

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

SOUTH CENTRAL LOS ANGELES REGIONAL
CENTER,

Service Agency.

OAH No. 2018080758

DECISION

Ji-Lan Zang, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on January 22, 2019, in Los Angeles, California.

Karmell Walker, Fair Hearings Manager, represented Service Agency, South Central Los Angeles Regional Center (Service Agency or SCLARC). Claimant's legal guardian represented claimant,¹ who was not present.

Oral and documentary evidence was received, and argument was heard. The record was held open until February 5, 2019, for claimant to submit (1) his most recent special education assessment, (2) his most recent Individual Education Plan, and (3) a letter from his therapist. SCLARC was granted leave until February 12, 2019, to provide a response, if any.

¹ Claimant and his legal guardian are identified by titles to protect their privacy.

On February 8, 2019, after the record had closed, claimant filed and served the following documents: (1) 2015 Triennial Psycho-Education Evaluation (marked as Exhibit A) and (2) November 15, 2018 Academic Assessment Report (marked as Exhibit B). Claimant did not file a letter from his therapist. Although claimant filed Exhibits A and B late, the ALJ, on her own motion, re-opened the record to consider these documents. However, SCLARC was granted leave until February 19, 2019, to provide a response, if any, to Exhibits A and B. On February 19, 2019, not having received a response from SCLARC, the ALJ admitted Exhibit B, but did not admit Exhibit A. Exhibit A is a duplicate of Service Agency's Exhibit 5 and is therefore cumulative.

The record was closed and the matter was submitted for decision on February 19, 2019.

ISSUE

Is claimant eligible to receive regional center services and supports from Service Agency under the Lanterman Developmental Disabilities Services Act (Lanterman Act) based on a claim of intellectual disability, or a condition closely related to intellectual disability or a condition that requires treatment similar to that required for individuals with intellectual disability (commonly known as the "Fifth Category")?

EVIDENCE RELIED UPON

Documents. Service Agency's Exhibits 1-7; claimant's Exhibit B.

Testimony. Laurie McKnight Brown, Ph.D.; claimant's legal guardian.

FACTUAL FINDINGS

PARTIES AND JURISDICTION

1. Claimant is a 17-year-old male. Claimant's legal guardian asked Service Agency to determine whether claimant is eligible for regional center services under the Lanterman Act based on claims of intellectual disability or the Fifth Category.

2. By a Notice of Proposed Action and letter dated July 13, 2018, Service Agency notified claimant that he is not eligible for regional center services. Service Agency's interdisciplinary team had determined that claimant does not meet the eligibility criteria set forth in the Lanterman Act.

3. On August 12, 2018, claimant filed a fair hearing request to appeal Service Agency's determination regarding his eligibility. This hearing ensued.

CLAIMANT'S BACKGROUND

4. Claimant lives in an apartment with his legal guardian, who is his father's first cousin. Other children in the household include claimant's younger sister and the legal guardian's two daughters. Claimant has an older sibling who is currently attending college. He also had an older brother who committed suicide in 2014.

5. From 2003 to 2009, when claimant was three to nine years old, claimant's legal guardian served as his primary caretaker. From 2009 to 2011, claimant's father took custody of claimant along with his siblings. During this three-year period, claimant's father abused and neglected him. Claimant was exposed to domestic violence, drug use, and pornography. He did not attend school for months at a time and was forced to stay in his room. Claimant sometimes traveled with his father and lived out of hotels and vans. Claimant's father was also physically violent, often hitting his son in the chest and slapping him in the face. In 2011, when claimant was 11 years old, the

Department of Children and Family Services (DCFS) returned custody of claimant to his legal guardian.

6. Claimant does not have any significant medical issues other than complaints of stomach problems. Claimant currently takes anti-depressant medication based on a prior diagnosis of Post-Traumatic Stress Disorder (PTSD), described more fully below.

7. It is undisputed that claimant does not have cerebral palsy, epilepsy, or autism spectrum disorder. At the hearing, the parties focused on whether claimant was eligible for regional center services based on claims of intellectual disability or the Fifth Category.

