAL FINDINGS

PROCEDURAL HISTORY

1. In 1980, at the age of three, claimant was originally found to be eligible for regional center services by RCEB, due to claimant's neurological handicap. Claimant received services from RCEB until approximately 2014, when she moved to Sacramento and her case was transferred to ACRC. On November 16, 2017, ACRC issued a Notice of Proposed Action (NOPA) to claimant informing her that she was no longer eligible to receive regional center services because she does not have a developmental disability within the Lanterman Act eligibility criteria. (Welf. & Inst. Code, § 4512, subd. (a).) On November 29, 2017, claimant submitted a Fair Hearing Request.

CLAIMANT'S BACKGROUND

2. Claimant was born in 1977. In 1980, at the age of three, claimant was assessed by the RCEB to determine whether she qualified for services. A medical evaluation was conducted by Felice Weber Parisi, M.D., a Staff Physician for the RCEB. Dr. Parisi obtained an early history concerning claimant's development. Dr. Parisi noted

that claimant's parents became concerned about her development when she was six months old. Claimant was able to sit and speak at a normal age, but began to develop muscle weakness. Medical records reviewed by Dr. Parisi noted that in July 1979, claimant was evaluated by Contra Costa Health Services. Claimant had muscle weakness, but no specific diagnosis was given. More testing was recommended. On July 31, 1980, claimant was seen at the Children's Hospital in Oakland, California and diagnosed with a "mild form of Intermediate Type Spinal Atrophy."

3. Dr. Parisi conducted an examination of claimant which included a review of systems, physical examination, neurological examination, self-help skills assessment and communication assessment. Claimant's physical examination was normal except that she had "weakness of upper extremities" and "very weak lower limbs." Claimant was able to walk if she could "really brace herself." She was also able to communicate with complete sentences and had no major behavior problems. Dr. Parisi noted under her impressions, that claimant suffered from a mild form of intermediate type of spinal atrophy. Under the "Recommendations and Plans" section of her report, Dr. Parisi recommended that claimant be made eligible for RCEB services on the basis of "neurological handicap."

4. Claimant received services and support from RCEB after she was made eligible in 1980. Claimant testified at hearing that she suffers from progressive muscle weakness that eventually required her to utilize a wheelchair. In 1995, claimant graduated from high school. Thereafter, she attended college. In 1997, she obtained her Associate of Arts (AA) degree in business administration. In 2008, she obtained her AA degree in human development. For the past ten years claimant has lived alone. Due to the progressive nature of her condition, claimant is unable to care for herself without assistance. Claimant received 24-hour care, seven days per week through Supported Living Services (SLS) funded by RCEB and In-home Support Services (IHSS) a county-funded program.

5. In late 2014, claimant moved to Sacramento. She accepted a position as an Associate Governmental Program Analyst (AGPA) with the Department of Social Services. Claimant made arrangements with her RCEB service coordinator to have her case transferred to ACRC. Respondent was told by her RCEB service coordinator that ACRC agreed to take her case. In approximately December 2014, claimant's case was transferred to ACRC, but was shared with RCEB which continued to fund claimant's SLS for a period of time. ACRC was not provided with an eligibility statement for claimant when her case was transferred. Carol Wilhelm, Program Manager for ACRC, is the manager in charge of the unit that supervises claimant's case. She testified that when a client transfers from another regional center, the goal is to match the services that are provided to the client by the transferring regional center. A formal reassessment of the client's eligibility for services is not conducted when the client transfers to ACRC.

6. On May 24, 2016, claimant completed her first Individual Program Plan (IPP) with her ACRC service coordinator, Kaysandra Siyam. The purpose of the IPP was to identify claimant's goals for the year. Ms. Siyam prepared an IPP report and testified at hearing. Ms. Siyam noted in the report that claimant was diagnosed with "Spinal Muscular Atrophy (Werdnig-Hoffman's Disease), and Scoliosis." Ms. Siyam was not aware that Spinal Muscular Atrophy (SMA) was the basis of her RCEB's eligibility determination. Ms. Siyam is not a physician and she did not conduct an assessment on claimant.

