BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

vs.

GOLDEN GATE REGIONAL CENTER, Service Agency.

OAH No. 2019080185

DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter by telephone and videoconference on August 17 through 21 and August 24 and 25, 2020.

Attorney Betsy J. Brazy represented claimant. Claimant was not present.

Attorney Rufus L. Cole represented service agency Golden Gate Regional Center (GGRC).

The record was held open for written closing argument. Claimant timely submitted closing and reply briefs, which were received and considered, except that claimant's citations to evidence that was not in the hearing record were disregarded. GGRC timely submitted a closing brief, which also was received and considered, except that GGRC's citations to evidence that was not in the hearing record likewise were disregarded.

In addition, without moving to reopen the evidentiary record, GGRC submitted documents with its closing brief that neither party had offered at the hearing. Claimant objected to these documents. Claimant's objection is sustained; the documents attached to GGRC's closing brief have not been considered.

The matter was submitted for decision October 26, 2020.

ISSUE

Is claimant eligible under the Lanterman Developmental Disabilities Services Act (the Lanterman Act, Welf. & Inst. Code, § 4500 et seq.) for services from GGRC?

FACTUAL FINDINGS

1. Claimant was born in April 1994. In early 2018, he asked GGRC to evaluate his eligibility under the Lanterman Act for GGRC's services. After collecting and reviewing information about claimant's medical and educational history, GGRC notified him in June 2018 that GGRC did not consider him to meet statutory criteria for Lanterman Act services.

2. Claimant asked GGRC to reconsider its decision, providing additional information about his background. In June 2019, GGRC notified claimant again that GGRC did not consider him eligible for Lanterman Act services. Claimant appealed this determination.

3. GGRC held an informal appeal meeting with claimant and his advocates in October 2019. After that meeting, GGRC confirmed again that GGRC did not

consider claimant eligible for Lanterman Act services. Claimant did not withdraw his appeal.

4. Claimant does not contend, and the evidence did not establish, that he has autism spectrum disorder, epilepsy, or cerebral palsy. Rather, claimant contends that he qualifies under the Lanterman Act for GGRC's services because he is substantially disabled by intellectual disability, or by a condition closely related to intellectual disability or requiring treatment similar to the treatment required for individuals with intellectual disability.

Key Life Events

5. Several witnesses described claimant from personal observation. Most of these witnesses met claimant in or after 2005, when he was already 11 years old. In addition, educational and medical records in evidence provided information about claimant's life. For material issues on which conflicts existed among documents and witnesses, the factual findings below reflect a preponderance of the most credible evidence.

BIRTH AND INFANCY

6. Claimant's mother abused cocaine and alcohol during her pregnancy with claimant. Claimant was born at approximately 29 weeks' gestation, weighing less than three pounds. Blood tests at birth showed recent cocaine exposure. He spent about seven weeks in newborn intensive care.

7. Clear evidence about claimant's early developmental milestones (sitting, crawling, walking, speaking, and toilet training) was not available.

8. Within a few months after claimant's birth, diagnostic testing confirmed that he has sickle cell disease. Claimant was hospitalized at least eight times before he turned five for pneumonia and other health problems relating to sickle cell disease.

ELEMENTARY SCHOOL YEARS

9. Claimant started kindergarten in fall 1999, when he was five years old. He missed more school days than he attended during the 1999-2000 school year, although the evidence did not explain why. He repeated kindergarten during the 2000-2001 school year.

10. Late in 2000, during his second school year in kindergarten, a school psychologist evaluated claimant, administering several psychological and academic tests. The psychologist described claimant as "functioning within the early to mid kindergarten range," consistent with his school placement at the time rather than with his chronological age, and did not recommend special education services for him.

11. Because of his sickle cell disease, claimant received regular medical care during childhood through the pediatric hematology clinic at the University of California, San Francisco, Medical Center. He also received social work services through this clinic.

12. By the time claimant was six years old, he was the subject of child dependency proceedings in San Mateo County because of his mother's alleged neglect. (Claimant has never lived with his father, and the evidence did not establish that they ever have had a meaningful parental relationship.) Records in evidence refer to mental health services claimant received in connection with these proceedings, although records from the services themselves were not in evidence.