MENTAL HEALTH RECORDS FROM VISTA DEL MAR CHILD AND FAMILY SERVICES

8. In 2013, DCFS referred claimant to Vista Del Mar Child and Family Services (Vista Del Mar) for a mental health assessment. According to an initial assessment report dated March 4, 2013, claimant described to the evaluator that he experienced nightmares 50 percent of the time, suffered intrusive memories, worried frequently, had flashbacks with particular trigger words or people (any male figures), and engaged in self-injurious behavior such as hitting himself. Claimant also presented with symptoms of depression, which were limited to low energy, low appetite, and poor sleep. Based on these reports and symptoms, the evaluator diagnosed claimant with PTSD and recommended that claimant receive weekly therapy sessions.

9. On August 26, 2015, claimant began weekly therapy sessions with Vista Del Mar. On August 16, 2017, claimant terminated services with Vista Del Mar in order to take a “break” from therapy. (Ex. 7, Termination Summary, p. 2.) Claimant’s Termination Summary from Vista Del Mar, dated August 16, 2017, indicated that claimant’s

symptoms of PTSD had improved significantly during the course of his treatment and that symptoms of depression were reduced. Farnush Farmand, Psy.D, claimant's therapist at Vista Del Mar wrote:

Prognosis is good. [Claimant] reports increase in pro social behaviors as well as increase in communication skills. Legal guardian also reports significant improvements and reports [claimant] engaging in more with friends outside of school, less isolating behaviors, and increase in verbal expression of thoughts and feelings. (*Id.* at p. 2.)

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CLAIMANT'S SPECIAL EDUCATION HISTORY

The 2015 Triennial Psycho-educational Evaluation

10. On January 10, 2014, claimant initially qualified for special education services at his school as a student with Other Health Impairment (OHI).²

² California Code of Regulations, title 5, section 3030, subdivision (b)(9), provides: Other health impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment that:

(A) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition,

11. On December 1, 2015, the school psychologist at claimant's high school performed a triennial psycho-educational evaluation of claimant to assess his continued eligibility for special education services. At the time of this evaluation, claimant was 14 years old. The school psychologist administered a battery of tests, which assessed claimant's cognitive development, perceptual motor skills, auditory processing skills, academic skills, and social/emotional development, and academic achievement. Her findings, summarized in a report dated December 2, 2015, are described below in Factual Findings 12 through 16.

12. A. The school psychologist indicated that in accordance with the school district's policy, intellectual quotient (IQ) tests are not conducted to determine special education eligibility. However, she noted that the Cognitive Assessment System (CAS) was administered to claimant during his prior assessment for special education services, on January 10, 2014. Claimant's scores on the CAS were 97 on the planning subtests³; 103 on the simultaneous subtests⁴; 94 on the attention subtests⁵; and 89 on the

hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and

(B) Adversely affects a child's educational performance.

³ The planning subtest assess the cognitive ability of an individual to determine, select, and use a strategy to solve a problem.

⁴ The simultaneous subtests assess the cognitive ability of an individual to integrate separate visual stimuli into a single whole or group.

⁵ The attention subtests assess the cognitive ability of an individual to selectively attend to a particular stimulus and resist distraction.

successive subtests.⁶ Claimant earned a full scale IQ of 95 on the CAS, placing him in the average range.

B. The school psychologist summarized claimant's cognitive ability as follows:

[Claimant] demonstrates overall average cognitive ability, based upon alternative procedures for measuring intellectual ability, including review of records, interviews, observations, and his previous performance on assessment tests... He has the ability to work and self-regulate his task completion when he is supervised and prompted by the teacher. He can be resilient and demonstrate cognitive strength when he is appropriately reinforced for succeeding... [Claimant] presents with emotional vulnerability, depression and anxiety; he has a tendency to focus on his internal emotional state and this impacts his ability to work optimally in the classroom. [Claimant] can be easily distracted by his internal thoughts or overwhelmed and anxious by expectations in the classroom, and he has difficulty maintaining a continuity of effort and perseverance. . . . (Ex. 5, p. 3.)

⁶ The successive subtests assess the cognitive ability of an individual order verbal information.