Claimant's explained to Ms. Siyam that her goals for the year were to "continue to live in the community with support" and to maintain her health and "adaptive equipment needs." Ms. Siyam noted that claimant lives alone with the support of SLS and IHSS services. Claimant requires assistance with food preparation, "assistance to complete her transfer and position in the restroom due to her decreasing arm strength." Claimant was not able to bear weight or raise her arms high. Claimant uses a manual

Hoyer lift, an electric wheelchair and is able to drive a modified van. Ms. Siyam noted that claimant's SLS services were provided by an entity funded by RCEB, but that efforts would be made to "secure a local agency that will meet [claimant's] needs." Ms. Siyam agreed to request ACRC funding for SLS hours from an SLS agency. In late 2016, ACRC took over the funding of claimant's SLS hours from RCEB.

7. On May 19, 2017, claimant completed her second IPP with Ms. Siyam. Claimant indicated that her goals for the year were to continue to live in the community and to continue to remain healthy and to maintain her "adaptive equipment needs." Ms. Siyam noted that claimant's SLS services were funded by ACRC.

8. On August 8, 2017, during a meeting with claimant, Ms. Siyam and claimant's new SLS service provider, claimant informed Ms. Siyam that she was moving into new housing and would need a ramp and door opener installed in her new home. Claimant's request for equipment was sent to ACRC's Durable Medical Equipment committee (DME) for review of the request. The role of the DME is to review requests for equipment to ensure the equipment need is based on the client's qualifying condition.

9. On September 8, 2017, Ms. Siyam was informed by Lori Banales, a supervisor with ACRC, that the DME put the approval of claimant's request for equipment "on hold" until her eligibility was determined. Ms. Siyam was informed that the documents provided to ACRC concerning claimant's history and condition did "show a clear statement of qualifying condition." Ms. Siyam was asked to complete and send a clinical referral form to the ACRC psychologist to clarify claimant's eligibility. Additionally, Ms. Siyam requested claimant sign medical releases to allow ACRC to review her medical records. Claimant complied with the request.

PSYCHOLOGICAL ASSESSMENT

10. Cynthia Root, Ph.D. is a licensed staff psychologist for ACRC. She has been employed with ACRC since 2008. Dr. Root's duties include performing psychological

evaluations of clients to determining eligibility, including assessments of intellectual functioning. Dr. Root completes approximately 50 evaluations per year. She also reviews approximately 800 evaluations per year, performed by other evaluators. On October 13, 2017, Dr. Root performed a psychological evaluation of claimant to determine whether she has an intellectual disability or a condition similar to intellectual disability that would make her eligible for ACRC services, also known as "fifth category." Dr. Root prepared an evaluation report and testified at hearing.

11. As part of the evaluation, Dr. Root reviewed the ACRC case file for claimant which included claimant's medical records, assessments performed by RCEB, and claimant's May 19, 2017 IPP. Dr. Root interviewed claimant, and administered several assessments, including the Adaptive Behavior Assessment System-Third Edition, Adult Form (ABAS-3), the Street Survival Skills Questionnaire (SSSQ), selected subtests, the Wechsler Abbreviated Intelligence Scale, Second Edition (WASI-II), and the Wide Range Achievement Test, 4th Edition (WRAT-4). Claimant arrived at the evaluation alone. The evaluation lasted approximately two hours.

12. Claimant informed Dr. Root that she rented a home in Sacramento. She lived alone, but "requires personal attendants '24/7' to assist her with activities of daily living and household management due to her physical limitations." Claimant requires an electrical wheelchair for mobility. She "accesses the community independently by driving a modified van." Claimant reported that she was diagnosed with SMA. Claimant explained that she had an appointment scheduled for genetic testing to confirm the diagnoses.

