BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: CLAIMANT, vs. WESTSIDE REGIONAL CENTER, Service Agency.	OAH Case No. 2018041257

DECISION

Cindy F. Forman, Administrative Law Judge, Office of Administrative Hearings, heard this matter on December 17, 2018, in Culver City, California.

Lisa Basiri, Fair Hearing Coordinator, represented Westside Regional Center (WRC or Service Agency).

Joel M. Simon, Attorney at Law, represented claimant as conservatee, on behalf of claimant's co-conservators. Both claimant and her parents were present during the hearing.[1] Claimant was accompanied by a representative from the Authentic Recovery Center (ARC), a drug and alcohol residential treatment center to which claimant had been recently admitted.

Oral and documentary evidence was received at the hearing. The record was closed and the matter was submitted for decision at the close of the hearing.

[1] Descriptors have been used to protect the privacy of claimant and her family.

ISSUE

Is claimant eligible for regional center services and supports under the qualifying fifth category, a disabling condition closely related to intellectual disability or requiring treatment similar to that required for individuals with an intellectual disability?

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FINDINGS OF FACT

JURISDICTIONAL FACTS

1. Claimant is a 29-year-old female. She suffered a traumatic brain injury (TBI) when she was 11 years old. Her family initially sought regional center services for her from Service Agency in 2002, but their request was denied. In seeking regional services again, claimant's family believes her current condition is best explained as a "fifth category" condition, i.e., a disabling condition closely related to intellectual disability or requiring treatment similar to that required for individuals with intellectual disability. Claimant's family believes claimant will benefit from the professional services available through WRC because they will improve her self-care and assist her to live independently.

2. On March 19, 2018, WRC issued a Notice of Proposed Action and accompanying letter informing claimant of her ineligibility for regional center services because she did not have an eligible disability that was substantially disabling within the meaning of the Lanterman Act. (Exhibit 1.) The letter suggested that claimant's needs might be addressed through mental health services.

3. On April 19, 2016, claimant's attorney filed a Fair Hearing Request on claimant's behalf, appealing WRC's eligibility denial and requesting a hearing. (Exhibit 3.) The Fair Hearing Request stated claimant was entitled to regional center services on the following grounds: "Claimant was denied eligibility and assessed with ADHD [Attention Deficit Hyperactivity Disorder]; however Claimant has Traumatic Brain Injury (TBI) and has

had hemorrhages in her frontal lobe, which is consistent with TBI. Claimant's mother believes Claimant should be eligible under the "Fifth Category" of Regional Center Eligibility, as she has organic brain disorder and requires treatment similar to a person with intellectual disability and meets criteria with DSM-V." (Exhibit 2.)

4. On June 4, 2018, WRC held a "first level appeal" of its March 19, 2018 decision. One of claimant's sisters, as claimant's co-conservator, attended. At the appeal, Mary E. Rollins of WRC reviewed all assessments and other materials in claimant's case file. Ms. Rollins upheld WRC's determination that claimant is not eligible for regional center services. According to Ms. Rollins, claimant's "intellectual and academic functioning level do not qualify her for services under the fifth category." (Exhibit 3.) This hearing ensued.

CLAIMANT'S HISTORY

5. Claimant was born full-term with no complications. She was raised by her two parents and has three sisters. Claimant's development and health were unremarkable until she was 11 years old, when claimant developed Idiopathic Thrombocytopenic Purpura (ITP), resulting in a low platelet count and bruising on the skin. In July 2000, as a complication of her ITP, claimant suffered an intracranial hemorrhage, which required brain surgery. During the surgery, claimant suffered two strokes and brain damage to her frontal lobe.

6. Following the hemorrhage and surgery, claimant was left significantly delayed in all areas and spent approximately 10 weeks at Miller Children's and Women's Hospital in intensive rehabilitation. Claimant had to re-learn everything, including how to sit, stand, walk, and talk. Claimant regained almost all of her lost skills; she has no residual physical effects from the hemorrhage and surgery except for a mild weakness on one side of her body.

7. Secondary to the surgery, claimant was left with several disabilities including "poor behavior and impulse control, along with difficulty with cognition and problem

solving," as reported by her then treating neurologist. (Exhibit 11, p. 1.) Claimant's parents reported that her personality significantly changed after the surgery, and claimant became more volatile and argumentative. Claimant was also diagnosed with Attention Deficit Hyperactivity Disorder (ADHD). Although claimant was a good student before the surgery, post-surgery claimant was forced to change schools because she could no longer keep up academically and her conduct was distracting to other students.

8. At claimant's new school, she was found eligible for special education services under the TBI and specific learning disability categories and was ultimately placed in a special day program. The school recommended DIS (Designated Instructional Service) counseling of 30 minutes per week to help claimant deal with frustrating and difficult situations. The school also provided a 1:1 aide and several other accommodations to help claimant meet grade level standards, including preferential seating, small class sizes, and extra time on exams. Claimant's aide performed several functions: she helped claimant to get to class on time, made sure she did not get lost, and helped control claimant's verbal outbursts and stay out of trouble amongst her peers. The aide also provided academic support by breaking up claimant's assignments into small increments.

9. Claimant attended San Pedro Senior High Marine Science Magnet School. While there, she spent 36 percent of her time in special education classes. Claimant received A's and B's in several substantive classes, including Advanced Applied Math, U.S. History, Contemporary Composition, and Principles of American Democracy. Claimant also received satisfactory or excellent marks in work habits and cooperation in all of her classes. According to her 2006 Individualized Education Plan (2006 IEP (Exhibit 9)) prepared in her junior year in high school, most of claimant's academic skills were between the eighth and ninth grade level, except for spelling, which was considerably higher. The 2006 IEP noted that claimant's test scores and work habits appeared to vacillate with her moods. (Exhibit 9, p. 4.)

10. The 2006 IEP as well as claimant's 2007 IEP (Exhibit 8), prepared during claimant's senior year of high school, both note claimant's processing deficits and her difficulties coping with frustrating situations in a socially appropriate manner. In addition to the accommodations detailed in Factual Finding 8, the IEP team recommended that claimant be given more difficult lessons and more challenging tasks. (Exhibit 9, p. 20.) Nothing in either IEP suggests that claimant suffers from intellectual disability.