13. Claimant was administered the Berry Development Test of Visual Motor Integration (VMI) to assess his fine and gross motor skills. His performance on the VMI yielded a standard score of 94, indicative of a performance better than or equal to 47 percent of his same-age peers.

14. On the Test of Information Processing Skills, which measures a student's preferred modality of learning, claimant scored 109 on the visual modality (73rd percentile), 108 on delayed recall for memory of words in context (70th percentile), 100 on word fluency (50th percentile), but 85 on auditory modality (16th percentile). The school psychologist attributed claimant's poor performance on the auditory modality on claimant's inability to focus and pay attention to information presented orally because he is easily overwhelmed and becomes emotional. (Ex. 5, p. 5.) The school psychologist wrote: "Overall, [claimant's] level of anxiety, depression and emotional vulnerability impact his optimal functioning in the classroom." (*Ibid.*)

15. In the area of academic achievement, the school psychologist noted that claimant's grades declined significantly as the semester progressed, despite his participation in a special program for academic support. However, based on his teacher's reports, claimant "has strong academic ability and is able to work at grade level in all areas." (Ex. 5, p. 6.)

16. In the area of language and communication skills, the school psychologist found that claimant's use of language appeared to be age-appropriate. He can initiate a conversation, ask for clarification, and understand directions. Claimant's communication skills are strong in all settings, with both adults and his peers. Claimant uses language effectively to communicate his thoughts and feelings. He is able to articulate his needs and openly discuss his present state of mind and past experiences with clarity.

17. A. To assess claimant's social/emotional skills, Behavior Assessment Scale for Children (BASC-2) was administered to claimant and two of his teachers. On the BASC-2, claimant did not identify any areas either in the at risk or significant range. However, claimant's special education teacher identified the following areas in claimant's emotional and behavioral skills to be in the significant range: anxiety, depression, somatization, internalizing problems, attention problems, learning problems, school problems, and atypicality. Claimant's art teacher only observed two areas in the significant range, anxiety and depression, and two areas in the at risk range, internalizing problems and withdrawal.

B. To further assess claimant's social/emotional behaviors, the school psychologist interviewed claimant and observed him in the classroom setting. Based on these interviews, the school psychologist concluded that "[claimant] is bright and he possesses a keen sensitivity to his environment and his internal states." (Ex. 5, p. 9.) In the classroom setting, claimant was observed to be friendly, talkative, outgoing, and getting along well with adults and his peers.

18. Based on this assessment, the school psychologist concluded that claimant continued to be eligible for special education services under the category of OHI.

The 2017 Individualized Education Program

19. On November 16, 2017, claimant's school district conducted an annual review of claimant's Individualized Education Program (IEP). The November 2017 IEP indicated that based on teacher reports, claimant is a strong reader. He can decode multi-syllabic and irregular words, and he reads with proper intonation and fluency. Claimant can construct clear, simple, complex, and compound sentences that include detailed information. He also demonstrated emerging skills in organizing a three to four paragraph essay around a thesis that includes a central argument. In his Geometry class,

claimant was performing at an average level commensurate with his peers. When claimant attends class, he participates in a meaningful way, and he displayed excellent insights and problem solving skills. One of claimant's teachers described him as "insightful, smart, articulate, sensitive and kind." (Ex. 6, p. 4.)

20. However, claimant often became overwhelmed when presented with tasks that he finds onerous or beyond his ability. Claimant was also chronically absent, missing out on 10 or more school days per semester. His absences were due to illnesses, oversleeping, lack of a ride, or general lack of motivation to go to school. When feeling depressed, claimant's teacher observed that claimant's tendency is to shut down and to be left alone with his difficult feelings.

The 2018 Academic Assessment Report

21. On November 1, 7, and 14, 2018, claimant's school psychologist conducted an Academic Assessment of claimant and set forth her findings in a report dated November 15, 2018. The academic assessment was completed as a part of the triennial IEP review to evaluate claimant's needs as he transitions from high school to college.