Claimant provided Dr. Root information concerning her academic and work history. Claimant explained that she graduated from high school and obtained two AA degrees. Claimant was employed as an AGPA with the Department of Social Services. She works as a foster care and probation "consultant/data analyst" for six counties. Prior

to her being employed at the Department, she worked as the director of an afterschool program for eight years.

During the course of the interview, Dr. Root observed that claimant was a “busy professional.” At times, claimant was distracted by work issues. Her cell phone buzzed repeatedly and she had to take breaks from the evaluation to respond to a work issues. Claimant requested that the evaluation end within a certain time so that she could return to work to participate in a conference call. As a result, the interview was abbreviated and Dr. Root did not provide her with feedback regarding her performance. Despite the distractions, Dr. Root observed claimant to “try her best to focus on the tasks that were presented to her” during the evaluation.

13. Dr. Root administered the WASI-II, “a standardized measure of general intellectual ability.” Claimant’s vocabulary score was 114, which is in the high average range of ability. Claimant scored 118 in the “Matrix Reasoning” which is also in the high average range. The two-subtest full scale IQ score was 118 which is in the 88th percentile.

14. Dr. Root also administered the WRAT-4, a “screening instrument that measures basic skills in reading, arithmetic, and spelling.” Claimant’s reading composite was in the average range. Her spelling and math composites were in the high average range.

15. Dr. Root attempted to administer claimant the ABAS-3, a survey completed by “parents, caregivers and/or teachers regarding the adaptive behavior of the person being evaluated.” The survey is “comprised of statements that are rated according to the frequency of the behavior observed by the examinee.” The answers are designed to “provide a comprehensive picture of the person’s ability to function in ten different domains.” Dr. Root attempted to complete the assessment with claimant’s assistance. However, Dr. Root observed that the scores were “being artificially impacted”

by claimant's physical disability.

One example Dr. Root noted was in response to a statement, "Obtains money from an ATM." Claimant informed Dr. Root that her response would be that she was not able to perform that task because she could not access her ATM card from her purse without help. However, claimant is "fully capable of understanding how to use an ATM machine and knows when she needs to go to one." Dr. Root and claimant "decided to discontinue the questionnaire, as the result would have questionable validity given [claimant's] significant physical limitations."

16. Dr. Root also administered the SSSQ, an "individually administered test of adaptive functioning that was specifically developed for use with a developmentally disabled population." Claimant was asked to "pick one of four pictures that represents the correct answer to questions based on a variety of skill areas, such as time, money concepts, and domestic management." Claimant was administered four of ten content areas due to time constraints. Claimant did not miss any questions on the Basic Concepts, Time and Money subtests. She missed one question on the Measurement subtest concerning the temperature of a typical refrigerator. Her score was in the normal range for all four tests.

17. Dr. Root utilized the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) to determine that claimant does not have an intellectual disability. Pursuant to the DSM-5, in order to qualify for a diagnosis of intellectual disability, an individual must meet certain diagnostic criteria, including: (1) deficits in intellectual functions; (2) deficits in adaptive functioning that result in failure to meet developmental and sociocultural standards for personal independence and social responsibility; and (3) onset of intellectual and adaptive deficits during the development period. Dr. Root opined that claimant did not meet criteria for intellectual disability because her IQ was "too high." Dr. Root explained that because claimant did not meet the first criteria of

deficits in intellectual functioning, further evaluation or consideration of adaptive functioning was not required.

18. Dr. Root also opined that claimant does not have a condition similar to intellectual disability, nor does she require treatment like that required by an individual with intellectual disability and therefore does not qualify for services under the fifth category of eligibility under the Lanterman Act. Dr. Root opined that conditions similar to intellectual disability include global development delay which is diagnosed in children under five years old and borderline intellectual functioning which can be diagnosed at any age. These diagnoses are similar to intellectual disability in that the individuals perform higher on an IQ test compared to a person with intellectual disability, but at a deficit compared to the average population.