13. Claimant's maternal grandmother took custody of him in approximately January 2001. At the beginning of the 2001-2002 school year, claimant's grandmother and his social worker through the pediatric hematology clinic asked his school district for a special education plan to address the effects claimant's sickle cell disease might have on his education. Claimant began receiving special education services in late 2001, although the evidence did not establish precisely what services he received in his early elementary years.

14. In 2005, the San Mateo County juvenile dependency court appointed Karen Shea as claimant's Court Appointed Special Advocate (CASA). Shea's role was to be a stable, mentoring adult for claimant, and to make recommendations to the dependency court regarding his residence, his education, and his general welfare. Shea and her husband Steven Beck visited claimant and his grandmother regularly after Shea's appointment.

15. Claimant entered fifth grade in fall 2005. He was in a combined fourth- and fifth-grade class taught by Marco Lopez. Lopez recalls that claimant was behind his peers in both literacy and numeracy. Lopez usually grouped claimant with the class's fourth-grade students, because Lopez did not believe that claimant was "ready" for fifth-grade work, but even so claimant often could not follow the class. At such times, claimant would misbehave or daydream. Lopez also observed that claimant could not maintain an age-appropriate level of personal organization; he could not follow a daily routine, and could not keep his belongings orderly without repeated prompting and aid.

16. In mid-2007, for reasons that were not in evidence, claimant's grandmother either lost or relinquished custody of him. An aunt and uncle in Oakland became claimant's foster parents. Shea continued as claimant's CASA; although she

would have participated in any decision to change his residence, her testimony did not explain why claimant moved. Shea and Beck saw claimant less often while he lived in Oakland because they continued to live in San Mateo County, but they maintained a cooperative relationship with claimant's aunt and uncle while the aunt and uncle were claimant's foster parents.

17. Claimant went to seventh and eighth grades at Bret Harte Middle School in Oakland. During both years, he received special education services primarily from Resource Specialist Kate Friedmann.

a. Friedmann testified that claimant was incapable of studying or learning independently. Without "constant prompting," he could not prioritize assignments or solve problems.

b. Friedmann also noted that claimant usually was unable to translate his academic knowledge into practical application. For example, although he could read aloud more fluently than most of Friedmann's other special education students, claimant rarely understood what he had read.

c. Friedmann testified that claimant preferred to spend recess and lunch periods in her classroom rather than in unstructured social interactions with classmates. He skipped his classes frequently also, sometimes coming to her classroom when he should have been in other classes.

d. Friedmann believed that claimant avoided classes and assignments that he could not understand, because feigning disinterest was less embarrassing than struggling or failing.

18. With Friedmann's assistance, claimant got a job as a kitchen assistant at a commercial bakery. Friedmann does not recall precisely how long claimant kept this job, but believes his tenure was brief because he was unable to follow instructions.

ADOLESCENCE

19. Claimant started high school in fall 2009, at Skyline High School in Oakland. An Individualized Education Plan (IEP) prepared in October 2009 describes claimant as needing considerable one-on-one attention, chiefly because he had "great difficulty maintaining focus when he is around his peers" and lacked "fundamental student skills, such as maintaining a binder and copying down his assignments."

20. When claimant started high school, he still lived with his aunt and uncle in Oakland. They expressed concern to school staff members at claimant's October 2009 IEP meeting about his marijuana use. The IEP notes that claimant already had been suspended from school twice for possessing marijuana on campus, and that he "now understands the zero tolerance policy for drug use."

21. That same fall, for reasons the evidence did not explain, claimant's aunt and uncle refused to continue as his foster parents. Beck testified that claimant "lost his housing" and asked Beck and Shea to allow him to live with them after living briefly in some type of group home. Shea declined to give any more detail about these circumstances. In early 2010, claimant moved into Shea's and Beck's home. Shea resigned as claimant's CASA, and she and Beck became claimant's foster parents.

22. After moving in with Beck and Shea, claimant continued his ninth-grade year briefly at Carlmont High School in Belmont. The school expelled him, however, for possessing marijuana on campus (despite the matters stated in Finding 20).

23. Claimant completed the 2009-2010 school year at Gateway High School in San Mateo. He also attended Gateway High School during the 2010-2011 and 2011-2012 academic years. Although claimant never passed the California High School Exit Examination (as described below in Finding 52.d), and although he spent only three school years in high school, he received a high school diploma in spring 2012. Beck and Shea testified that the district allowed claimant to graduate without passing the exit examination because he was in foster care.

