

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

CLAIMANT

vs.

NORTH LOS ANGELES COUNTY REGIONAL CENTER

OAH No. 2019080584

DECISION

Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on December 11, 2019, in Chatsworth, California.

Dana Lawrence, Fair Hearing and Administrative Procedures Manager, represented North Los Angeles County Regional Center (Service Agency or NLACRC).

Ellen S. Finkelberg, Attorney at Law, represented Claimant, who was not present at the hearing.

Oral and documentary evidence was received. The record was held open for the parties to simultaneously file and serve written closing briefs by December 16, 2019. The parties timely filed and served their briefs. Service Agency's closing brief was

marked as Exhibit 32. Claimant's closing brief was marked as Exhibit B. The record was closed and the matter was submitted for decision on December 16, 2019.

ISSUE

Is Claimant eligible for regional center services on the basis that he is an individual with intellectual disability or a "fifth category" condition (i.e., one that is closely related to intellectual disability or requires treatment similar to that required for an individual with intellectual disability)?

EVIDENCE RELIED ON

Documentary: Service Agency's exhibits 1-32; Claimant's exhibits A and B.

Testimonial: Sandi J. Fischer, Ph.D., Co-Supervisor of NLACRC's Clinical and Intake Departments.

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is a 27-year-old male. He is currently incarcerated.
2. On April 10, 2019, Service Agency received a letter from Ibrahim K. Saab, Attorney/Clients' Rights Advocate with Disability Rights California, requesting an expedited eligibility determination for Claimant. (Exh. 24.) In the letter, Mr. Saab stated that Claimant was diagnosed with fetal alcohol syndrome disorder (FASD), which is a lifelong disability that substantially impairs his adaptive functioning abilities. Mr. Saab

asserted that Claimant qualified for regional center services under the fifth category because he requires treatment similar to an individual with intellectual disability. The letter asserted that Claimant's deficits in adaptive functioning due to FASD are equal to those seen in individuals with intellectual disability.

3. On April 17, 2019, Harry McKee, Deputy Public Defender, submitted a letter to Service Agency requesting an expedited eligibility determination for Claimant. (Exh. 25.) Mr. McKee's letter included a copy of the April 10, 2019 letter by Mr. Saab of Disability Rights California, and letters from three experts who evaluated Claimant and concluded that he meets the eligibility criteria for regional center services. (See Exhs. 21, 22, 23.)

4. On or about May 7, 2019, Service Agency received an Intake Application signed by Claimant and his public defender, Mr. McKee. (Exh. 26.) The Intake Application indicated that Claimant was diagnosed with intellectual disability by Ann Walker, Ph.D., when he was 19 years old.¹ The Intake Application also explained that Claimant was applying for regional center services because "[Claimant] was diagnosed with Alcohol-Related Neurodevelopmental Deficits (ARND) which is a lifelong developmental disability which substantially impairs his adaptive functioning abilities. As such, [Claimant] qualifies for regional center under the fifth category." (Exh. 26, p. 3.)

¹ According to her written report, the diagnosis given by Dr. Walker was Cognitive Disorder NOS. (Exh. 16.)

5. On July 8, 2019, Service Agency's interdisciplinary eligibility committee reviewed Claimant's application and available records, and determined that Claimant was not eligible for regional center services. (Exh. 27.)

6. By a letter and a Notice of Proposed Action, both dated July 9, 2019, Service Agency notified Claimant of its decision that he was not eligible for regional center services. On August 8, 2019, Claimant filed a fair hearing request to appeal Service Agency's decision. All jurisdictional requirements were met. This hearing ensued.

Claimant's Background

7. Claimant was born in 1992 in Riverside, California. Claimant's mother passed away when he was seven years old. Claimant's father had no involvement in his life since his birth. Claimant had been living with his maternal aunt and maternal grandmother before his mother passed away. He then lived with a maternal uncle until 2005, when the uncle refused to take Claimant back home. Claimant had difficulties with his uncle, who mistreated him. The uncle could not control Claimant's behaviors. Claimant had constant arguments with his uncle and would run away from home when he got upset.