When determining whether an individual qualifies for regional center services under the fifth category, intellectual functioning is the primary consideration. Deficits in adaptive functioning are also considered. However, in order to qualify under the fifth category under the Lanterman Act, deficits in adaptive functioning must not solely be a result of psychiatric condition, physical condition or learning disability. The adaptive deficits must be a result of global intellectual delay. Based on the testing, claimant does not have global intellectual delay.

Additionally, requiring treatment similar to an individual with intellectually disability relates to the application of services that must be altered so that information can be understood. Typically, this would include breaking down information into simple terms, using simple vocabulary and repetition to learn basic skills. Dr. Root found no evidence that claimant requires treatment similar to an individual with intellectual disability, as she has no intellectual deficit.

19. Dr. Root opined that based on her review of the records and assessments, RCEB's determination that claimant qualified for regional center services based on a

neurological condition was clearly an error. Dr. Root opined that claimant does not have a development disability and her SMA condition is not included as an eligible condition under the Lanterman Act. Additionally, Dr. Root found no evidence that claimant has a diagnosis of cerebral palsy, epilepsy, or autism.

REVIEW OF RECORDS BY BARBARA FRIEDMAN, M.D.

20. Barbara Friedman, M.D. is a staff physician for ACRC. She has been employed as a staff physician with ACRC since September 2016. Her duties include determining eligibility of new and existing clients. She attends DME and other committee meetings. She also consults with ACRC service coordinators concerning clients' medical needs.

21. Dr. Friedman first became involved in claimant's case in the fall of 2017, when claimant's request for a ramp and safety lock was submitted to the DME. When the DME looked at the document in claimant's case file to determine whether the request could be linked to an eligible condition, the question arose whether her condition was an eligible condition. The only diagnosis provided the DME was SMA. Dr. Friedman was asked by the DME to assess claimant's records to determine if she was eligible for regional center services based the conditions of cerebral palsy or epilepsy.

22. Dr. Friedman reviewed the records from RCEB, which indicates that Dr. Parisi assessed claimant in 1980, when she was three years old. Dr. Parisi's impression was that claimant had a mild form of SMA, based on a previous medical diagnosis. Dr. Friedman explained that SMA is a neurological condition caused by the degeneration of the nerves that come from the spinal cord. Dr. Friedman explained that SMA is broken into categories of zero through four, from severe to mild. Claimant has been diagnosed with SMA type three (SMA-3) an intermediate form of the condition. Dr. Friedman explained that the condition is caused by a specific gene disorder. In December 2017, claimant underwent genetic testing which confirmed the diagnosis of SMA-3.

23. Dr. Friedman explained that Dr. Parisi found claimant to be eligible for RCEB services based on her neurological condition. Dr. Friedman opined that neurological conditions, including SMA-3, are not eligible conditions unless the individual also has cerebral palsy, epilepsy, autism, or intellectual disability, or because she has a disabling condition that is closely related to intellectual disability or requires treatment similar to that required for individuals with an intellectual disability. Nor was it a qualifying condition in 1980, when claimant was first made eligible. Dr. Friedman explained that she does not know why claimant was made eligible for services by the RCEB. Dr. Friedman did not consult Dr. Parisi, or conduct an independent medical examination of claimant.

24. Dr. Friedman found no evidence that claimant has a diagnosis of cerebral palsy or epilepsy. Based on all the information Dr. Friedman reviewed, claimant's condition of SMA-3 is not an eligible condition under the Lanterman Act.

25. The information compiled by Dr. Friedman and Dr. Root was provided to an ACRC multidisciplinary eligibility team which included Ms. Siyam and Ms. Wilhelm. The determination was made that claimant was not eligible for regional center services. Efforts have been undertaken by ACRC to identify alternative services for claimant that she can access should her appeal be denied.