11. Claimant graduated high school with a diploma, after meeting all of her course credit requirements and passing the CAHSEE exam on her second attempt with the help of a calculator. Claimant failed to meet the 350 passing score for CAHSEE on her first attempt, scoring 347 on the math portion and 323 on the language arts portion. On her second attempt, claimant was able to improve her scores, obtaining a 354 in math and 365 in language arts. Claimant was permitted to use a calculator on the test because it allowed her to focus on being engaged in problem solving that required advanced math processes. Claimant's mother testified that she enrolled claimant in a special class to help her pass the test, and she regularly reviewed the required subject areas with claimant so that the information would be retained in claimant's long-term memory.

12. After graduating high school, claimant has not been able to support herself or live independently. Claimant enrolled in El Camino College and Southwest College, but she never went to class. She instead began working at Subway, making sandwiches. Claimant held this job for two to three days before she quit. According to claimant, she had a hard time remembering the ingredients for the sandwiches. She has not worked since; she receives Social Security benefits for financial support which is paid to claimant's mother and also receives medical benefits through Medi-Cal.

13. Claimant resides with her mother and father, although their relationship is strained. Claimant spends more time in the homes of her friends, and typically only comes home about two days a week. Claimant is vague about where she is going and what she

does during the day. She is known to wander the streets and live in abandoned housing. When claimant comes home, she is often dirty and odorous because she does not take showers or wash her clothes when she is away. Her hygiene is generally poor. According to claimant's mother, claimant is vulnerable to the attention of strangers, is known to give her money away, and hangs out with people who take advantage of her. Claimant does not know how to handle money, and she does not cook. She is impulsive and often tells stories about her actions. Claimant does not drive; she gets around the community by walking and taking the bus or train. Her mother believes that claimant is more impaired in her daily functioning than her sister who suffers from Down's syndrome.

14. Claimant has difficulties with short-term memory. She sometimes starts the shower, but then does not enter it. She has difficulty recounting recent experiences. She also has trouble concentrating on things, such as reading a newspaper or watching television.

15. Claimant has a nine-year-old son. Her parenting rights, however, have been terminated because she was not able to provide her son child with proper care. Claimant's parents are her son's legal guardians and primary caretakers. Claimant does not look after her child, and her visits with him tend to be inconsistent.

16. In 2010, the court appointed claimant's mother and one of claimant's sisters to be claimant's co-conservators. The appointment was based in part on a declaration by claimant's physician, Priti R. Sahgal, M.D., of claimant's incompetency. Dr. Sahgal found claimant to suffer major impairments in her ability to reason using abstract concepts as well as in her ability to plan, organize, and carry out actions in her own rational self-interest. Dr. Sahgal also found claimant to be moderately impaired in her ability to concentrate, to remember long term, to comprehend questions and follow instructions, and to perform simple calculations. According to Dr. Sahgal, claimant's TBI impacted her ability to "self regulate and respond appropriately to life situations or circumstances.

[Claimant] also has difficulty and is unable to [make] decisions in her own interest." (Exhibit D.)

17. a. Over the past several years, claimant has suffered from substance abuse issues. According to claimant's mother as reflected in claimant's medical records, claimant was in the hospital emergency room at least twice because she passed out from drug use. (Exhibit 7, pp. 8, 18.) Claimant has smoked marijuana and used methamphetamines. (*Id.*, at pp. 5, 8.) Because of her drug use, claimant has been placed by her relatives in three different substance abuse rehabilitation programs. Claimant was not able to complete the first two programs entirely. She left the first program before it was complete, and she was asked to leave the second program because she was not following the curriculum. Claimant began re-using drugs after she left the program.

b. Claimant is currently participating in a residential substance abuse treatment program operated by ARC. Claimant enrolled in the ARC program on November 24, 2018; her scheduled discharge date is December 23, 2018. ARC specializes in the treatment of adults who experience substance abuse, chemical dependency and/or behavioral issues correlated to a substantiated psychiatric diagnosis compounded by the aforementioned conditions. (Exhibit E.) As part of her treatment at ARC, claimant is required to participate in recovery activities, individual sessions with a case manager and a primary therapist, group sessions, educational addiction classes, relapse–prevention, daily 12-step meetings, and weekly sessions with a psychiatrist. (*Ibid.*) Claimant attended the hearing accompanied by an ARC counselor; she is not permitted to leave the facility unaccompanied. After release, claimant expects to move to a sober living facility operated by ARC.

18. After the surgery, claimant took Clonidine to help her to calm down and assist with her restlessness and impulsivity. Claimant was prescribed Nuedexta and other medication to treat her ADHD, but claimant has refused to take them. Currently, claimant

does not take any drugs to address her ADHD or any other psychological or psychiatric condition. Other than the therapy she receives at ARC, claimant receives no psychological counseling. Although she was once under the care of a psychiatrist, claimant stopped because, according to claimant's mother, claimant felt she did not need such care. (Exhibit 7, p. 26.)

19. Claimant has no history of anxiety or psychotic symptoms, including auditory hallucinations or delusional beliefs. Other than her brain hemorrhage and surgery in 2000, claimant has not suffered from any other significant medical problems. She is not prescribed routine medication to treat any physical condition.

ASSESSMENTS OF CLAIMANT'S COGNITIVE ABILITIES AND FUNCTIONING

20. Claimant has been evaluated three times to determine whether she is eligible for regional center services. In connection with claimant's earlier request for services in 2002, WRC conducted a psychological evaluation and a physical examination as well as reviewed claimant's records. In response to claimant's recent request for services, WRC conducted a psychological evaluation, a psychosocial assessment, and reviewed claimant's educational records. Claimant retained a psychologist in 2018 who also conducted a psychological evaluation.

