

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

VALLEY MOUNTAIN REGIONAL CENTER,

Service Agency.

OAH No. 2019020189

DECISION

This matter was heard before Administrative Law Judge Dena Coggins, State of California, Office of Administrative Hearings (OAH), in San Andreas, California, on April 29, 2019.

Anthony Hill, Legal Affairs Advisor, represented the Service Agency, Valley Mountain Regional Center (VMRC).

Claimant was represented by his mother at the hearing.¹

Oral and documentary evidence was received, the record was closed, and the matter was submitted for decision on April 29, 2019.

ISSUE

Is claimant eligible to receive regional center services as an individual with autism, or based on the "fifth category"² because he has a condition closely related to

¹ The names of Claimant, his mother, and his family members are omitted throughout this Decision to protect Claimant's privacy.

intellectual disability, or that requires treatment similar to that required for individuals with an intellectual disability pursuant to Welfare and Institutions Code section 4512?³

FACTUAL FINDINGS

1. Claimant is a 24-year-old male who lives in the family home with his mother and stepfather. He has a history of Attention Deficit Hyperactivity Disorder (ADHD), Reactive Attachment Disorder, depression, anxiety, and learning disabilities. Claimant began receiving special education services pursuant to an Individualized Education Program in fourth grade. He graduated high school and attended community college for a brief period.

2. Claimant's mother referred him to VMRC; claimant is seeking employment support by requesting a job coach through VMRC.⁴ Claimant has not received or applied for regional center services in the past. On August 31, 2018, VMRC conducted an intake assessment of claimant and detailed its findings in a report. Jeff Traill, VMRC's Intake Coordinator, noted in the report that claimant was referred to the regional center "for an assessment to determine if he has an autistic disorder. However[,] his mother says he

² To be eligible under the fifth category, an individual must: (1) have a disabling condition closely related to an intellectual disability; or, (2) have a disabling condition which requires treatment similar to that of a person with an intellectual disability. (*Samantha C. v. State Department of Developmental Services*, (2014) 185 Cal.App.4th 1462, 1492.0029

³ Unless otherwise indicated, all statutory references are to the California Welfare and Institutions Code.

⁴ Claimant previously received services through the Department of Rehabilitation that included an External Situational Assessment, which is discussed below.

is not autistic.” At the hearing, claimant’s mother reiterated that claimant was not seeking services as an individual with autism. Rather, she believes claimant may be eligible for services under the “fifth category” of eligibility and would like an independent assessment by a qualified psychologist to determine if claimant has developmental disabilities.

3. A Notice of Proposed Action (NOPA) was issued by VMRC to claimant on January 2, 2019. The NOPA notified claimant that the interdisciplinary team reviewed his medical, psychological, and educational records and found claimant ineligible for regional center services because he does not have a substantially handicapping developmental disability. Claimant appealed VMRC’s decision on January 24, 2018, and this fair hearing ensued.

FRESNO DIAGNOSTIC CENTER STUDENT ASSESSMENT REPORT

4. Claimant provided VMRC with a copy of a Student Assessment Report prepared by the Diagnostic Center, Central California, Fresno, California, which was prepared in 2006, when claimant was 10 years old. The assessment was conducted to address diagnostic questions posed by claimant’s mother and the Amador County Unified School District. For purposes of the assessment, claimant was observed in the classroom, then received formal and informal testing at the Diagnostic Center several days later. The assessment team consisted of an education specialist, a speech-language pathologist, and a clinical psychologist. A consultant in psychiatry conducted an additional assessment. The assessment team obtained developmental, medical, familial, and educational histories from claimant’s parents and available records.

5. The assessment team’s combined findings were as follows:

- Cognitive functioning – Significant discrepancy (37 points) between verbal (Average) and nonverbal (Borderline) abilities, suggesting a learning disorder, not otherwise specified, in the realm of nonverbal skills and abilities.