24. When claimant turned 16 in 2010, he told Beck that he wanted to get a driver's license.

a. Beck advised claimant to begin by getting a Driver Handbook from the California Department of Motor Vehicles, and to study it to prepare for the written driver's license examination. Claimant did obtain the handbook, but to Beck's knowledge he never studied it or learned any of the rules in the handbook.

b. Beck himself did not attempt to teach claimant any driving mechanics. He did help claimant sign up for a motorcycle driver education class, but claimant abandoned the class after the first session.

c. Claimant has never learned to drive. He takes public transportation independently, but only to familiar locations.

25. When he moved into Beck's and Shea's home, claimant received behavioral or mental health services through the Edgewood Center for Children and Families. The evidence did not establish precisely what services claimant received or for how long, but did establish that the services included job placement at a grocery store. Beck recalls that claimant worked at the store for about three months stocking

shelves and retrieving shopping carts from the parking lot, but lost the job after receiving written warnings about poor work.

26. Beginning in claimant's middle school years, school records noted repeatedly that claimant could not remember to drink water regularly during the school day, even though his sickle cell disease makes dehydration especially harmful to his health. School records also note that when claimant had free choice of what to eat or when, he would forget to eat regular meals and would eat predominantly non-nutritious foods such as chips and sugary drinks.

27. Beck and Shea assigned household chores to claimant, but he did them reluctantly and poorly if at all. They attempted to teach him to use a "pill minder" box to manage his own regular medications, but were unsuccessful.

28. Over Shea's and Beck's objections, claimant insisted on moving out of their home immediately after graduating from high school. According to Beck, claimant reasoned that because he was 18 years old and a high school graduate, he was an adult who should be able to live independently even though he had no job and did not know how to drive; manage his own nutrition, health care, or daily medications; use a bank account; maintain a safe, orderly home; shop for food, housewares, or clothing; or cook.

YOUNG ADULTHOOD

29. Claimant's inability to do any of the adult activities of daily living described in Finding 28 made him unsuccessful at independent living. He lived off and on with other family members between 2012 and 2016, and also lived from time to time in institutions including a psychiatric hospital (as described in Findings 31 and 33) and a county jail (described in Finding 30). He maintained contact with Shea and Beck

during this time and stayed with them occasionally but did not live regularly in their home.

30. In 2012 and 2013, claimant had several conflicts with his mother and his grandmother that resulted in police intervention. According to Beck and Shea, these conflicts involved both women's attempts to steal money from claimant, and on at least one occasion his violent response. (Beck and Shea also testified credibly that claimant's mother encouraged claimant to use cocaine and possibly other illegal drugs with her.) He was convicted of one or more crimes, and spent time in jail in late 2013 and again in late 2014. The criminal court in which claimant was convicted has set aside his convictions.

31. In early 2014, claimant had a series of physical and mental health crises, precipitated in part by his failure to use medication for sickle cell disease and for psychiatric illness as prescribed. He was involuntarily psychiatrically hospitalized on several occasions, including for most of February 2014 at the Langley-Porter Psychiatric Hospital in San Francisco. Records from this hospital stay describe claimant as showing psychosis, with disorganized thinking, delusions, and paranoia. These records also identify substance abuse as a potential cause of, or contributor to, claimant's psychosis.

32. Before his February 2014 hospital stay, claimant had lived with an uncle in San Jose. Staff members at Langley-Porter Psychiatric Hospital asked the Santa Clara County Public Guardian to petition for appointment as claimant's conservator, on the ground that claimant's psychiatric illness made him unable to provide for his own welfare. The Santa Clara County Superior Court entered an order on February 18, 2014, temporarily appointing the Santa Clara County Public Guardian as claimant's conservator. By its terms, the temporary conservatorship expired 30 days later; the

evidence did not establish whether any further proceedings in the conservatorship matter occurred, or if so what happened.

33. Claimant quickly discontinued his prescribed psychiatric medications after his discharge from Langley-Porter Psychiatric Hospital. During summer 2014, he was seen several times at the San Mateo Medical Center, either seeking narcotic pain medication or after overdosing on such medication. Claimant again was hospitalized at Langley-Porter Psychiatric Hospital in October and early November 2014.

34. Between early 2015 and early 2018, claimant received treatment for sickle cell disease through Children's Hospital Oakland. Medical records from this treatment show generally improving physical health, which the treatment team attributed to good compliance with his sickle cell disease medication regimen. Claimant's treating physician from this period (Ward Hagar, M.D.) provided a letter describing claimant as unable "to process more than a single subject at a time," or to "retain information."