CLAIMANT'S POSITION

26. Claimant contends that ACRC failed to perform a comprehensive reassessment before determining that she was no longer eligible for regional center services. Claimant also contends that the assessment performed by Dr. Root failed to assess her adaptive functioning and that the DSM-5 states that for a diagnosis of intellectual disability, an assessment of adaptive functioning is required for a proper diagnosis. Claimant contends that she is eligible for services under the fifth category because her disability requires treatment similar to that required for individuals with

intellectual disability and her disability constitutes a substantial disability. Specifically, claimant contends that she requires treatment in the form of SLS services in order to live safely in her home and to access the community. Her condition substantially impairs her mobility and her ability to live independently and provide self-care. In addition to claimant's testimony concerning her limitations, she also provided letters from her care providers which attest to her limitations and need for services.

27. Claimant also contends that ACRC should be prohibited from terminating her regional center services under the doctrine of equitable estoppel. Claimant cited *Fontana Paving, Inc. v. Hedley Brothers, Inc.* (1995) 38 Cal.App.4th, 146, to explain that the requirements for equitable estoppel are that: "(1) the party to be estopped must be apprised of the facts; (2)[s] he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) [s]he must rely upon the conduct to his injury." [Citations omitted.]

Claimant contends that ACRC knew during claimant's first IPP in May 2016, that claimant was made eligible for services based on her neurological condition, and did not take any action to review her eligibility. Claimant relied on ACRC to authorize and fund her services, which she relied upon and received for almost 40 years. Claimant contends she had no reason to question her eligibility and the services she has been provided have allowed her to live independently.

28. Claimant also contends under the doctrine of laches, ACRC should be prohibited from terminating her services because of the unreasonable delay in proposing to terminate her eligibility. Claimant contends that she suffered prejudice as a result of the delay, thus meeting the elements of a laches defense. (*Mt. San Antonio Community College. Dist. v. Public Employment Relations Bd.*, (1989) 210 Cal. App. 3d 178, 258.) Claimant contends that she has been a consumer of ACRC since 2015. Since

the May 2016 IPP ACRC has been apprised of her condition but failed to take any action to reassess her eligibility until 2017. Since 2015, claimant relied on the services provided by ACRC. Claimant contends that if she had been aware earlier that ACRC would seek to have her services terminated, she would have had time to prepare an adequate defense to the action.

ACRC'S POSITION

29. ACRC contends that a comprehensive reassessment of claimant was performed prior to making a determination that claimant is not eligible for regional center services. Specifically, Dr. Root conducted comprehensive psychological testing to determine whether claimant has an intellectual disability or qualifies under the fifth category, which included the administration of several tests, observation, review of records and an interview of claimant. Dr. Friedman reviewed claimant's medical records and file from RCEB. The information was provided to ACRC's multidisciplinary review team which determined that claimant was not eligible for regional center services based on her SMA-3 condition.

ACRC also contends that claimant is not eligible based on intellectual disability or under the fifth category because her IQ and academic achievement results do not score within the range of intellectual disability, borderline intellectual functioning or global developmental delay. Claimant's condition does not affect her cognitive ability. ACRC concedes that claimant's condition affects her adaptive functioning. However, ACRC contends that pursuant to the DSM-5, in order to qualify for a diagnosis of intellectual disability, impairment in adaptive functioning must be directly related to intellectual impairment.

Additionally, claimant does not require treatment similar to an individual with intellectual disability. Claimant is capable of communicating and understanding information without modification. ACRC contends that while SLS services allow claimant

to live independently, the fact that claimant benefits from the services does not equate to requiring services similar to an individual with intellectual disability.

30. ACRC also disputes that claimant can assert equitable estoppel as a defense. ACRC contends that pursuant to Welfare and Institutions Code section 4643.5, subdivision (c), ACRC was required to authorize and secure services provided for in claimant's IPP from RCEB when she transferred to ACRC. There was no requirement to reassess claimant's eligibility at that time and it was not ACRC's practice to reassess a client's eligibility. However, ACRC made no assurances to claimant prior to her moving to Sacramento that she would not be reassessed.