2002 Evaluation by Service Agency

21. In 2002, Carol Kelly, Ed.D., a licensed psychologist, administered to claimant the Wechsler Intelligence Scale for Children III (WISC-3), the Wide Range Achievement Test – 3 (WRAT-3), and Vineland Adaptive Behavior Scales. (Exhibit 11.) Claimant was 13 years of age at the time. The results of the tests were as follows:

- On the WISC-3, claimant's cognitive ability fell within the low-average to borderline range. Her Full Scale Intelligence Quotient (FSIQ) was 76. An analysis of individual subtests revealed significant inter-test scatter. Claimant scored in

the average range on the Coding subtest, which measures perceptual skills and ability to sequence, in the low-average range on the Information and Comprehension subtests, which measure long-term memory, verbal facility and ability, and social observation, and in the extremely low range on the Picture Completion test, indicating some incapability in concentration as well as an inability to note detail.

- Claimant's academic skills fell within the low-average range of ability. She performed at a sixth grade level in reading, spelling, and arithmetic.
- With respect to adaptive skills, claimant's communication skills were found to be in the low-average range while her daily living skills and socialization skills fell within the mildly delayed range. Dr. Kelly opined that claimant's difficulty with daily living skills was a result of claimant's attentional problems. She noted that claimant's family reported claimant often takes forever to complete a task and will "drift off" in the middle of a task. Claimant's family also noted that claimant had difficulty controlling angry or hurt feelings and that claimant argued frequently. Dr. Kelly opined that claimant had "higher potential" in improving her socialization skills if some of her behavioral issues could be addressed.

22. Based on her observation of claimant and her review of claimant's records and test scores, Dr. Kelly determined that claimant suffered from ADHD and her lower test scores were due to problems associated with ADHD. (Exhibit 11, p. 4.) Dr. Kelly also noted that claimant's "poor behavior and impulse control" had impacted her functioning level at home and at school. (*Ibid.*) Dr. Kelly's diagnostic impressions, based on the Diagnostic and Statistical Manual of Mental Disorders, volume 4 (DSM-IV)[2], were ADHD, combined type, and borderline intellectual functioning (with high potential indicated). She recommended

[2] See footnote 4, *infra*, for a description of the DSM-IV.

claimant be referred to a regional center to determine eligibility, the continuation of appropriate school placements to address claimant's educational and behavioral needs, and that claimant's parents be referred to a program that would assist them in learning to manage and structure the home environment to address claimant's ADHD symptoms. (*Ibid.*)

23. Dr. Ari Zeldin, a pediatric neurologist and a WRC consultant, also examined claimant in response to her 2002 request for regional center services. He found that claimant was able to read, had reasonably good math skills, and was fully verbal and able to express of her needs and wants with no difficulty. According to Dr. Zeldin, claimant understood and was able to comply with complex multistep directions. Dr. Zeldin also noted that claimant's speech was neither pressured nor tangential. Dr. Zeldin believed that claimant might have mild developmental delays. (Exhibit 12.)

24. Janet Wolf, Ph.D., a licensed clinical psychologist and part of the WRC interdisciplinary team reviewing claimant's 2002 request, conducted a chart review of claimant's records. She found that claimant did not perform in the range of intellectual disability, writing: "It does not appear that she would be appropriate for treatment similar to that need by individuals with [intellectual disability]. The data supports the school's classification of learning disability and traumatic brain injury (contributing to impulsivity)." (Exhibit 13.)

25. WRC wrote a letter to claimant's parents on May 21, 2002, stating that claimant was not eligible for regional center services based on claimant's psychological evaluation, neurological evaluation, and school records. (Exhibit 14.) However, notwithstanding the letter, the WRC Eligibility Sheet, which reflects the eligibility committee's determinations as of May 16, 2002, shows that the "yes" box for eligibility is checked. (Exhibit 10.) The Eligibility Sheet does not explain why the "yes" box has been checked, and the diagnosis notes on the Sheet do not support a finding of eligibility for

regional center services. The diagnosis notes from Dr. Zeldin state: "patient underwent history and physical w/t me on 5/1/02; her ITP and stroke and [language deficits] now largely resolved, does not have CP/Epilepsy; not eligible from medical perspective"; the diagnosis note from Dr. Wolf states: "Borderline cognitive functioning with scatter upwards per Dr. Kelly." WRC could not provide any explanation for the discrepancy between its May 21, 2002 letter to claimant's parents and the Eligibility Sheet marking. Claimant did not appeal regional center's May 21, 2002 denial of eligibility.

2018 Evaluation by Service Agency

26. Claimant's family sought regional center services again in January 2018 because claimant "cannot take care of her basic needs." (Exhibit 6, p. 1.) WRC retained Rebecca R. Dubner, Psy.D., to conduct a psychological assessment of claimant in response to claimant's request. (Exhibit 5.) On January 29, 2018, Dr. Dubner administered the Wechsler /Adult Intelligence Scale – Fourth Edition (WAIS-4) to measure claimant's cognitive ability, employing the use of both verbal and performance-based tasks. The WAIS-4 consists of four index scales: the Verbal Comprehension Index (VCI), which measures verbal reasoning ability; the Perceptual Reasoning Index (PRI), which measures nonverbal reasoning ability; the Working Memory Index (WMI), which measures mental control and short-term memory manipulation; and the Processing Speed Index (PSI), which measures cognitive processing efficiency. A combination of these tasks yielded a FSIQ score of 82 in the Low Average Range for claimant.

27. Consistent with the 2002 WISC-3 results, claimant's scores on the individual index scales reflected significant scatter. Claimant scored at the upper end of the Low Average Range on the VCI and PRI scales with scores of 89 and 88, respectively, and in the Low Average Range on the PSI scale with a score of 92. However, on the WMI scale, which represents claimant's ability to comprehend and hold information in immediate awareness, manipulate the information, and produce a result, claimant scored in the Extremely Low Range with a score of 69.

28. Dr. Dubner administered the Wide Range Achievement Test-Fourth Edition (WRAT-4) to measure claimant's basic academic skills of word reading, sentence comprehension, spelling, and math computation. Scores on each subtest of the WRAT-4 have a mean of 100 and a standard deviation of 15. Claimant's word reading score (87) placed her in the Below Average range, equivalent to an 8.9 grade level. On the spelling subtest, claimant scored in the Average Range (96), equivalent to a 12.2 grade level. On the Math Computation subtest, claimant obtained a Low Average score (85), equivalent to a 6.5 grade level. According to Dr. Dubner, claimant had no difficulty staying on topic for the duration of the subtests and put considerable effort toward trying to answer most of the math problems.