8. Starting in 2005, when he was 13 years old, Claimant was a ward of the court and lived in out-of-home placements. Claimant's first arrest was in March 2005 for burglary. In July 2005, Claimant was placed at Clardy's New Direction Orchid House, but he was removed a few months later due to his failure to adjust. He was next placed at Real Life Center, but he ran away from that facility after only eight days. In October 2006, Claimant was placed at Riverside County Youth Academy (RCYA), where he had significant difficulties adjusting to that placement. While residing at

RCYA, Claimant accumulated 40 incident reports for destruction of property, horseplay with peers, aggressive behavior, spitting at another minor, and throwing a chair at his locker. In May 2007, Claimant was removed from RCYA and taken into custody by the probation department and placed at Van Horn Youth Center (Van Horn). In October 2007, he ran away from Van Horn and was later detained and placed at juvenile hall. In March 2008, Claimant was placed at Optimist Residential Facility, which was his fifth out-of-home placement since 2005.

9. When living with his uncle or in an out-of-home placement, Claimant did not like limit setting and would get angry with his uncle or leave the house when someone tried to set limits for him. Claimant also had difficulties in school. He had difficulties with paying attention in class and was argumentative with peers and adults. By age 11, Claimant began associating with gang members. His acting out behaviors escalated as he entered middle school. He would often argue with peers and adults. When he became very angry, he would break windows, doors, and sometimes threaten to hurt others. Claimant also had sudden mood changes and would often engage in risk taking behaviors.

Educational History

10. Claimant received special education services starting in June 2004, when he was in sixth grade in the Alvord Unified School District. Assessment information from that time showed Claimant's cognitive abilities were in the average range. (Exh. 3, p. 3.) Claimant was found eligible for special education services as a student with emotional disturbance, based on his inability to build or maintain satisfactory interpersonal relationships with peers and teachers, and because he engaged in inappropriate types of behavior or feelings under normal circumstances.

2007 EVALUATION BY DR. HENDRICK

11. On July 20, 2007, Michael Hendrick, District Psychologist for the Riverside County Office of Education, completed a psychological evaluation of Claimant. At the time of the evaluation, Claimant was 14 years, 11 months old, and was a ninth grader at F.H. Butterfield Juvenile Hall. He was receiving special education services as a student with emotional disturbance. Dr. Hendrick's evaluation was to address: (1) Claimant's present levels of academic and social/emotional needs; (2) whether Claimant was eligible for special education services; and (3) whether Claimant's needs could be met in the regular education program. Dr. Hendrick reviewed records, interviewed Claimant, made clinical observations, and administered testing. Dr. Hendrick prepared a written Psychological Evaluation report that summarized his findings and conclusions. (Exh. 3.)

12. Dr. Hendrick found Claimant was cooperative and well-mannered during the evaluation. Claimant seemed well motivated during the testing session, and he seemed to use his best effort on the various tasks presented to him. He appeared to enjoy the one-to-one attention he received during the testing. Claimant's performance during the formal testing did not appear to be adversely affected by failure or frustration. He did not require any adaptations or modifications in the standardized procedures, and he did not require an excessive amount of reinforcement and praise.

13. Dr. Hendrick found no language or communication factors that would directly affect Claimant's ability to profit from the educational process. Claimant seemed comfortable in conversation with Dr. Hendrick, but he did not initiate discussion with the doctor apart from the testing responses. Claimant articulated his thoughts, needs, and wants clearly, and responded appropriately to verbal directions.

Claimant appeared to process information adequately, and his vocabulary levels were consistent with his overall academic functioning levels.

14. (A) Dr. Hendrick administered testing to Claimant, including the Naglieri Nonverbal Ability Test (NNAT), which is a nonverbal measure of general ability that is predictive of academic success; the Children's Depression Inventory (CDI), which is a self-rated symptom oriented scale for adolescents; the Adolescent Psychopathology Scale (APS); and the Woodcock-Johnson Psychoeducational Battery-III (WJ-III), which assesses the achievement of children in grades K through 12.

(B) Claimant's scores on the NNAT measured his nonverbal cognitive ability in the average range. (Exh. 3, p. 4; Exh. 30.) Claimant's scores on the CDI were in the average range, and his scores on the APS indicated moderate clinical symptoms for Conduct Disorder and Defensiveness. Dr. Hendrick concluded that Claimant's scores on the CDI and APS did not satisfy criteria for special education eligibility as a student with emotional disturbance.

(C) Claimant's scores on the WJ-III were in the average range for reading, spelling, and math calculation; in the low average range for math reasoning; and in the high end of the low average range for story recall. (Exh. 3, p. 6; Exh. 30.) Dr. Hendrick concluded Claimant did not have a severe discrepancy between achievement and ability to a degree that he could not be adequately served in regular education classes.