35. During summer 2015, claimant repeatedly received emergency psychiatric treatment at the San Mateo Medical Center. Urine drug screens showed him to be using cocaine, amphetamines, cannabis, and opioid drugs. He also reported auditory hallucinations on several occasions even though by this time he again was regularly taking anti-psychotic medication. During summer 2016, claimant received additional emergency psychiatric treatment at the San Mateo Medical Center, reporting auditory hallucinations more than once.

36. In 2015, claimant's mental health treatment providers attempted to enroll him in San Mateo County's Vocational Rehabilitation Services program. He completed some enrollment documents, but by 2016 he still had not attended an assessment interview.

37. During 2015, 2016, and 2017, claimant received regular outpatient psychiatric treatment with Brendan Scherer, M.D., through the County of San Mateo Health System. Scherer's treatment notes describe "cognitive impairments," psychosis, an "accidental overdose" of morphine, and marijuana use to a degree Scherer considered unhealthy.

38. Despite the matters stated in Findings 30 through 37, claimant enrolled in community college courses between 2012 and 2016 at Cañada College in Redwood City, at the College of San Mateo in San Mateo, and at Skyline College in San Bruno. The evidence did not establish precisely what courses he took, or what grades he received. Claimant received assistance from tutors in some of these courses.

39. In 2016, Shea also began exploring the possibility of enrolling claimant in a full-time residential college program for students with learning disabilities. She has investigated several such programs and visited a few with claimant. Claimant has never been admitted to any such program, however. In particular, one program declined to admit him after the testing described below in Finding 53.

40. In late 2016, claimant returned to live full-time with Beck and Shea. He has an "in-law" apartment with a bedroom, bathroom, microwave oven, and refrigerator, but also spends time with Beck and Shea in their living area.

41. Although the evidence does not show that claimant currently and actively abuses any psychoactive drugs (whether illicit or by prescription), educational and medical records in evidence, such as those summarized in Findings 20, 22, 31, 33, 35, and 37, showed that claimant has abused a variety of psychoactive drugs during the past 10 or more years. Despite Beck's and Shea's efforts in testimony to minimize claimant's drug abuse history, these records also show that school personnel as well as

claimant's physical and mental health providers discussed his abuse of both prescription and nonprescription drugs repeatedly with both of them.

42. Currently, Beck and Shea testified credibly that they manage claimant's medications for him, by instructing him on what to take and when. They store claimant's prescribed controlled substances in a locked box.

43. Shea and Beck do not leave claimant alone for longer than about two hours at a time. Beginning in 2016, they have employed other young adults to supervise him when they cannot, calling these young adults claimant's "mentors" in front of claimant as a gesture of respect. These mentors accompany claimant out in the community, such as to his community college classes; they also spend time with him at home. Beck and Shea summarized the mentors' duties as keeping claimant safe, keeping him company, reminding him to do basic activities such as showering and taking his medication (and assisting him when necessary), and modeling for him how independent young adults should behave.

44. Beck and Shea have never been able to rely on claimant to participate meaningfully in household management, such as by cleaning or shopping. Claimant knows how to use a microwave oven to reheat food or drinks, but does not otherwise cook.

45. Claimant has never learned to manage his own money. Although he has received Social Security benefits for many years, he preferred as a young adult to cash his checks and carry the entire sum in cash until he had spent it all (which usually occurred very quickly, according to Beck). Currently, Beck serves as claimant's Social Security payee, and manages claimant's money for him.

46. GGRC social worker Mariana Cardenas met claimant at the home he shares with Shea and Beck on February 2, 2018. She observed that he often "would have a blank stare and had to be asked multiple times" to answer her questions.

47. Claimant told Cardenas that he had a "best friend," but she realized after asking more specific questions that he was referring to a friend from about 15 years earlier. According to Beck and Shea, claimant has no social relationships aside from his family and his hired mentors.

48. Although claimant's sickle cell disease sometimes causes him pain, he has no ongoing or significant mobility limitations.