- Attentional and executive control limitations were evident for information presented in verbal and visual modalities.
- Difficulties with visual sequencing and the ability to switch mental sets (cognitive flexibility) were observed.
- Language skills within the average range overall. Some relative weaknesses evidence when challenged in the area of grammar/formulating sentences (using complex sentences incorporating multiple target words and applicable to a specific situational context).
- Attention and apparent auditory memory weaknesses impacted ability to follow directions of increasing length and detail.
- Age-appropriate performance on formal test of language-based critical thinking skills (inferring, predicting, determining causes, sequencing, answering negative questions, and problem solving).
- Overall reading skills in the average range. Ability to comprehend passages aloud in the superior range. Demonstrated good automaticity with both phonetically regular and irregular words.
- Overall math skills below average. Good understanding of [*sic*] evident for a number of higher level math concepts; however[,] observed deficit in overall calculation skills resulted in a number of incorrect responses.
- Overall written language skills in the below average range. Overall content of written output was generally appropriate (more with short writing tasks than with longer writing tasks). Deficits observed in writing conventions such as capitalization, punctuation, spelling, planning, spatial organization, and handwriting. Writing was difficult to read and reduced the overall quality of writing.

- Spelling skills with both phonetically regular and irregular spelling patterns significantly below grade level expectations.
- Performance improved with verbal mediation.

6. In the student assessment report, the assessment team explained that the significant discrepancy of 27⁵ points between claimant's verbal and nonverbal abilities suggested a learning disability in the nonverbal realm. In the area of social skills, claimant had deficits in social awareness and social judgment along with difficulties with higher level reasoning and abstract language. He demonstrated age appropriate performance on a formal test of language-based critical thinking skills. He had some difficulties with arithmetic and spelling, but his verbal abilities were superior. The report noted that previous evaluations suggested diagnoses of ADHD, Major Depression and Reactive Attachment Disorder. Using the Asperger Syndrome Diagnostic Scale — a scale previously used to diagnose Autism Spectrum Disorder (ASD) — the assessment team determined claimant's score fell well below the range (very unlikely) associated with ASD.

7. The assessment team recommended to claimant's school that he participate in a social skills support group, that the school refer him for an occupational therapy evaluation to address his visual-motor issues and their impact on his academic performance, that it provide mathematics intervention to focus on filling gaps of overall skill deficits, and that it develop strategies and intensive practice for calculation deficits. Also, the team recommended the school consider incorporating spelling generalizations into his spelling instruction.

⁵ It is not clear from the Fresno Diagnostic Center Student Assessment Report whether the discrepancy was 27 or 37 points, as the report contains both scores.

PRIDE INDUSTRIES EXTERNAL SITUATIONAL ASSESSMENT

8. The Department of Rehabilitation referred claimant to Pride Industries for an External Situational Assessment (ESA), and he was assessed in August and September 2016. The assessor, Lisa Opack, prepared a written ESA report. Claimant was assessed to determine his work-related capabilities, interpersonal interaction skills, employment readiness, vocational barriers, whether accommodations/supports were needed, and to determine his ability to perform essential job functions.

9. Claimant displayed ongoing difficulty independently remembering instructions. He played games on his work computer and did not follow instructions to keep his personal phone in a bag. Also, he went on break without asking or notifying the assessor. He was unable to follow verbal and written instructions and completed incomplete work. He was unable to complete 95 percent of his assigned tasks because of his "pace" and not following directions.

10. During the assessment, claimant displayed a low level of focus and attention to detail on his assigned tasks. The assessor noted that claimant "[d]emonstrated no gradual growth of knowledge on the job." Claimant did not want to correct mistakes. He appeared to be uncomfortable working around people. The assessor found that claimant "required continuous support performing and completing the essential job functions and therefore was not able to accurately perform these job functions at the level of independence and pace required by the employer." The assessor concluded the following:

While [claimant] may possess the intellectual capacity for work, based on the findings of the ESA[,] he cannot at this time be recommended for complete employment.

[Claimant] repeatedly demonstrated a low level of interest and focus throughout the ESA, and struggled to respond to

employer feedback intended to improve his performance. His work pace was below employer standard and although additional supports were implemented, [claimant] did not improve his performance to meet established standards for the field. At this current time[,] further employment services would not be beneficial and will likely not be beneficial until barriers related to transportation, school requirements and family obligations are further addressed

NOVEMBER 2018 PSYCHOLOGICAL EVALUATION

11. VMRC referred claimant to Lesley J. Deprey, Ph.D., for a psychological evaluation to clarify respondent's current level of functioning and to assist in determining his eligibility for regional center services. Dr. Deprey is a licensed psychologist at the University of California-Davis MIND Institute. She has been involved in the evaluation of research subjects in studies investigating ASD and other genetic disorders. She received a bachelor's degree in psychology, a master's degree in counseling psychology, and a doctor of philosophy in counseling psychology. She also has her own private practice conducting ASD evaluations.