2008 EVALUATION BY DR. ADZHYAN

15. On or about April 4, 2008, Peter Adzhyan, Psy.D., School Psychologist for Los Angeles Unified School District (LAUSD), completed a comprehensive psychoeducational assessment of Claimant. At the time of the assessment, Claimant was 15 years, seven months old, and a ninth grader in the high school at Optimist

Residential Facility. The purpose of the assessment was, among other things, to determine whether Claimant had a learning disability in math, reading and writing; determine if reported difficulties with attention were due to characteristics of attentional disorders; and determine if Claimant continued to be eligible for special education services as a student with emotional disturbance. Dr. Adzhyan reviewed records; reviewed information regarding Claimant's current classroom performance; observed and interviewed teachers and other service providers; made clinical observations; and administered testing and alternative assessment methods. Dr. Adzhyan prepared a written Psychological Report dated April 24, 2008, which summarized his findings and conclusions. (Exh. 5.)

16. Dr. Adzhyan's report included a section on Claimant's developmental history, which stated: "Records show that [Claimant] was a product of a full term pregnancy and the pregnancy was with no complications and [his mother] never used any substances that would have affected [Claimant's] prenatal development. [Claimant's] developmental milestones of sitting, standing, crawling, and walking were obtained at a typical rate of development. Likewise, the language milestones of speaking his first words and speaking in sentences were obtained at a typical rate." (Exh. 5, pp. 4-5.)

17. (A) In his written report, Dr. Adzhyan summarized Claimant's educational history. Prior to attending Optimist high school, Claimant attended Terrace Elementary in the Alvord Unified School District and F.H. Butterfield K-8 School in Loma Vista. It was reported that Claimant had a hard time learning and passing his classes. He had difficulties with completing his work, staying on task, and remaining in his seat. He had a difficult time adjusting to new teachers and class routines. He had difficulty controlling his impulses, which led to fights with peers. Claimant had numerous

suspensions in elementary school. His scores on school-wide standardized tests indicated below-average performance in reading, writing, and math. In seventh grade, Claimant did not meet grade level standards in reading, math, and writing. He failed most of his classes in eighth grade as well. He had numerous suspensions due to fights, defiance, and trancies. Records showed Claimant had a history of defiance towards teachers and school staff in all grades.

(B) Dr. Adzhyan's report noted that Claimant received interventions in school. He received after school tutoring in elementary school to improve his math and language arts skills, but he did not significantly improve in those skills. At Optimist high school, Claimant received academic interventions including small group instruction, extra time on tests and class work, and individual help from teachers, as well as classroom accommodations such as preferential seating and repetition of instructions. Claimant benefited from these interventions. He reported that the small group instruction helped him pass some of his classes.

(C) At the time of Dr. Adzhyan's assessment, Claimant was taking six classes and had earned a total of 30 credits towards graduation. Claimant was passing most of his classes with "C" and "B" grades, but he was failing his history class and was earning a "D" grade in geometry. Dr. Adzhyan noted: "Overall, based on his academic performance in elementary, middle and high schools, it seems that [Claimant] showed limited academic progress in school. He also has shown difficulties with attention, task completion, study habits, following adult directives, accepting authority and peer relationships since elementary grades as well. He has a long history of defiance and appears that he does not like following adult directions." (Exh. 5, p. 5.)

18. Dr. Adzhyan noted that an April 2008 assessment by an assessor (Dr. Wasserman) diagnosed Claimant with Phase of Life Problem with Dysthymic Features.

The assessor concluded that Claimant met the educational diagnostic criteria for emotional disturbance because he exhibited "A General pervasive mood of unhappiness or depression." (Exh. 5, p. 6.) The assessor noted that Claimant was described as an impulsive young man. The assessor concluded that the impulsivity was an attempt to essentially mask and act out underlying depression.

19. Dr. Adzhyan interviewed Claimant's teachers regarding Claimant's academic performance and interaction skills. His English teacher reported that Claimant did well in his assignments and tests when he focused on the assignment, but he failed to follow directions and rushed through his classwork, resulting in many mistakes. His geometry teacher reported that Claimant comes to class unmotivated and does not pay attention to the lesson. Claimant's history teacher reported that he did well on tests and assignments and he considered Claimant to be "a great addition to the class." (Exh. 5, p. 6.) Claimant's science teacher reported that Claimant was capable of doing his work, but he had a hard time paying attention, he tended to rush through his work, and he did not stay focused. All of the teachers reported that Claimant "exhibits difficulties with his ability to inhibit, resist, or not act on impulse and the ability to stop his own behaviors at the appropriate time." (*Id.*)