49. Claimant enjoys watching and playing basketball. He also watches movies and television for entertainment.

50. In late 2019 and early 2020, one of Beck's, Shea's, and claimant's neighbors employed claimant briefly in a veterinary practice. Claimant's role was to greet clients and their pets and to stock shelves. Claimant complained to Beck that the job was boring, although Beck does not know whether their neighbor considered claimant's performance acceptable. Claimant stopped working at the practice in mid-March 2020, when business limitations relating to the COVID-19 pandemic began, and had not returned by the date of the hearing.

Testing

51. Several times during his school years, claimant took tests to measure his cognitive and learning abilities. Although some of those test scores were in the "low average" range and most were lower, claimant's scores on such tests were never as low as two full standard deviations below the mean test score.

52. Claimant also took several standardized academic achievement tests during his school years.

a. When he was 12 and in sixth grade, he showed "basic" proficiency in language arts and science, but "far below basic" proficiency in mathematics.

b. When he was 17 and in tenth grade, claimant performed "far below basic" in both language arts and science, with no score for mathematics because he did not answer enough questions to produce a score.

c. Claimant took standardized Measure of Academic Performance tests in October 2011. He scored in the tenth percentile or below in both mathematics and reading.

d. Claimant took the English-Language Arts portion of the California High School Exit Examination on November 1, 2011, but did not pass. He would have taken the mathematics portion the next day, but was absent. Claimant never retook either portion of the examination.

53. On January 4, 2017, Andrea Miller, Psy.D., administered the Wechsler Adult Intelligence Scale, Fourth Edition (WAIS-IV) to claimant, and prepared a written report about him. The test measured claimant's Full-Scale IQ at 65, "extremely low." Dr. Miller's report noted that claimant seemed to give his "best effort," but that he became fatigued easily and might have scored higher if not for fatigue.

54. In July 2017, claimant underwent standardized achievement testing at Skyline College, using the Woodcock-Johnson IV Tests of Achievement. Examiner Jessica Truglio reported that claimant's overall performance in reading, writing, and mathematics was poorer than 99 percent of his peers. She noted (as had Friedmann,

described in Finding 17.b) that claimant's skill in reading aloud far exceeded his skill in comprehending what he read.

55. In April and May 2018, GGRC clinical psychologist Elsie Mak, Ph.D., again administered the WAIS-IV to claimant. Claimant scored no higher than "low average" on any component of this test; the test measured his Full-Scale IQ at 72, "borderline." Because claimant appeared to Dr. Mak to have avoided giving his best effort on the test because he was (or pretended to be) tired and unfocused, she concluded that the results probably are an "underrepresentation" of claimant's "true underlying cognitive abilities."

56. In July, August, and September 2019, clinical and educational psychologist Cheryl Ambler, Ph.D., administered several psychological and academic evaluations to claimant.

a. The Reynolds Intellectual Assessment Scales, Second Edition, is a test of cognitive ability. Although this tool is not as commonly used as the WAIS-IV, Dr. Ambler chose this test as an alternative to the WAIS-IV because claimant had taken the WAIS-IV in 2017 and 2018. He scored 40, "within the very low range of cognitive functioning."

b. As he had during Dr. Mak's testing, claimant expressed fatigue during Dr. Ambler's testing, and sometimes failed to pay attention. Like Dr. Mak, Dr. Ambler believes claimant's test score understates his cognitive ability.

57. Dr. Ambler also asked Shea to describe claimant using the Adaptive Behavior Assessment System, Third Edition. Her answers to this questionnaire scored claimant at 51, at "less than the 0.1st percentile" by comparison to peers. His adaptive function according to this questionnaire was very poor across all domains:

communication, functional academics, and self-direction; leisure activities and social interactions; and community use, home living, health and safety, and self-care.

58. In March and April 2020, Dr. Ambler asked Shea and one of claimant's mentors to complete the Vineland Adaptive Behavior Scales, Third Edition. Both gave claimant very low scores, at or below the first percentile of ability relative to peers, although Shea's were lower than the mentor's.

a. Claimant cannot follow multi-step instructions. He understands the plots of television programs or movies only if he has seen them many times.

b. Claimant does not use email or text messages. He can use a telephone to call someone only at a pre-programmed number.

c. Claimant bathes, washes his hands or face, and brushes his teeth only if someone reminds him to do so. He can dress himself but sometimes chooses inappropriate clothing for the weather.

d. Claimant rarely asks for help when he encounters a problem he cannot solve.