29. Dr. Dubner administered the Vineland Adaptive Behavior Scales, Second Edition (VABS-2), to one of claimant's sisters to measure claimant's adaptive functioning, i.e., the practical everyday skills required in order to function and negotiate environmental demands. According to Dr. Dubner, the VABS-2 measures 11 skill areas that are used to determine an Adaptive Behavior Composite Score and four domain-skill area classification scores based on claimant's age group: Communication (receptive and expressive); Daily Living Skills (personal, domestic, and community); Socialization (interpersonal relationships, play and leisure time, and coping skills); and Motor Skills (gross motor and fine motor).

30. The results of the VABS-2 indicate that claimant's overall adaptive functioning fell within the low (mild) range with an Adaptive Behavior Composite Score of 51. Claimant's Communication Skills fell within the low (severe) range (score of 29); her

Daily Living Skills fell within the low (mild) range (score of 52); and, her Socialization Skills fell within the moderately low range (score of 71).[3] Claimant's sister reported as follows:

- In the Communication Skills area, claimant sometimes follows instructions with two or three actions; sometimes follows instructions told five minutes before; sometimes can move easily from one topic to another; sometimes can explain ideas in more than one way; sometimes sustains a conversation that lasts ten minutes; sometimes can say her own telephone number; sometimes can write reports, papers or essays at least one page long; and sometimes can write simple correspondences at least three sentences long.
- Regarding Daily Living Skills, claimant is able to bathe herself but often needs reminders and does not seem to do a thorough job. Claimant sometimes washes or dries her hair; sometimes uses household products correctly; sometimes is able to prepare foods and to use the stove or oven; and, sometimes travels at least 5 to 10 miles to a familiar destination. Claimant never cares for minor cuts; she cannot take medication as directed; she is not able to use a thermometer to check her own temperature; she never washes clothing; she never evaluates quality and price when selecting items to purchase; and she has never used a checking or savings account appropriately.
- Socially, claimant is able to start small talk, meets with friends regularly, and goes places with friends without adult supervision. She can sometimes plan fun activities with more than two things to be arranged, follow rules, and show good sportsmanship. Claimant is not able to control her anger or hurt feelings when

[3] Claimant's Motor Skills do not appear to have been included in the VABS-2 administered to claimant's sister or in the calculation of claimant's Adaptive Behavior Score.

she does not have her way. Nor does claimant stop or stay away from situations or relationships that are hurtful or dangerous. Claimant does not think about the potential consequences of her decisions.

31. Based on the foregoing tests and her observation of claimant, Dr. Dubner found that claimant presents as an adult "with working memory and adaptive deficits likely secondary to her medical condition." She diagnosed claimant with Mild Neurocognitive Disorder Due to Traumatic Brain Injury (with behavioral disturbance) under the DSM-V.[4] Dr. Dubner recommended that claimant would benefit from assistance with independent living and participating in a vocational program that provides her with the opportunity to learn skills that will increase her chances of finding employment. (Exhibit 5, p. 5.)

[4] All citations to the DSM-V are to the American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition. The Diagnostic and Statistical Manual of Mental Disorders (DSM) is a generally-accepted manual listing the diagnostic criteria and discussing the identifying factors of most known mental disorders. Since 1917, the predecessor of the American Psychiatric Association has developed and published standards for and nomenclature of mental disorders. The American Psychiatric Association Committee on Nomenclature and Statistics developed and published the first edition of Diagnostic and Statistical Manual: Mental Disorders (DSM-I) in 1952. Subsequent editions were the DSM-II, DSM-III (1980), DSM-III-R (1987), DSM-IV (1994), and DSM-IV-TR (2000). The most recent edition is the DSM-V, published in May 2013. At hearing, the Administrative Law Judge took official notice of the history and contents of the DSM-V, without objection from the parties, as a highly respected and generally accepted tool for diagnosing mental and developmental disorders.

32. Dr. Kaely Shilakes, Psy.D., WRC's Chief Psychologist, testified on behalf of the Service Agency. Dr. Shilakes has never met claimant; however, she reviewed all of the information reviewed and considered by the WRC interdisciplinary team in determining claimant's eligibility for regional center services. Based on her review of these materials, Dr. Shilakes agreed with the team's conclusion that claimant was ineligible for WRC services. She testified that the scatter in claimant's scores did not reflect the global deficits typically observed in individuals suffering from intellectual disability. Dr. Shilakes also testified that claimant's poor working memory scores might be affected by her ADHD and her TBI. In addition, she noted that claimant's WRAT-4 scores and the academic grades noted in her IEP's were not consistent with a fifth category condition. According to Dr. Shilakes, claimant's VABS-2 scores indicated that claimant was capable of carrying out tasks, but needed reminders to do so. Dr. Shilakes acknowledged that claimant was substantially disabled in the self-care, communication, and self-direction areas, but she contended that claimant's disability was not caused by a fifth category condition but instead was attributable to claimant's ADHD, impaired mental health as a result of her TBI, or substance abuse.

Evaluation by claimant's psychologist

33. Claimant was evaluated by Gary Freeman-Harvey, Ph.D., a psychologist with more than 28 years of training in the area of mental capacity evaluations for the court system. Dr. Freeman-Harvey was requested by claimant's attorney to provide his opinion regarding claimant's current mental status and functioning relative to regional center eligibility. Dr. Freeman-Harvey testified at the hearing, and his report of his visits with claimant (Exhibit A.) was admitted into evidence.

34. Dr. Freeman-Harvey met with claimant and her family twice. He administered to claimant the Kaufman Brief Intelligence Test (K-BIT) and the Vineland

Adaptive Behavior Scales, Third Edition (VABS-3). Dr. Freeman-Harvey did not administer to claimant any educational achievement tests.