22. The school psychologist observed claimant in the classroom setting on several occasions. Claimant was "on-task in class, working diligently to complete all assigned work.... In general, he appear[ed] confident and at ease in the classroom environment." (Ex. B., p. 1.)

23. A. To assess claimant's academic performance, the school psychologist administered to claimant the Woodcock-Johnson IV Test of Academic Achievement (WJIV). Claimant's scores on the reading subtests of the WJIV were 103 (58th percentile) in reading; 104 (61st percentile) in broad reading; 104 (61st percentile) in letter-word

identification; 101 (53rd percentile) in passage comprehension; and 104 (61st percentile) in sentence reading fluency. These scores indicated that claimant's reading skills were within the average range for a student of his age.

B. Claimant's scores on the writing subtests of the WJIV were 112 (78th percentile) in written language; 109 (72nd percentile) in broad written language; 113 (81st percentile) in written expression; 101 (52nd percentile) in spelling; 97 (41st percentile) in sentence writing fluency; and 121 (92nd percentile) in writing samples. These scores indicated that claimant's writing skills were within the average to high average range for a student of his age.

C. Claimant's scores on the mathematics subtests of the WJIV were 74 (4th percentile) in mathematics; 74 (4th percentile) in broad math; 70 (2nd percentile) in calculation; 79 (8th percentile) in math facts fluency; 84 (14 percentile) in applied math; and 73 (4th percentile) in math calculation skills. These scores indicated that claimant's mathematics skills were within the low to low average range for a student of his age.

24. Based on claimant's performance on the WJIV assessments, the school psychologist recommended that claimant continue to receive special education supports and services.

SERVICE AGENCY'S EVALUATION OF CLAIMANT

25. On May 4, 2018, at the request of Service Agency, Gabrielle du Verglas, Ph.D., conducted a psychological evaluation of claimant to determine his eligibility for regional center services. Dr. du Verglas reviewed claimant's prior evaluations and administered standardized tests to complete her evaluation. She set forth her findings in a psychological evaluation report dated the same date.

26. In her record review, Dr. du Verglas reviewed claimant's mental health records from Vista Del Mar and the 2015 Psycho-Educational Evaluation. During her assessment of claimant, Dr. du Verglas observed that claimant behaved appropriately, spoke in sentences, responded to questions, and worked with motivation on standardized tests.

27. A. In standardized tests, Dr. du Verglas administered the Wechsler Adult Intelligence Scale IV (WAIS-IV). Claimant's overall performance on the WAIS-IV yielded a full scale IQ of 89, which suggested a general level of intellectual ability in the low average range. Claimant performed particularly well on the verbal comprehensive subtest, earning a score of 103, which was in the average range. Claimant's scores on the perceptual reasoning and the processing speed subtests were 90 and 86, respectively, both of which fell within the low average range. However, his perceptual reasoning subtest score was 80, which is in the lower quadrant of low average range.

B. Claimant's academic skills were assessed using the Wide Range Achievement Test-4 (WRAT-4). On the reading test, claimant performed at a 12.7 grade-level equivalency, which is within the average range. Dr. du Verglas did not indicate in her report whether the mathematics subtest of the WRAT-4 was administered to claimant or what scores, if any, were obtained from that subtest.

C. With claimant and his legal guardian serving as the informant, Dr. du Verglas administered the Vineland Adaptive Behavior Scales-Second Edition (VABS-2) to evaluate claimant's adaptive functioning. In the domain of communication, claimant earned a score of 78, which is within the moderately low range of abilities. In daily living skills, claimant's score of 77 fell within the moderately low range. In socialization, claimant's score was 93, which is within the average range of abilities. Overall, claimant's adaptive behavior composite was 79, which is within the moderately low range.

28. Dr. du Verglas summarized her impressions as follows:

Results of current evaluation do not support [a] diagnosis of intellectual disability as [claimant's] cognitive abilities are in the average to low average range of abilities with reading at grade-appropriate levels. Previous school assessments completed did not identify cognitive delays with average cognitive abilities reported. Adaptive functioning overall is viewed as adequate with some of the lower scores reported by the caregiver possibly affected by motivation rather than lack of skill; for example, [claimant] needs prompts to complete hygiene skills linked to depression, rather than ability to complete the task. He does not like to clean his room and at home still has a tendency to self-isolate. (Ex. 8, p.10.)