Claimant's eligibility was not questioned until approximately August 2017, when the DME reviewed her request for equipment and was unable to determine her eligible condition. Once the determination was made to review claimant's eligibility, ACRC acted promptly in conducting the reassessment. Additionally, ACRC continued to fund services for claimant while her eligibility was reassessed and reviewed.

31. Likewise, ACRC contends that the doctrine of laches also does not apply to claimant's case. ACRC contends that there was no unreasonable delay in completing the reassessment. Claimant completed her first IPP with ACRC in May 2016. A reassessment of claimant began in September 2017. ACRC contends that claimant failed to demonstrate that she was not able to obtain information to present at hearing concerning her initial eligibility determination, as a result of any delay by ACRC.

DISCUSSION

32. Under the Lanterman Act, the legislature has authorized regional centers to provide services *only* to those individuals who have developmental disabilities that fall into one of the five distinct categories listed in Welfare and Institutions Code section 4512, subdivision (a): (1) intellectual disability; (2) cerebral palsy; (3) epilepsy; (4) autism; or (5) a disabling condition that is closely related to or requires treatment similar to that

required for individuals with an intellectual disability (fifth category).

33. When claimant was three years old, she was made eligible for regional center services based on mild SMA, which the RCEB physician categorized as a "neurological handicap." Claimant has received regional center services since that time. ACRC bears the burden of proving that the original determination of eligibility was "clearly erroneous." ACRC has met that burden. The evidence established that ACRC completed a comprehensive reassessment of claimant that included a psychological evaluation conducted by Dr. Root and a review of medical records by Dr. Friedman. The information gathered and documented by Dr. Root and Dr. Friedman was reviewed by the ACRC multidisciplinary evaluation team that ultimately concluded that claimant was not eligible for regional center services.

34. Dr. Root persuasively testified that claimant does not have intellectual disability because her IQ is in the high average range. Under the DSM-5, in order to qualify for a diagnosis of intellectual disability impairment in adaptive functioning must be directly related to intellectual impairments. Claimant's impairment in adaptive functioning is exclusively related to her physical condition.

Additionally, Dr. Root persuasively opined that claimant is not eligible for services under the fifth category because she does not require treatment similar to that required for individuals with intellectual disability. Claimant does not have global intellectual delay. She does not require information to be relayed in a manner that allows her to learn basic skills. Rather, the limitations in her adaptive functioning are a result of her physical condition. It is undisputed that claimant has significant limitations in her adaptive functioning. Claimant requires 24-hour care in order to live independently. However, in order to qualify under the fifth category under the Lanterman Act, deficits in adaptive functioning must not solely be a result of a physical condition.

35. Dr. Friedman also found no evidence that claimant has cerebral palsy or

epilepsy. Dr. Parisi determined claimant was eligible for services based on her neurological condition, which she described as mild spinal atrophy. Dr. Friedman review of claimant's records revealed a diagnosis of SMA-3, which was confirmed by genetic testing in December 2017. Dr. Friedman persuasively testified that mild spinal atrophy and SMA-3 alone are not conditions that qualify claimant for services under the Lanterman Act.

36. Claimant's contention that ACRC is barred from terminating her services under the doctrines of equitable estoppel and laches are without merit. ACRC made no assurances to claimant before she moved to Sacramento that she would not be reassessed for eligibility. ACRC continued providing claimant the services set forth in her RCEB IPP, as required. It was not until August 2017, that ACRC discovered that the sole basis for claimant's initial eligibility determination by RCEB was a neurological condition, later identified as SMA-3. The Lanterman Act allows regional centers to conduct reassessments of eligibility determinations. ACRC promptly undertook a reassessment and notified claimant of the findings. ACRC has continued to pay for claimant's services pending the outcome of her appeal and has assisted claimant with finding alternative services. Claimant failed to meet the required elements of the estoppel and laches defenses.