35. Claimant scored a composite score of 81 (± 5) on the K-BIT, in the below average to well below average range. On the vocabulary subtest she scored 86 (± 5) and on the matrices subtest she scored 79 ((± 7). No further analysis of the scores or the subtests was provided. The K-BIT scores were comparable to those obtained by Dr. Dubner, and according to Dr. Freeman-Harvey, "*initially* appear to be above the cut-off score for eligibility for routinely relied upon by Regional Center." (Exhibit A, p. 9 (p. 6 of report).) Dr. Freeman-Harvey contends, however, that claimant's FSIQ score is artificially high because of the Flynn Effect, which accounts for a general trend of increased IQ scores over time, approximately 0.3 points per year. Because the K-BIT was normed in 1990 and the WAIS-4 was normed in 2009, Dr. Freeman-Harvey believes that claimant's adjusted FSIQ could be low as 74 points after deducting the 0.3 point increase, although he also conceded that he did not know if the Flynn Effect could be extrapolated to the particular test results obtained by one person.

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36. Claimant's score on the Adaptive Behavior Composite of the VABS-3, based on Dr. Freeman-Harvey's interview with claimant's mother, was 57 (Low), corresponding to a percentile rank of less than one. The Adaptive Behavior Composite score was based on the same domains that comprise the VBAS-2 administered by Dr. Dubner: in the Communication domain, claimant received a score of 36 (Low), corresponding to a percentile rank of less than one; in the Daily Living Skills domain, claimant received a score of 49 (Low), corresponding to a percentile rank of less than one, and in the Socialization domain, claimant received a score of 81 (Moderately Low), corresponding to a percentile rank of 10. Claimant's lowest score was in the Receptive

subdomain, part of the Communication Domain. The Receptive subdomain assesses attending, understanding, and responding appropriately to information from others.

37. In response to the VABS-3 interview, claimant's mother indicated claimant has significant difficulty following instructions and paying attention to a story for at least 15 minutes. She is unable to perform the following tasks: pay attention to a show for at least 30 minutes, follow instructions requiring three actions, pay attention to a 15-minute informational talk, and remember to do something up to an hour later.

38. The VBAS-3 also indicated that claimant suffered from certain maladaptive behaviors. According to claimant's mother, claimant sometimes wanders away without regard for safety and she is sometimes tricked into doing something that could cause harm. According to Dr. Freeman-Harvey, these maladaptive behaviors underscore claimant's vulnerability and her increased risk in the community without supervision. (Exhibit A, p. 9 (p. 6 of report).)

39. (a). Dr. Freeman-Harvey, both in testimony and his report, stressed claimant's lack of self-care and attentional issues. Dr. Freeman-Harvey testified that claimant lacked the ability to follow through on tasks because of her attentional issues, and there was a disconnect between claimant and her environment. In his report and testimony, Dr. Freeman-Harvey noted claimant's strong body odor during his visits. He said that claimant told him that after the interview she planned to shower and dress before going out of the house. However, claimant never showered and left the house in the same clothes.

(b) Dr. Freeman-Harvey described claimant's attentional issues as follows:

> During the interview, [claimant] either drew or wrote things on paper, or got up to leave the room, apparently without a goal or purpose, only to be called back to the interview. Sometimes she cooperated, and other times she resisted the

> redirection of her mother or other family members. [Claimant] was clearly limited in her attentional abilities. She has impaired memory in terms of recent experiences which she recalled with only vague detail and she initiated purposeless activities, seemingly too attentive to be able to carry out plans. [¶] During the administration of K-BIT I found [claimant] to be responding with good effort but was frequently distracted by environmental factors. She was attentive to the test but vigilant to changes inside her home which had at least [two] other adults and one infant in the greater part of the living room.
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> [¶] . . . [¶]
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> Many of the questions I asked directly to [claimant] needed repetition. She was having difficulty with sustained attention over a short period of time. This was consistent with her movement around and in/out of the room, apparently without goal or purpose, suggestive of behaviors after traumatic brain injury.

(Exhibit A, pp. 6, 7 (pp. 3, 4 of report).)

40. Dr. Freeman-Harvey also noted claimant's problems with receptive language. He believed that claimant had difficulty hearing or connecting the words she heard. He testified that claimant's weakness in receptive language made it difficult for claimant to focus on tasks. Dr. Freeman-Harvey believed that there was a gap in comprehension because of claimant's brain trauma. He acknowledged that claimant's

attentional deficits contributed to claimant's inability to complete tasks but he also testified that the problem appeared to be conceptual.

41. Based on his testing and his observations, Dr. Freeman-Harvey found that "A combination of disruption of intellectual development related to traumatic brain injury, along with associated attention and concentration limitations and behavioral disinhibition previously diagnosed as ADHD, have disrupted [claimant] from accomplishing her expected, age-related levels of functioning." (Exhibit A, p. 10 (page 7 of report).) He diagnosed claimant with Intellectual Disorder, moderate with an extrapolated IQ more or equal to 74 and Attention Deficit Disorder (per records). (*Ibid.*) Dr. Freeman-Harvey noted that an IQ score that could be below 75 would not be unreasonable for claimant. (*Ibid.*)

42. Dr. Freeman-Harvey was unaware of claimant's history of substance abuse when he conducted his evaluation. However, Dr. Freeman-Harvey testified that while some of the VBAS-3 results could have been affected by substance abuse, he did not get the sense that substance abuse had a strong impact on claimant's abilities. He also noted that claimant was not under the influence of drugs when he interviewed her.

43. According to Dr. Freedman-Harvey, claimant needs an institutional group home setting with an environment that would reinforce claimant's self-directed goals. The group home setting would have a treatment plan that would apportion claimant's time and help her recognize and address distractions. In his report, Dr. Freedman-Harvey also notes that claimant requires "interdisciplinary planning and coordination to avoid exploitation or loss of resources" as well as "independent skills training and supervision with long-term monitoring." (Exhibit A., p. 12 (p. 9 of report).) His report asserts that claimant would benefit from many of the types of treatment identified in *Samantha C. v. Department of Developmental Services* (2010) 185 Cal.App.4th 1462, 1478, including: "1) self-help and independent living skill training, including cooking,

cleaning, money management, and public transportation use; (2) service coordination and management; (3) information and referral services; (4) generic or special social or recreational services; (5) generic or special rehabilitative or vocational training; (6) specialized residential care or supported living services for those not living with family; (7) supported employment; (8) supported or semi-independent living arrangements; (9) day activity program services for those who do not work; (10) mobility training, including transportation education; (11) specialized skill development teaching methods; (12) behavioral training and behavior modification programs; (13) financial oversight, reading, and writing support services; and (14) publications that translate complex information into manageable units."