29. Based on her assessment, Dr. du Verglas diagnosed claimant with PTSD and depression by history and noted that "no developmentally based diagnosis present." (Ex. 6, p. 5.) Dr. du Verglas used the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) to reach her diagnosis. Specifically, Dr. du Verglas wrote that under the DSM-5, an individual must meet three criteria for a diagnosis of intellectual disability: (1) deficits in intellectual functions; (2) deficits in adaptive functions; and (3) onset of intellectual and adaptive deficits that occurs during the developmental period. However, in claimant's case, Dr. du Verglas opined that he did not meet any of these three criteria.

TESTIMONY OF LAURIE MCKNIGHT BROWN, PH.D.

30. Laurie McKnight Brown, Ph.D. is Service Agency's lead psychologist consultant. She received her doctor of philosophy degree from Walden University in 2014.

31. At the hearing, Dr. McKnight Brown testified to provide a more detailed explanation of Dr. du Verglas' psychological evaluation. According to Dr. McKnight Brown, Dr. du Verglas' observation that claimant was motivated during the standard testing sessions was important because the fact that claimant put forth a significant amount of effort validates the test results. Dr. McKnight Brown noted that claimant's full IQ on the WAIS-IV was 89, which is in the low average range but not is indicative of intellectual disability. For an individual with intellectual disability, she would expect an IQ score on the WAIS-IV of 70 or less, with a measurement error of plus or minus five points.

32. Furthermore, Dr. McKnight Brown stated that for a diagnosis of intellectual disability, she also expected to see significant delays across domains and across contexts, which were not present in claimant's case. In support of her opinion, Dr. McKnight Brown cited to claimant's results on the VABS-2, which assesses claimant's adaptive functioning. She noted that claimant's scores on the VABS-2 ranged across domains from 77 to 93. These scores are within the moderately low to average range and again are not indicative of an individual with intellectual disability. Dr. McKnight Brown pointed out that on the VABS-2, claimant's score in the domain of daily living skills was the lowest at 77. However, she opined this score did not necessarily reflect claimant's true abilities because his depression and the resultant lack of motivation could affect the score.

33. Dr. McKnight Brown agreed with Dr. du Verglas' diagnosis and concluded that claimant does not qualify as an individual with intellectual disability under the DSM-5 criteria. In Dr. McKnight Brown's opinion, claimant also does not qualify for regional services under the Fifth Category, because claimant's cognitive and adaptive functions are not similar to an individual with an intellectual disability. She opined that claimant suffers from PTSD and depression, stemming from the years of abuse and neglect that claimant endured while he was in his father's custody. During cross-examination, Dr. McKnight Brown admitted that intellectual disability can co-occur with depression. Nevertheless, she did not waver from her opinion that claimant does not have intellectual disability.

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TESTIMONY OF CLAIMANT'S LEGAL GUARDIAN

34. Claimant's legal guardian testified at the hearing regarding her observations and concerns regarding claimant's behavior. Claimant's legal guardian has been claimant's primary caretaker since he was three years old. Claimant's legal guardian recounted that claimant was always very quiet, and she was always concerned about him. Even at a young age, claimant lacked focus and resorted to breaking crayons when he felt frustrated. In the classroom, claimant often cried. Claimant's behavior was so alarming to his legal guardian that she asked claimant's teachers to keep notes of his activities in class. Due to her concerns, claimant's legal guardian planned to have claimant undergo some psychological testing. However, in 2009, claimant's father took custody of claimant and his siblings. For the next three years, claimant's father, who has mental health issues of his own, neglected and abused his son. In 2012, claimant was returned to his legal guardian's custody. Shortly thereafter, claimant entered into therapy with Vista Del Mar due to his diagnosis for PTSD and depression.

35. Claimant's legal guardian admitted that she does not know the nature of claimant's condition. She speculated that claimant may have fetal alcohol syndrome, which may be the source of claimant's intellectual difficulties. Claimant is currently a senior in high school and has plans to attend college. However, his legal guardian is concerned about his ability to graduate on time, and she stated that her foremost goal is to teach claimant how to live independently so he can go to college.