Expert Testimony

59. Several GGRC staff members, including a physician (John D. Michael, M.D.) and two psychologists (Dr. Mak and Telford Moore, Ph.D.) evaluated claimant and expressed opinions about his condition. In addition, claimant presented expert testimony from two other physicians (James Huang, M.D., and Kenneth Lyons Jones, M.D.), a California-licensed psychologist (Dr. Ambler), and another psychologist with academic and research experience who is licensed only in Nebraska (Stephen Greenspan, Ph.D.).

SICKLE CELL DISEASE

60. James Huang, M.D., testified regarding sickle cell disease and its potential effects on mental function. Dr. Huang currently directs the pediatric hematology clinic through which claimant received childhood medical care, as described in Finding 11. Dr. Huang first met claimant in about 2007, when Dr. Huang joined the clinic's staff.

61. According to Dr. Huang, sickle cell disease often damages patients' brains, because misshapen red blood cells block small blood vessels in the brain. Brain imaging in children with sickle cell disease shows evidence of past strokes in about 25 percent of children by age 4 and in about 33 percent of children by age 16. Imaging of claimant's brain when he was about 20 years old showed evidence that he had experienced small strokes in the past, although Dr. Huang could not say when those strokes might have occurred. Nevertheless, Dr. Huang's opinion is that sickle cell disease has caused vascular damage to claimant's brain, starting in early childhood, and that this vascular brain damage impairs claimant's judgment, executive function, and cognitive ability.

62. Dr. Huang also testified that sickle cell disease can cause extreme pain during crisis episodes. Many patients, including claimant, use narcotic pain medications. While claimant was Dr. Huang's patient, Dr. Huang worried that claimant misused his pain medications; he also believed that claimant used marijuana excessively and unhealthily.

FETAL ALCOHOL SPECTRUM DISORDER

63. Kenneth Lyons Jones, M.D., testified regarding the developmental effects of prenatal alcohol exposure. Dr. Jones is a pediatrician who has focused on this issue for almost 50 years. He developed one of the earliest descriptions of what clinicians

now call Fetal Alcohol Spectrum Disorder (FASD). Dr. Jones directs a clinic at the University of California, San Diego, devoted to identifying and managing this disorder and to training other clinicians about it.

64. FASD occurs when alcohol exposure damages the developing fetal brain. Although FASD does not occur in every infant born to a mother who consumes alcohol during pregnancy, Dr. Jones considers prenatal exposure to alcohol to be much riskier for a developing fetus than prenatal exposure to many other drugs including cocaine and methamphetamine.

65. FASD involves three key features. First, because of abnormal brain growth within the growing fetal skull, people with FASD usually have a distinctive facial structure. Second, people with FASD usually have overall growth deficiencies, including small heads. Third, FASD produces significant impairments in executive function, impulse control, and mood regulation. Dr. Jones noted that children with FASD usually have modest impairments in cognitive function, with more significant impairments in judgment and self-regulation that cause them to be uncooperative, lazy, and volatile. These impairments become more salient as children with FASD age, because their unaffected peers reach far greater maturity in judgment and self-regulation than do children with FASD.

66. Dr. Jones examined claimant in person in October 2019. He also spoke by videoconference with claimant in April 2020, and reviewed a report by Dr. Ambler summarizing the testing and evaluation described in Findings 56, 57, 58, and 69. Based on claimant's facial features, his behavior and psychological evaluations, and his low weight (about 130 pounds) in relation to his height (about 70 inches), Dr. Jones diagnosed FASD in claimant. Although claimant was thinner when he saw Dr. Jones than he had been a few years earlier, Dr. Jones's diagnosis is persuasive.

COGNITIVE AND ADAPTIVE FUNCTION

67. According to Dr. Mak, the forgetfulness and disorganization described in all of claimant's educational records are "hallmarks" of Attention Deficit Hyperactivity Disorder (ADHD). Dr. Mak acknowledged that claimant has shown severe attention deficits since early childhood, with a significant impact on his adaptive function. Her opinion, however, is that such deficits never constitute developmental disabilities that qualify a person for Lanterman Act services.

68. GGRC psychologist Telford Moore, Ph.D., did not personally interview or assess claimant, but reviewed all records regarding him that GGRC had collected during 2018 and 2019. Dr. Moore reviewed and compared claimant's test scores from childhood to adulthood and testified that until the unreliable scores from 2017 and 2019 (described in Findings 53 and 56), claimant had never scored poorly enough to qualify as a person with intellectual disability. In addition, to the extent claimant's cognitive function may have declined since he was a young child, Dr. Moore attributes that decline to substance abuse and psychiatric illness, not to any non-psychiatric pathology that began during claimant's developmental period.