ADDITIONAL EVIDENCE

44. Claimant testified at the hearing. She appeared well-groomed, clean, and alert. Claimant listened attentively to the questions posed, did appear to be distracted, and her answers were responsive. As of the hearing date, claimant had been residing at the ARC facility for two weeks, and she appeared to be functioning well under the program. She has a schedule every day, and she consults with staff if she has any questions.

45. Claimant testified regarding her memory difficulties. According to claimant, she has a hard time remembering things. She has difficulty handling money and could not work because she could not remember what she was supposed to do. Claimant testified she did not take showers because there was always something else she wanted to do. She testified clearly and correctly as to the steps she needed to take a shower, but acknowledged that she sometimes would forget to do so.

46. Claimant's mother testified regarding claimant's changes since her brain surgery. According to claimant's mother, claimant was quiet and respectful before her surgery, but now is volatile and difficult. Claimant's mother does not know of her

daughter's whereabouts most of the time; she testified her daughter lives in abandoned houses and hangs around with dangerous people.

47. Claimant's mother believes claimant is doing well in the ARC program because the program is designed for people who suffer from a dual diagnosis and addresses her daughter's substance abuse as well as her psychiatric issues.

EVALUATION OF EVIDENCE OF FIFTH CATEGORY ELIGIBILITY

48. The assessment of whether claimant suffers from a fifth category condition requires consideration of both prongs of potential fifth category eligibility, i.e., whether claimant suffers from a disabling condition found to be closely related to intellectual disability or whether claimant requires treatment similar to that required for individuals with intellectual disability. (Welf. & Inst. Code § 4512, subd. (a).)

49. In *Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, the appellate court held that "the fifth category condition must be very similar to [intellectual disability], with many of the same, or close to the same, factors required in classifying a person as [intellectually disabled]. Furthermore, the various additional factors required in designating an individual developmentally disabled and substantially handicapped must apply as well." (*Id.*, at p. 1129.) It is therefore important to track factors required for a diagnosis of intellectual disability when considering fifth category eligibility.

50. Both parties' conclusions are guided, in part, by the DSM-V discussion of intellectual disability. The DSM-V states in pertinent part as follows:

> Intellectual disability (intellectual developmental disorder) is a disorder with onset during the developmental period that includes both intellectual and adaptive functioning deficits in conceptual, social, and practical domains. The following three criteria must be met:

A. Deficits in intellectual functions, such as reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience, confirmed by both clinical assessment and individualized, standardized intelligence testing.
B. Deficits in adaptive functioning that result in failure to meet developmental and sociocultural standards for personal independence and social responsibility. Without ongoing support, the adaptive deficits limit functioning in one or more activities of daily life, such as communication, social participation, and independent living, across multiple environments, such as home, school, work, and community.
C. Onset of intellectual and adaptive deficits during the developmental period

[¶] . . . [¶]

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

Criterion A refers to intellectual functions that involve reasoning, problem solving, planning, abstract thinking, judgment, learning from instruction and experience, and practical understanding. Critical components include verbal

comprehension, working memory, perceptual reasoning, quantitative reasoning, abstract thought, and cognitive efficacy. Intellectual functioning is typically measured with individually administered and psychometrically valid, comprehensive, culturally appropriate, psychometrically sound tests of intelligence. Individuals with intellectual disability have scores of approximately two standard deviations or more below the population mean, including a margin for measurement error (generally +5 points). On tests with a standard deviation of 15 and a mean of 100, this involves a score of 65-75 (70 ± 5). Clinical training and judgment are required to interpret test results and assess intellectual performance.

Factors that may affect test scores include practice effects and the "Flynn effect" (i.e., overly high scores due to out-of-date test norms). Invalid scores may result from the use of brief intelligence screening tests or group tests; highly discrepant individual subtest scores may make an overall IQ score invalid. . . . Individual cognitive profiles based on neuropsychological testing are more useful for understanding intellectual abilities than a single IQ score. . . .

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 socio-cultural 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 s*ocial 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 tasks 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…

> [¶] . . . [¶]
>
> 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, at work, at home, or in the community. To meet the diagnostic criteria for intellectual disability, the deficits in adaptive functioning must be directly related to the intellectual impairments described in Criterion A.

(DSM-V, pp. 37-38, italics in original.)

> first prong: does claimant suffer from a disabling condition found to be closely related to intellectual disability

51. Although each of claimant's evaluations note certain intellectual and adaptive deficits, there is insufficient evidence to establish that claimant's disabling condition is similar to intellectual disability. The DSM-V provides that the "essential feature" of intellectual disability is significantly sub average general intellectual functioning, which it defines as an FSIQ of about 70 or below. Claimant's recent WAIS-4 and K-BIT testing indicate that claimant's *overall* intellectual functioning is in the low average to well below average range. (Factual Findings 26, 27, and 35.) Although claimant scored in the borderline range in 2002, Dr. Kelley indicated that claimant's scores were adversely affected by her attentional issues and poor impulse control. (Factual Findings 21 and 22.) Claimant did not demonstrate that her poor short term memory function was sufficient by itself to establish a disabling condition related to intellectual disability. As Dr. Shilakes testified, individuals who suffer from intellectual disability show consistent, relatively low-

level functioning across all domains, and claimant's WISC-4 scores did not reflect such consistent low-level functioning. (Factual Finding 32.)

52. Claimant's educational records also undercut claimant's assertion that she suffers from a disabling condition similar to intellectual disability. According to those records, claimant was not identified as a student suffering from intellectual disability; claimant was deemed eligible for special education because of a learning disability and her TBI. Her IEP's also reflect that claimant was able to excel in her classes and to graduate high school with a diploma. The IEP team advocated making claimant's classes more challenging, not less. The presence of a 1:1 aide to ensure claimant stayed on task does not detract from claimant's academic achievement, as the aide was present to keep claimant on task. While the aide did break down academic tasks into smaller components, there was no evidence that the aide tutored claimant or performed claimant's actual work; indeed, claimant passed the CAHSEE test without her aide's assistance. (Factual Findings 8 through 11.) In addition, claimant's academic achievement scores as reflected on the WRAT-4 far exceed those of a person suffering from intellectual disability.