36. Claimant currently exhibits many behavioral issues that will prevent him from living independently in a dorm setting. For example, claimant does not clean his room. Although claimant states that he wants to clean his room by himself, he will allow trash, including rotting food items, to pile up around and under his bed. Claimant has also left food in his backpack until it rotted. Although claimant can now make small snack items for himself, he used to wait until his legal guardian came home to make a meal for him. Claimant also has poor organization skills. He often misplaces important paper work, such as field trip permission slips and homework assignments. Additionally, claimant loses his house keys two to three times per week, which raises safety concerns for his legal guardian. Claimant is currently participating in the Individualized Transition Skills Program, which is an independent living program that offers one-on-one assistance to children in foster care. However, this program only lasts two years, and claimant's legal guardian is concerned that claimant will not gain sufficient independent living skills to attend college on his own.

LEGAL CONCLUSIONS

BURDEN AND STANDARD OF PROOF

1. Because claimant is the party asserting a claim, he bears the burden of proving, by a preponderance of the evidence, that he is eligible for government benefits or services. (See Evid. Code, §§ 115 and 500.) He has not met this burden.

2. Claimant did not establish that he suffers from a developmental disability entitling him to receive regional center services, as set forth in Factual Findings 1 through 36 and Legal Conclusions 1 through 14.

APPLICABLE LAW

3. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 et seq.) Eligibility for regional center services is limited to those persons meeting the criteria for one of the five categories of developmental disabilities set forth in Welfare and Institutions Code section 4512, subdivision (a), 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 intellectual disability [“Fifth Category”], but shall not include other handicapping conditions that are solely physical in nature.

4. The qualifying conditions must also cause a substantial disability. (Welf. & Inst. Code, § 4512, subd. (a); Cal. Code Regs., tit. 17, § 54000, subd. (b)(3).) A “substantial disability” is defined by California Code of Regulations, title 17, section 54001, subdivision (a), as:

(1) A condition which results in major impairment of cognitive and/or social functioning, representing sufficient

impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential; and

(2) The existence of significant functional limitations, as determined by the regional center, in three or more of the following areas of major life activity, as appropriate to the person's age:

(A) Receptive and expressive language;

(B) Learning;

(C) Self-care;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living;

(G) Economic self-sufficiency.⁷

5. In this case, the parties do not dispute that claimant does not suffer from cerebral palsy, epilepsy, or autism. Thus, the sole question is whether claimant qualifies

⁷Welfare and Institutions Code section 4512, subdivision (l), defines "substantial disability" similar to that of California Code of Regulations, title 17, section 54001, subdivision (a)(2).

for regional center services based on intellectual disability, or a disabling condition that is closely related to intellectual disability or requires treatment similar to that required for individuals with intellectual disability.

CLAIMANT IS NOT ELIGIBLE BASED ON A CLAIM OF INTELLECTUAL DISABILITY

6. The DSM-5 describes Intellectual Disability as follows:

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

A. Deficits in intellectual functions, such as reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience, confirmed by both clinical assessment and individualized, standardized intelligence testing.

B. Deficits in adaptive functioning that result in failure to meet developmental and socio-cultural standards for personal independence and social responsibility. Without ongoing support, the adaptive deficits limit functioning in one or more activities of daily life, such as communication, social participation, and independent living, across multiple environments, such as home, school, work, and community.

C. Onset of intellectual and adaptive deficits during the developmental period. (DSM-5, p. 33.)

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

8. During the psychological evaluation with Dr. du Verglas, claimant obtained a full scale IQ of 89, which is in the low average range. This IQ score is consistent with prior cognitive testing conducted in 2014, when claimant obtained an IQ of 95, which is in the average range. Although a standardized IQ test was not administered when claimant underwent the Triennial Psycho-educational Evaluation, the school psychologist again found that claimant's cognitive abilities were in the average range. As Dr. McKnight Brown explained in her testimony, an IQ score of 70, with a measurement error of five points, is indicative of intellectual disability. Moreover, a review of claimant's special education history did not reveal any concerns about cognitive delays by the school psychologist or by claimant's teachers.