12. Dr. Deprey conducted a psychological evaluation of claimant on November 8, 2018. As part of the evaluation, Dr. Deprey reviewed VMRC's records, the Fresno Diagnostic Center Student Assessment Report, and the Pride Industries ESA. She conducted a clinical interview of claimant and his mother and administered the Behavioral Observations/Autism Diagnostic Observation Schedule- Second Edition, Module 4 (ADOS-2), Wechsler Abbreviated Scale of Intelligence - Second Edition (WASI-II), and Adaptive Behavior Assessment System-Third Edition: Adult Form (ABAS-3).

13. The ADOS-2 is a structured interaction and observation that provides opportunities for social interaction and communication. Based upon claimant's language

level and intellectual ability, Dr. Deprey administered Module 4 to claimant. Claimant displayed some performance anxiety and struggled during particular nonverbal cognitive tasks. After administering the ADOS-2, Dr. Deprey concluded, "Overall, [claimant's] presentation was unlike an individual with an autism spectrum disorder with his score falling below the ASD cut-off ([Claimant's] score 2; Autism cut-off = 10.)"

14. The results of the WASI-II provide scores that are used to supply information about specific areas of ability, including verbal comprehension and perceptual reasoning skills. The WASI-II generates a Full Scale Intelligence Quotient (IQ) score that reflects overall cognitive capabilities. Claimant's Full Scale IQ score of 108 fell in the average range when compared with his same-aged peers. In her report, Dr. Deprey wrote, "[h]is verbal comprehension scores were an area of significant relative strength while recreating patterns with blocks was a notable weakness." The results of claimant's scores on the WASI-II were as follows:

Composite Area	Standard Score	Percentile Rank*	90% Confidence Interval**	Functioning Range
Verbal Comprehension	131	98	124-135	Very Superior
Perceptual Reasoning	81	10	76-88	Below Average
Full Scale IQ	108	70	104-112	Average

*A percentile ranking refers to the percentage of adults of similar age who would be expected to score equal to or below the adult on that particular measure. In general, the

Average range of ability is considered to be between the 25th and 75th percentiles.

**90% [Confidence Interval] indicates that there is a 90% likelihood that the adult's score falls within this range.

Average scores range from 90-110.

[Emphasis omitted.]

15. The ABAS-3 is a norm-referenced, caregiver report questionnaire designed to assess individuals' adaptive functioning, meaning what an individual does on a daily basis. Skills assessed by the ABAS-3 include communication, self-direction, social skills, home living, self-care, and work skills, among other skills. The ABAS-3 was completed by claimant's mother. The results of the ABAS-3 revealed that claimant's daily skills fell in the "Extremely Low" range, below the first percentile, when compared to claimant's same age peers. Also, claimant's adaptive skills were "significantly lower than his cognitive functioning, a profile seen in individuals with mental health and learning issues." Dr. Deprey opined, "[O]verall, intervention in everyday living is clearly needed at this time." The following ABAS-3 Summary Table was provided in Dr. Deprey's report:

Domain	Standard Score*	Range	Percentile	Classification
GENERAL ADAPTIVE COMPOSITE	50	46-54	<0.1	Extremely Low
CONCEPTUAL	54	48-60	0.1	Extremely Low
SOCIAL	56	50-62	0.2	Extremely Low
PRACTICAL	51	45-57	0.1	Extremely Low

Adaptive skill area	Scaled score**	Adaptive skill area	Scaled score
Communication	1	Community Use	1
Functional Academics	1	Home Living	2
Health and Safety	1	Leisure	1
Self-Care	1	Self-Direction	1
Social	1	Work	n/a

* Standard scores between 90 and 110 are considered to be within the average range.

** Scaled scores between 8-12 are considered average.

16. Dr. Deprey concluded that claimant's behavior during testing "does not support an ASD diagnosis at this time although historically he may have had ASD traits Although social delays were presented, the quality of his social presentation seems inconsistent with ASD and rather [is] associated with anxiety." Dr. Deprey concluded further:

Claimant displays sensory issues as described by him [sic] family. Sensory issues are not specific to ASD, yet may need further attention. The family reported a history of ADHD since the elementary years along with anxiety and depression. Difficulties following instruction to-date may be related to ADHD, a neurodevelopmental condition. Learning delays have been highlighted in his educational record including concerns regarding auditory processing which are likely impacting his current clinical profile.