53. Claimant's assertion that her FSIQ score is actually as low as 74 because of the Flynn Effect is speculative and therefore unpersuasive. Although the two intelligence tests recently administered to claimant were normed at least ten years ago, there was no evidence that the norms for those two tests were in fact no longer applicable or what the gain in IQ points would be for those particular tests if the norms were out-of-date. Nor was there any evidence demonstrating how the Flynn Effect would apply to claimant's scores; Dr. Freeman-Harvey acknowledged that he did not know if the Flynn Effect could be extrapolated to individual test scores. (Factual Finding 35.) Dr. Freeman-Harvey's knowledge of the Flynn Effect appeared to be limited to the two treatises he cited in his report. (Exhibit A, p. 9.) Accordingly, there was insufficient evidence in support of claimant's claim that her FSIQ scores should be adjusted downwards because of the Flynn Effect.

54. The presence of adaptive deficits alone is not sufficient to establish intellectual disability or fifth category eligibility. (*Samantha C.*, *supra*, 185 Cal.App.4th at 1486 [intellectual disability "includes both a cognitive element and an adaptive functioning element" and to "interpret fifth category eligibility as including only an adaptive functioning element" misconstrues section 4512, subdivision (a)].) As set forth in Factual Findings 51 through 53, claimant has not established that she suffers from the kind of general intellectual impairment found in persons with intellectual disabilities. Nor is there sufficient evidence to establish that claimant's adaptive deficits stem from her deficits in working memory. Claimant has the capacity to perform many of the tasks asked of her, and, she demonstrated, by recounting the steps she needed to take a shower in her testimony, that her memory deficits have not necessarily prevented her from completing a task. Instead, the evidence suggests that claimant's untreated ADHD and the loss of executive functioning caused by her TBI are the likely causes of her adaptive deficits. Indeed, Dr. Freeman-Harvey documented multiple times where claimant's attention problems interfered with her completion of tasks (Factual Finding 39), and Dr. Kelly attributed claimant's adaptive skill deficits to claimant's ADHD, impulsivity, and lack of self-control (Factual Findings 21 and 22). In addition, claimant failed to address the effects of her history of substance abuse on her ability to perform tasks. Dr. Freeman-Harvey was unaware when he conducted claimant's psychological evaluation that respondent had a history of drug abuse. (Factual Finding 42.) Accordingly, there was insufficient evidence to establish that claimant's adaptive deficits were directly related to any intellectual impairment, particularly in light of claimant's untreated ADHD, her poor executive functioning, and drug abuse history.

55. Claimant also contended that she was initially found eligible for regional center services in 2002 by WRC, and that she should be considered eligible today based on WRC's 2002 finding. Claimant's contention, however, is not supported by the

evidence. As set forth in Factual Finding 25, while the Eligibility Sheet showed that the yes box for eligibility had been checked, none of the reports or records reviewed by the interdisciplinary committee in connection with claimant's 2002 request for regional center services or the diagnosis notes on the Eligibility Sheet support an eligibility finding. In addition, claimant never appealed WRC's ultimate determination. Thus, the checked box appears to be an anomaly and is given no weight in considering claimant's current request for regional center services.

second prong: does claimant require treatment similar to that required for individuals with intellectual disability

56. Determining whether a claimant's condition "requires treatment similar to that required" for persons with intellectual disability is not a simple exercise of enumerating the services provided and finding that a claimant would benefit from them. Many people, including those who do not suffer from intellectual disability, or any developmental disability, could benefit from the types of services offered by regional centers (e.g., counseling, vocational training, living skills training, or supervision). The criterion therefore is not whether someone would benefit from the provision of services, but whether that person's condition requires treatment similar to that required for persons with intellectual disability, which has a narrower meaning under the Lanterman Act than services. (*Ronald F. v. Dept. of Developmental Services* (*Ronald F.*), (2017) 8 Cal.App.5th 94, 98.)

57. Thus, the broad interpretation by the court in *Samantha C.* of the second prong of a fifth category condition, i.e., what constitutes treatment similar to that required for individuals with intellectual disability, was criticized as contrary to the language and purposes of the Lanterman Act by the court in *Ronald F.*:

The court in *Samantha C.* found the claimant eligible for regional center benefits because she required "treatment"

similar to that required by individuals with [intellectual disability]. In making this determination, the court conflated "treatment" as used in section 4512, subdivision (a), with "services" for persons with developmental disabilities, such as those listed in subdivision (b) of the statute. For example, the court in *Samantha C.* referred to evidence that "clients with [intellectual disability] and with fifth category eligibility both needed 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 services" as well as "undisputed" testimony "that Samantha needed all of these types of *treatment.*" (*Samantha C., supra,* 185 Cal.App.4th at p. 1493, 112 Cal.Rptr.3d 415, italics added.)

The *Samantha C.* court's failure to distinguish between "treatment" and "services" is inconsistent with the plain language of the statute. Section 4512 defines a qualifying "developmental disability" as a disabling condition that requires "treatment similar to that required for individuals with an intellectual disability." (§ 4512, subd. (a), italics added.) The statutory definition does not include disabling conditions requiring similar services.

That the Legislature intended the term "treatment" to have a different and narrower meaning than "services" is evident in

the statutory scheme as a whole. The term "services and supports for persons with developmental disabilities" is broadly defined in subdivision (b) of section 4512 to include those services cited by the court in *Samantha C.,* e.g., cooking, public transportation, money management, and rehabilitative and vocational training, and many others as well. (§ 4512, subd. (b); Samantha C., supra, 185 Cal.App.4th at p. 1493, 112 Cal.Rptr.3d 415.) "Treatment" is listed as one of the services available under section 4512, subdivision (b), indicating that it is narrower in meaning and scope than "services and supports for persons with developmental disabilities."