9. Claimant's adaptive functioning also does not seem to be considerably impacted by any cognitive deficits. On the VABS-2, claimant's score in socialization was in the average range, while his scores in communication and daily livings skills were in the moderately low moderately low range. Claimant's lower scores in the areas of communication and daily living skills, according to both Dr. du Verglas and Dr. McKnight Brown, were attributable to issues of motivation rather than ability. Based on her record review, standardized testing, and her clinical observations, Dr. du Verglas opined that claimant did not meet any of the three criteria for a diagnosis of intellectual disability under the DSM-5. Dr. McKnight Brown concurred with this conclusion. Dr. du Verglas and Dr. McKnight Brown's opinions on this issue were unrefuted and persuasive.

CLAIMANT IS NOT ELIGIBLE UNDER THE FIFTH CATEGORY

10. Addressing eligibility under the Fifth Category, the Appellate Court in *Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, 1129, stated in part:

The fifth category condition must be very similar to mental retardation [now, intellectual disability⁸], with many of the same, or close to the same, factors required in classifying a person as mentally retarded. Furthermore, the various additional factors required in designating an individual developmentally disabled and substantially handicapped must apply as well.

11. Thus, to be “closely related” to intellectual disability, there must be a manifestation of cognitive and/or adaptive deficits that render that individual’s disability like that of a person with intellectual disability. However, this does not require strict replication of all of the cognitive and adaptive criteria typically utilized when establishing eligibility due to intellectual disability (e.g., reliance on IQ scores). If this were so, the Fifth Category would be redundant. Eligibility under this category requires an analysis of the quality of a claimant’s cognitive and adaptive functioning and a determination of whether the effect on his performance renders him like a person with intellectual disability.

12. Dr. McKnight Brown opined, during her testimony, that claimant does not qualify for regional center services under the Fifth Category because he does not

⁸ The DSM-5 changed the diagnosis of mental retardation to intellectual disability.

function in a manner similar to an individual with intellectual disability. The evidence in this case supports this opinion. In the school setting, although claimant has qualified for special education services through his school district since 2014, eligibility for special education services is generally more inclusive than eligibility for regional center services. According to claimant's 2015 Triennial Psycho-Educational Evaluation and his 2017 IEP, claimant's teachers consistently report that claimant exhibits strong academic abilities. Claimant's teachers described him as bright, insightful, smart, and articulate. They attribute claimant's poor performance at school to his emotional vulnerability, anxiety, and depression. Claimant's most recent 2018 Academic Achievement Assessment also shows that his reading and writing skills are in the average range, although his mathematics skills are in the low average range.

13. In the home setting, claimant's legal guardian, in her testimony, expressed concerns mostly with claimant's ability to living on his own in a dorm setting. However, little evidence was presented that claimant's refusal to clean his room, lack of organization, and frequent loss of his house keys are related to cognitive problems rather than PTSD and depression. Although claimant would clearly benefit from some services, such as independent living skills, offered by the regional center, the determination of whether 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, speech therapy, or occupational therapy). The criterion is not whether someone would benefit from the provision of *services*, but whether that person's condition requires *treatment*, which has a narrower meaning under the Lanterman Act than *services*. (*Ronald F. v. Dept. of*

Developmental Services, (2017) 8 Cal.App.5th 94, 98.) In this case, there was little evidence presented that the independent living skills services claimant is seeking are treatments similar to that required for an individual with intellectual disability.

14. Under these circumstances, claimant does not have a developmental disability, as defined by the Lanterman Act, under either the claim of intellectual disability or the Fifth Category. Thus, he is not eligible for regional center services at this time.

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ORDER

Claimant's appeal from the South Central Los Angeles Regional Center's denial of eligibility for services is DENIED. Claimant is not eligible to receive regional center services under the Lanterman Act at this time.

DATE:

JI-LAN ZANG

Administrative Law Judge

Office of Administrative Hearings

NOTICE

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