Results of the WASI-II revealed a verbal IQ of 131 in the very superior range while nonverbal tasks were in the below

average range. This notable discrepancy has been identified in his elementary years and such can be associated with learning delays. Unlike his intellectual functioning, adaptive skills fell in the extremely low range which warrants intervention. [Claimant] will benefit from a range of services and the following recommendations are offered to address the aforementioned challenges.

DSM-5 Diagnostic Impressions

Unspecified Anxiety Disorder

History of ADHD

History of Learning Delays

17. Dr. Deprey advised that claimant should seek counseling to address current anxious feelings, make efforts to enhance functional skills needed for daily independent functioning, pursue regular interactions with peers, seek consultation with a career counselor, and engage in reading about anxiety, among other recommendations.

VMRC'S DETERMINATION REGARDING CLAIMANT'S ELIGIBILITY

18. A VMRC interdisciplinary eligibility review team consisting of John Chellsen, Ph.D., psychologist; Janwyn Funamura, M.D., physician; and Mr. Traill conducted an eligibility review of claimant in December 2018. The team reviewed claimant's available medical, psychological, and educational records in reaching its determination. The team commented in its written report that, "Dr.[.] Deprey tested [claimant] on 11/8/18 and found evidence of superior verbal, average nonverbal, but

impaired adaptive skills. She ruled out the presence of an ASD while diagnosing [claimant] with an anxiety disorder.” The team found that claimant did not have a qualifying developmental disability for purposes of receiving regional center services.

TESTIMONY

19. Dr. Johnson. Barbara Johnson, Psy.D., testified at the hearing. Dr. Johnson is employed at VMRC as a licensed clinical psychologist, and she is also a licensed marriage and family therapist in California. Her duties at VMRC include conducting eligibility reviews, participating in multidisciplinary meetings, and consulting with staff regarding intake. She has an associate’s degree, bachelor’s degree, and two masters’ degrees in psychology. She obtained a doctorate of psychology with an emphasis in clinical psychology. She reviewed the evaluations and assessments of claimant, discussed above, and provided testimony regarding claimant’s eligibility for regional center services.

As a member of VMRC’s eligibility teams, Dr. Johnson regularly assists VMRC in determining whether a person qualifies for regional center services as an individual with autism or under the fifth category. At the hearing, Dr. Johnson reviewed and analyzed in detail the Fresno Diagnostic Center Student Assessment Report and psychological evaluation by Dr. Deprey. Dr. Johnson was also familiar with the Pride Industries ESA. She did not find any indication that claimant has an intellectual disability, autism, or a disabling condition that is closely related to intellectual disability or requires treatment similar to that required for individuals with an intellectual disability (fifth category).

Dr. Johnson testified that an IQ of 70 or below is a factor in identifying an individual with an intellectual disability, and an IQ of 75 or below is a factor in identifying whether an individual falls within the range of fifth category eligibility. Dr. Johnson agreed with the eligibility team’s finding that claimant did not qualify under the fifth category because his IQ is well above 75.

Dr. Johnson agreed with the VMRC eligibility team's determination that claimant did not have a qualifying condition for purposes of eligibility for regional center services. In the Fresno Diagnostic Center Student Assessment Report, Dr. Johnson did not find any indication respondent had an intellectual disability or any other condition that would fall under the fifth category. She recognized that claimant had learning disabilities, but explained that learning disabilities were not a condition that constituted a developmental disability for purposes of eligibility for regional center services. Although acknowledging that claimant had a significant discrepancy at age 10 between his verbal and nonverbal abilities, Dr. Johnson opined that both abilities were not at a level that would indicate an intellectual disability, or an individual functioning similar to someone with an intellectual disability. Additionally, she explained that claimant's score on the Asperger Syndrome Diagnostic Scale showed no indication that claimant was an individual with ASD. Additionally, she found claimant's mental health conditions, considered an exclusionary condition, that did not support a finding that claimant has a developmental disability.