37. The legislature made the determination that only individuals with one or more of the five specified types of disabling conditions identified in the Lanterman Act are eligible for services from regional centers. The legislature chose not to grant services to individuals who may have other types of disabling conditions, including physical conditions, if they cannot show that they fall within one of the five categories delineated in the act. In addition, the legislature provided that, in order for an individual to qualify for services under the Lanterman Act, the individual's developmental disability must be substantially disabling and must be the cause of the adaptive deficits as to which the

requested services relate.

Although the result may seem harsh, particularly for individuals such as claimant who requires 24-hour assistance and support due to her physical limitations, the legislature did not grant regional centers the authority to provide services to individuals whose disabilities fall outside the five specified categories. Claimant is not an individual with cerebral palsy, epilepsy, autism, or intellectual disability, or a disabling condition that is closely related to intellectual disability or requires treatment similar to that required for individuals with an intellectual disability. Rather she suffers from a genetic spinal muscular condition, not included as an eligible condition under the Lanterman Act. It is undisputed that claimant has significant deficits in adaptive functioning. However, these deficits are related to her physician condition, not her cognitive ability. As a result, she is not eligible for services under the Lanterman Act. Consequently, claimant does not qualify for continued services through ACRC.

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LEGAL CONCLUSIONS

1. 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 or to require treatment similar to that required for individuals with an intellectual disability [commonly known as the "fifth category"], but shall not include other handicapping conditions that are solely physical in nature.

2. Developmental disability does not include "handicapping conditions that are solely physical nature. These conditions include conditions acquired through disease, accident or faulty development which are not associated with a neurological impairment that results in need for treatment similar to that required for [intellectual disability]." (Cal. Code Regs., tit. 17, § 54000, subd. (c)(3).)

3. Once a consumer has been found eligible for regional center services under the Lanterman Act, eligibility cannot be revoked unless a "comprehensive reassessment" causes the regional center to conclude that the original determination was "clearly erroneous." Welfare and Institutions Code section 4643.5, subdivision (b) provides:

An individual who is determined by any regional center to have a developmental disability shall remain eligible for services from regional centers unless a regional center, following a comprehensive reassessment, concludes that the original determination that the individual has a developmental disability is clearly erroneous.

4. An original determination may be found to be clearly erroneous because the individual does not have one of the qualifying conditions set forth in section 4512;

that is she does not have intellectual disability, cerebral palsy, epilepsy, autism, or a disabling condition found to be closely related to intellectual disability or to require treatment similar to that required for individuals with intellectual disability.

5. In 1980, RCEB determined that claimant was eligible for regional services based on her "neurological condition." ACRC has the burden of proving that the original determination that claimant was eligible for regional center services based on a neurological condition is "clearly erroneous." ACRC established that a comprehensive reassessment was performed in terms of the scope of information reviewed and the individuals who participated in the review and determination of eligibility. Based upon this reassessment, ACRC determined that claimant does not have cerebral palsy, epilepsy, autism, or intellectual disability, or a disabling condition that is closely related to intellectual disability or requires treatment similar to that required for individuals with an intellectual disability.

Additionally, there is no evidence that claimant's original assessment by the RCEB correctly diagnosed her with developmental disability as defined by the Lanterman Act. Rather her eligibility was based on a "neurological handicap," later confirmed by genetic testing as SMA-3, which is a not a condition covered under the Lanterman Act. As a result, ACRC established that RCEB's original determination that claimant has a condition that qualifies her for regional center services under the Lanterman Act was clearly erroneous.

6. Accordingly, claimant does not have a developmental disability as defined by the Lanterman Act and is no longer eligible for regional center services.

ORDER

Claimant's appeal from Alta California Regional Center's denial of eligibility for continued services is DENIED. Claimant is not eligible for continued regional center services under the Lanterman Act. The determination by Alta California Regional Center

to deny continued eligibility is SUSTAINED.

DATED: June 21, 2018

MARCIE LARSON

Administrative Law Judge

Office of Administrative Hearings

NOTICE

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