69. In addition to the testing described above in Findings 56, 57, and 58, Dr. Ambler interviewed claimant, Shea, one of claimant's mentors, and a social worker who had known claimant in his pre-teen and early teen years. Based on all these observations, Dr. Ambler diagnosed claimant at age 24 with intellectual disability. In addition, although Dr. Ambler did not meet or evaluate claimant until he was a young man, she concluded on the basis of her review of his educational records and life history that his impairments in executive function had existed since childhood. She diagnosed him as well with a mild neurocognitive disorder, noting that "[e]ven with

the support and accommodations/modifications [claimant] received in school at all levels, he could not learn the necessary skills to prepare for independent living."

70. Stephen Greenspan, Ph.D., testified regarding conditions closely related to intellectual disability or requiring similar treatment. Dr. Greenspan, as a Fellow of the American Association on Intellectual and Developmental Disabilities, served as a consultant to the committee that prepared the section on intellectual disability in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition.

71. Dr. Greenspan testified that intellectual disability sometimes results from treatable or curable medical conditions, such as malnutrition, and that if so, medical intervention can address or reverse such intellectual disability. In most cases, however, interventions cannot alter or reverse intellectual disability, and appropriate treatment involves services to support and improve the person's safety and quality of life. Dr. Greenspan emphasized that adaptive function deficits are intellectual disability's hallmark, and that improving adaptive function or compensating for its absence are necessary regardless of intellectual disability's cause or severity.

Analysis

72. Dr. Moore testified that to find Lanterman Act eligibility on the basis of intellectual disability, GGRC looks for evidence that the applicant has demonstrated cognitive testing scores more than two standard deviations below the mean during the developmental period. Because of the matters stated in Finding 51, the GGRC team found claimant ineligible on this basis.

73. Dr. Moore testified further that significant deficits in adaptive function that arise during the developmental period and that do not result solely from psychiatric illness may qualify a person for Lanterman Act services if the person's

cognitive testing scores are close to, but not at or below, two standard deviations below the mean. As to claimant, however, the GGRC evaluation team concluded that claimant's poor adaptive function as an adult did not indicate developmental disability. Instead, the GGRC evaluation team concluded that claimant's poor adaptive function resulted from his psychiatric illness (described in Findings 31, 33, 35, and 37), from his drug abuse (described in Findings 20, 22, 31, 33, 35, and 37), from attention deficit disorder (as stated in Finding 67), or from simple laziness. According to the GGRC team, because none of these mental disorders or character flaws qualifies by itself as a developmental disability, claimant does not meet the Lanterman Act's statutory eligibility definition.

74. The matters stated in Finding 17.b, 23, and 51 show that claimant's cognitive ability is not as poor as that of a person with intellectual disability. The matters stated in Findings 10 and 52 suggest that claimant's cognitive ability was better when he was a child than it is now. Nevertheless, the matters stated in Findings 15, 17.a, 18, 19, 22, 25, 26, 27, 28, 36, and 45 confirm that additional, severe impairments in executive function have existed for claimant since childhood. As stated in Findings 55 and 56, in a testing environment these impairments interfere with claimant's cognitive ability; as stated in Findings 18, 24 through 28, 42 through 45, 50, and 69, these impairments have made claimant unable to learn from education or experience and to mature into an independent adult.

75. The persuasive opinions described in Findings 60 through 66 and 69 refute the GGRC evaluation team's conclusion that claimant's adaptive deficits result only from factors that make him ineligible for Lanterman Act services. Instead, according to Dr. Huang, claimant's lifelong sickle cell disease has damaged his brain in general; and according to Dr. Jones, claimant's prenatal alcohol exposure has

particularly damaged the portions of his brain that regulate mood, impulse, judgment, and self-discipline. Although the extent of claimant's adaptive impairment may not have been fully evident until his young adulthood, the matters stated in Findings 60 through 66 and 69 confirm that this impairment has existed in claimant since early childhood and that it results from brain damage that began in or before infancy.