The term "treatment," as distinct from "services" also appears in section 4502, which accords persons with developmental disabilities "[a] right to treatment and habilitation services and supports in the least restrictive environment. Treatment and habilitation services and supports should foster the developmental potential of the person and be directed toward the achievement of the most independent, productive, and normal lives possible. Such services shall protect the personal liberty of the individual and shall be provided with the least restrictive conditions necessary to achieve the purposes of the treatment, services, or supports." (§ 4502, subd. (b)(1), italics added.) The Lanterman Act thus distinguishes between "treatment" and "services" as two different types of benefits available under the statute.

58. Claimant has not established that her treatment needs are similar to and targeted at improving or alleviating a condition similar to intellectual disability, as required by *Ronald F.* According to Dr. Harvey-Freedman, claimant requires a group home setting with close supervision and appropriate modeling to ensure claimant stays self-directed and completes tasks. Dr. Harvey-Freedman also believes that the services identified in *Samantha C.* would be helpful to claimant. (Factual Finding 43.) Yet Dr. Harvey-Freedman's recommendations are not particular to those persons who suffer from an intellectual disability. They also appear to address claimant's ADHD and executive function issues, not any deficit similar to intellectual disability. In addition, claimant's positive experience at the ARC residential facility, which treats individuals suffering from substance abuse and a co-existing psychiatric disorder, demonstrates that claimant does not require a setting directed to individuals suffering from intellectual disability to gain better self-control, improve her self-care, and complete tasks. (Factual Findings 16(b), 44, 47.)

59. Claimant also did not offer any evidence demonstrating she required treatment similar to that required by persons with intellectual disability before she entered adulthood. The special education services claimant received were not based on her intellectual deficits but as a result of a learning disability and her TBI. Claimant's medical or educational records pertaining to her development prior to the age of 18 did not reflect any treatment recommendations based on conditions closely related to intellectual disability. Rather, claimant's IEP's recommended counseling as well as accommodations to deal with claimant's impulsivity, inattentiveness, memory issues, and her inability to deal with frustrating situations.

LEGAL CONCLUSIONS

1. Jurisdiction exists to conduct a fair hearing in the above-captioned matter, pursuant to section 4710 et seq., based on Factual Findings 1 through 4.

2. Because claimant is the party asserting a claim, she bears the burden of proving, by a preponderance of the evidence, that she is eligible for government benefits or services. (See Evid. Code, §§ 115 and 500.) Claimant has not met her burden of proving she is eligible for regional center services in this case.

3. The Lanterman Act is a comprehensive statutory scheme to provide treatment, services, and supports for persons with developmental disabilities. (Welf. & Inst. Code[5] §§ 4500, 4500.5, 4502, 4511.) The term "'[s]ervices and supports for persons with developmental disabilities'" is broadly defined in section 4512, subdivision (b), to include diagnosis, evaluation, treatment, care, special living arrangements, physical, occupational, and speech therapy, training, education, employment, and mental health services.

4. To be eligible for services and treatment under the Lanterman Act, a person must have a "developmental disability," defined in section 4512 as "a disability that originates before an individual attains 18 years of age; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for that individual." (§ 4512, subd. (a).) The statute identifies five categories of disabling conditions that are eligible for services: (1) intellectual disability, (2) cerebral palsy, (3) epilepsy, (4) autism, and (5) "disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability, but shall not include other handicapping conditions that are solely physical in nature." (*Ibid.*)

5. Under the fifth category of disabling conditions specified in section 4512, subdivision (a), a person may qualify for services in two ways: (1) by having a disabling

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[5] All statutory references are to the Welfare and Institutions Code unless otherwise stated.

condition found to be "closely related to" intellectual disability; or (2) by having a disabling condition that requires "treatment similar to" that required by persons with intellectual disability. (§ 4512, subd. (a); *Samantha C., supra*, 185 Cal.App.4th at p. 1492.)

6. To be eligible for services under section 4512, subdivision (a), a person must not only have a qualifying "developmental disability," but that disability must also constitute a "substantial disability for that individual." (§ 4512, subd. (a).) Subdivision (l) of section 4512 defines "substantial disability" as "the existence of significant functional limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person: [¶] (A) Self care. [¶] (B) Receptive and expressive language. [¶] (C) Learning. [¶] (D) Mobility. [¶] (E) Self-direction. [¶] (F) Capacity for independent living. [¶] (G) Economic self-sufficiency." The parties do not dispute that claimant suffers from a substantial disability in at least three areas of major life activity, including self care, self-direction, capacity for independent living, and economic self-sufficiency.

7. In addition to having a condition that meets the foregoing statutory requirements, a claimant seeking fifth category eligibility under section 4512, cannot have a "handicapping condition" that is "solely physical in nature" (§ 4512, subd. (a)) or solely constitutes a psychiatric disorder or a learning disability. (Cal. Code. Regs., tit. 17 (CCR), § 54000, subd. (c).) The excluded conditions are defined in CCR section 54000, subdivision (c):

> (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 [intellectual disability], 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 [intellectual disability].

8. As set forth in Factual Findings 5 through 59 and Legal Conclusions 3 through 7, claimant has not established by a preponderance of evidence that she suffers from a fifth category condition. Although claimant is substantially disabled, insufficient evidence exists to support claimant's claim that she suffers a condition similar to intellectual disability. Her intelligence test and achievement test scores are inconsistent with those of someone suffering from intellectual disability, and claimant failed to establish that her limitations in adaptive functioning were not due to her ADHD, poor impulse control resulting from her TBI, or substance abuse. (Factual Findings 51–54.) Moreover, claimant failed to establish that she requires treatment similar to that required for individuals with intellectual disability or that such treatment was required before she reached the age of 18. (Factual Findings 56–59.) There is little doubt that claimant would benefit from some of the services provided through the regional center system, as many with mental disabilities would, but that is not sufficient for a finding of eligibility for services. As a result, claimant failed to establish, by a preponderance of the evidence, that she is eligible for regional center services under the fifth category.

ORDER

Service Agency's determination that claimant is not eligible for regional center services is sustained. Claimant's appeal of that determination is denied.

DATED:

CINDY F. FORMAN
Administrative Law Judge
Office of Administrative Hearings

NOTICE

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