Dr. Johnson also reviewed Dr. Deprey's Psychological Evaluation Report and found no evidence that claimant suffered from a qualifying developmental disability for purposes of eligibility as an individual with autism or under the fifth category. While claimant did show a mild deficiency in the area of perceptual reasoning, his score was not low enough to indicate an intellectual disability or eligibility under the fifth category. When reviewing claimant's WASI-II results for general cognitive functioning, Dr. Johnson acknowledged there was a 50-point discrepancy between his verbal comprehension and perceptual reasoning standard scores, but this discrepancy and claimant's standard scores were not at a level that would indicate an intellectual disability or an individual functioning similar to someone with an intellectual disability. There were no findings in the records before Dr. Johnson that claimant had a qualifying developmental disability.

20. Dr. Deprey. Dr. Deprey also testified at the hearing. Dr. Deprey reviewed the Fresno Diagnostic Center Student Assessment Report and ESA. Dr. Deprey explained that the significant discrepancy between claimant's verbal and nonverbal standard scores suggested learning delays, but did not meet the criteria for diagnosing an intellectual disability. While Dr. Deprey acknowledged that claimant's adaptive functioning scores were at an extremely low level, these results alone were not enough to diagnose claimant with an intellectual disability. Based upon the information reviewed and the psychological evaluation of claimant, Dr. Deprey concluded that claimant does not have an intellectual disability or ASD.

21. Claimant. Claimant submitted a written statement at the hearing. He stated that he has not been able to hold a job for more than a week. He further wrote, "I lost that job because I didn't understand the work environment and the expectations and demands of the job." Lastly, he wrote, "As a citizen, I have a right to lead a 'normal' life, which includes holding a job and living independently."

22. Claimant's mother. Claimant's mother testified at the hearing and submitted a written statement. When claimant was a toddler, his day care providers had a difficult time caring for claimant because he would not listen. He was punished and reprimanded for his behavior. In his preschool/kindergarten class, a teacher allowed claimant to walk around the classroom to keep him calm and taught him to read simple stories. Claimant's mother believes that as a result, claimant's behavior improved and he started learning. In public school, he had behavior issues and learning difficulties, and was placed in a special day class for first through third grade. He was mainstreamed in the general population for his fourth through sixth grade years, but his grades "plummeted." Claimant's mother believes claimant has a cognitive developmental disability and requests that he receive an independent assessment by a qualified psychologist to determine if he has developmental disabilities.

Claimant's mother expressed concern that representatives from VMRC did not mention that the fifth category exists for purposes of qualifying for regional center services. A separate organization informed mother of the fifth category and its potential applicability to claimant's case. She explained to VMRC staff that claimant is not an individual with ASD and requested he be tested for other developmental disabilities. Nonetheless, VMRC represented to claimant's mother that she could only request an autism assessment and that VMRC would "mention to" the assessor to evaluate claimant for processing, sequencing, and other weaknesses. Claimant's mother is concerned that VMRC did not assess claimant in other areas of developmental disability.

DISCUSSION

23. Regional centers provide services to individuals who have a "developmental disability" as defined in the Lanterman Developmental Disabilities Services Act (Lanterman Act). The developmental disabilities described in the Lanterman Act include five categories, intellectual disability, cerebral palsy, epilepsy, autism, and a "fifth category" of disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability. The evidence did not establish, nor did claimant assert, that he is an individual with intellectual disability, cerebral palsy, or epilepsy. The uncontested evidence did show that he had a significant discrepancy between his verbal and nonverbal standard scores when he was evaluated in November 2018, which was consistent with his abilities when tested in 2006. But Dr. Deprey persuasively concluded that such discrepancy was not sufficient to diagnose intellectual disability. The fact that claimant's adaptive functioning scores were extremely low did not change her opinion. Additionally, there was insufficient evidence to establish that claimant had a disabling condition that is closely related to intellectual disability or requires treatment similar to that required for individuals with an intellectual disability. While claimant's mother

asserted that he may qualify for regional services based upon this fifth category, the evidence did not support her assertion.

24. Although VMRC's records indicate that claimant's mother referred him to the regional center to rule out ASD, claimant's mother was clear at the hearing that she did not believe, nor was there any evidence to show, that claimant is an individual with ASD. As discussed above, Dr. Deprey concluded after evaluating claimant that claimant's behavior during testing did not support an ASD diagnosis.