76. Finally, Dr. Greenspan's opinion that claimant's condition relates closely to intellectual disability and requires similar treatment is persuasive. The evidence demonstrated, as described in Findings 29 through 37, that claimant led a chaotic life when he attempted to live independently, in essence because he did not know how to care for himself despite many adults' sustained efforts over many years to teach him. The evidence also demonstrated, however, as described in Findings 34 and 42 through 50, that with strong guidance and support, claimant's health and daily life have stabilized. The matters stated in Findings 42 through 45 establish that claimant is not likely to achieve adult independence or to succeed in higher education, but the matters stated in Findings 26, 27, 30, 42 through 45, and 47 confirm that he needs assistance such as a supervised residence with cooking and cleaning services, medication management, and social opportunities with peers who do not threaten his health or welfare by encouraging self-destructive or criminal behavior.

LEGAL CONCLUSIONS

1. To establish eligibility for GGRC's services under the Lanterman Act, claimant has the burden of proving by a preponderance of the evidence that (1) he suffers from a developmental disability and (2) he is substantially disabled by that developmental disability. (Welf. & Inst. Code, §§ 4501, 4512, subd. (a).)

2. Disabilities that qualify under the Lanterman Act as "developmental disabilities" include "intellectual disability, cerebral palsy, epilepsy, and autism." (Welf. & Inst. Code, § 4512, subd. (a).) They 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." (*Id.*) In any case, the "developmental disability" must originate before the person turns 18, and must be lifelong. (*Id.*)

3. The matters stated in Finding 4 confirm that claimant does not qualify for GGRC services because of autism, epilepsy, or cerebral palsy.

4. The matters stated in Findings 51 and 72 confirm that claimant does not qualify for GGRC services because of intellectual disability.

5. Disabling conditions "closely related to intellectual disability" or requiring "treatment similar to that required for individuals with intellectual disability" include conditions that prevent full use of a person's cognitive ability, particularly where cognitive ability is poor but not so poor as to qualify by itself as intellectual disability. (*Samantha C. v. State Department of Developmental Services* (2010) 185 Cal.App.4th 1462, 1492-1493.) Regulations refining and implementing the Lanterman Act's definitions exclude "[s]olely psychiatric disorders" and "[s]olely learning disabilities" from consideration as contributors to developmental disability. (Cal. Code Regs., tit. 17, § 54000, subds. (c)(1), (c)(2).) Nevertheless, depending on their apparent cause, major impairments in problem solving, situational adaptation, or the ability to learn and grow from experience can combine with poor cognitive function to constitute developmental disability within the meaning of the Lanterman Act.

6. The matters stated in Findings 6, 8, and 66 establish that claimant has sickle cell disease and FASD, and that he was born substantially prematurely. In light of

all claimant's childhood development summarized in Findings 6 through 28, and the expert opinions summarized in Findings 60 through 66 and 69 through 71, these conditions are disabling conditions that originated at or before claimant's birth and that have caused lifelong impairment in his ability to learn from experience, to exercise self-control, to make and carry out complex plans, and to translate any academic learning into daily life. Further, although these insults to claimant's developing brain may have resulted in part from psycho-social factors (such as parental neglect, as described in Findings 6 and 12) and may also have led to psychiatric illness (as described in Findings 31, 33, 35, and 37), they are neither solely "psychiatric disorders" nor solely "learning disabilities," as the expert testimony summarized in Findings 60 through 66 explains. Claimant has a condition closely related to intellectual disability or requiring treatment similar to the treatment required for individuals with intellectual disability. This condition is a developmental disability within the meaning of the Lanterman Act.

7. A qualifying disability must be "substantial," meaning that it causes "significant functional limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person: (A) Self care. (B) Receptive and expressive language. (C) Learning. (D) Mobility. (E) Self direction. (F) Capacity for independent living. (G) Economic self sufficiency." (Welf. & Inst. Code, § 4512, subds. (a), (l)(1); Cal. Code Regs., tit. 17, § 54001, subd. (a)(2).) The matters stated in Findings 15, 17, 19, 26, 29 through 37, 42 through 47, 57, and 58 establish that claimant's developmental disability is substantial.

ORDER

The appeal by claimant from Golden Gate Regional Center's determination that he is ineligible for services under the Lanterman Act is granted. Claimant is eligible under the Lanterman Act to receive appropriate and necessary services from Golden Gate Regional Center.

DATE:

JULIET E. COX
Administrative Law Judge
Office of Administrative Hearings

NOTICE

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