25. The evidence did, however, establish that claimant does have mental health conditions and learning disabilities, which he was diagnosed with from an early age. However, the legislature made the determination that only individuals with the five specified types of disabling conditions identified in the Lanterman Act are eligible for services from regional centers. The legislature chose not to grant services to individuals who may have other types of disabling conditions, including mental health disorders and learning disabilities, if they cannot show that they fall within one of the five categories delineated in the Act. Although the result may seem harsh, particularly for individuals with mental health conditions and learning disabilities like claimant, the legislature did not grant regional centers the authority to provide services to individuals whose disabilities fall outside the five specified categories. Because claimant did not show that he has autism, an intellectual disability, meets the criteria for fifth category eligibility, or any other qualifying developmental disability, he did not establish that he is eligible for services under the Lanterman Act.

LEGAL CONCLUSIONS

1. Eligibility for regional center services is limited to those persons meeting the eligibility criteria for one of the five categories of developmental disabilities set forth in section 4512 as follows:

"Developmental disability" means a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. ... [T]his term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability [commonly known as the "fifth category"], but shall not include other handicapping conditions that consist solely physical in nature.

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

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

(b) The Development Disability shall:

(1) Originate before age eighteen;

(2) Be likely to continue indefinitely;

(3) Constitute a substantial disability for the individual as defined in the article.

(c) Developmental Disability shall not include handicapping conditions that are:

(1) Solely psychiatric disorders where there is impaired intellectual or social functioning which originated as a result of the psychiatric disorder or treatment given for such a disorder. Such psychiatric disorders include psycho-social deprivation and/or psychosis, severe neurosis or personality disorders even where social and intellectual functioning have become seriously impaired as an integral manifestation of the disorder.

(2) Solely learning disabilities. A learning disability is a condition which manifests as a significant discrepancy between estimated cognitive potential and actual level of educational performance and which is not a result of generalized mental retardation, educational or psycho-social deprivation, psychiatric disorder, or sensory loss.

(3) Solely physical in nature. These conditions include congenital anomalies or conditions acquired through disease, accident, or faulty development which are not associated with a neurological impairment that results in a need for treatment similar to that required for mental retardation.

3. Welfare and Institutions Code section 4512, subdivision (l), defines substantial disability as:

(I) 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.

4. California Code of Regulations, title 17, section 54001, provides:

(a) "Substantial disability" means:

(1) A condition which results in major impairment of cognitive and/or social functioning, representing sufficient impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential; and

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

- (A) Receptive and expressive language;
- (B) Learning;
- (C) Self-care;
- (D) Mobility;
- (E) Self-direction;
- (F) Capacity for independent living
- (G) Economic self-sufficiency.

5. To be eligible under the fifth category, an individual must: (1) have a disabling condition closely related to an intellectual disability; or, (2) have a disabling condition which requires treatment similar to that of a person with an intellectual disability. (*Samantha C. v. State Department of Developmental Services*, (2014) 185 Cal.App.4th 1462, 1492.) Conditions which are solely learning disabilities do not constitute a developmental disability. (Cal. Code Regs., tit. 17, § 54000, subd. (c)(2).) Likewise, conditions which are 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 do not constitute a developmental disability. (*Ibid.*)

6. As set forth in the Factual Findings, the evidence did not establish that claimant is intellectually disabled, autistic, or has a condition closely related to an intellectual disability, or requires treatment similar to that required for an individual with an intellectual disability. Rather, cognitive testing revealed that claimant is of average intelligence. Although claimant was diagnosed with learning disabilities and multiple mental health conditions prior to and after turning age 18, none of these qualify as a

developmental disability under the Lanterman Act. (Cal. Code of Regs., tit. 17, § 54000, subd. (c)(2).)

7. Claimant contends that he exhibits deficits or impairments in his adaptive functioning, is impaired by these limitations, and would benefit from regional center services. However, regional center services are limited to those individuals meeting the stated eligibility criteria. The evidence did not establish that claimant has impairments that result from a qualifying condition which originated and constituted a substantial disability before the age of 18.

8. Claimant failed to prove that he has a substantially disabling developmental disability as defined by the Lanterman Act. He is therefore not eligible for regional center services and supports at this time.

///

///

///

ORDER

Claimant's appeal is denied. The service agency's determination that claimant is not eligible for regional center services is upheld.

DATED: May 14, 2019

DENA COGGINS

Administrative Law Judge

Office of Administrative Hearings

NOTICE

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