20. Dr. Adzhyan's assessment results for Claimant indicated that Claimant was "functioning within the average range of intellectual ability for his age with equally developed nonverbal and verbal thinking and reasoning skills." (Exh. 5, p. 12.) The assessment results showed that Claimant had age-appropriate adaptive skills and exhibited age-level social skills. (Exh. 5, p. 10.) Claimant had age-level interpersonal skills but showed below age-level study skills, motivation and academic engagement that made learning more difficult for him. Dr. Adzhyan found that Claimant exhibited characteristics consistent with ADHD that seemed to be comorbid with bipolar

disorder. At the time of Dr. Adzhyan's evaluation, Claimant was taking Abilify, which is commonly prescribed for the treatment of depression, bipolar disorder, anxiety and panic attacks.

21. Based on his evaluation of Claimant, Dr. Adzhyan concluded that Claimant met the eligibility criteria to receive special education as a student with a specific learning disability in math and writing. The discrepancy between his math skills and ability was not due to a lack of school experience. Claimant had grade level reading skills. A lack of schooling would affect all academic areas and not just a specific area like math and writing. Dr. Adzhyan opined that the discrepancy between Claimant's ability and achievement was due to a deficiency in attention and working memory. Dr. Adzhyan also concluded that Claimant met the eligibility criteria to receive special education services as a student with Other Health Impairment due to characteristics consistent with bipolar disorder and ADHD.

22. Based on the assessment results, Dr. Adzhyan also concluded that Claimant did not meet the eligibility criteria to receive special education services as a student with emotional disturbance. Dr. Adzhyan found that Claimant's prior poor academic performance and difficulties with adjusting to his school environment and being out in the community were primarily due to characteristics consistent with bipolar disorder. Although Claimant also exhibited characteristics consistent with oppositional defiant and conduct disorders, those characteristics seemed to be due to Claimant's inability to control his impulses and racing thoughts.

2008 IEP

23. Claimant's individualized education program (IEP) dated April 25, 2008 (2008 IEP), from LAUSD, was presented at the hearing. (Exh. 6.) The 2008 IEP indicated

Claimant was 15 years old and in the tenth grade, and was eligible for special education services as a student with Other Health Impairment.

24. The 2008 IEP indicated that Claimant was scheduled to graduate high school in June 2010. After high school, Claimant's plan was to attend community college and study criminal justice. The 2008 IEP stated that Claimant passed his driver's education class and just needed to take the written test to get his DMV driver's permit. The 2008 IEP stated that Claimant was able to do his own laundry, cook a few basic meals, and use public transportation. He could make correct change but needed to learn how to keep a checkbook. The 2008 IEP also stated that Claimant previously worked on-and-off as a lane scorer in a bowling alley, and he enjoyed playing most team sports.

25. In the area of social-emotional functioning, the 2008 IEP reported that Claimant demonstrated age-appropriate adaptive skills and social skills, but showed below age-level study skills, motivation and academic engagement. Claimant's characteristics were consistent with ADHD and bipolar disorder. In the area of general ability, the 2008 IEP noted that Claimant was functioning within the average range of intellectual ability for his age, with equally developed nonverbal and verbal thinking and reasoning skills. It was further noted that Claimant had average visual processing skills, below average phonological awareness and verbal working memory, and low average auditory short-term sequential memory skills.

26. The 2008 IEP contained annual goals/objectives in the areas of reading, math, and written language, and in the areas of social-emotional, behavioral support, and behavior. The 2008 IEP also included a Behavior Support Plan to address Claimant's behavioral issue related to his failure to complete assignments.

2010 IEP

27. Claimant's IEP dated May 26, 2010 (2010 IEP), from Riverside County Special Education Local Plan Area, was presented at the hearing. (Exh. 9.)² At the time of the 2010 IEP, Claimant was in the eleventh grade and was 17 years, nine months old. The 2010 IEP indicated Claimant was eligible for special education services as a student with Other Health Impairment. Claimant was described as "very personable" and "capable of grade level work." (Exh. 9, p. 1.)

28. The 2010 IEP noted that Claimant's WJ-III scores reflected math skills in the average range for calculation skills, and the low average range for calculation, math fluency, and applied problems. It was noted that Claimant "tends to avoid working in this area [i.e., math] and lacks the motivation to try." (Exh. 9, p. 2.) In the area of communication, the 2010 IEP noted that Claimant engaged in "talking out of turn" and "getting up at inappropriate times," and that Claimant admitted "to having problems with anger and that he lacks self-motivation." (*Id.*) In the area of reading, the 2010 IEP noted that Claimant was "reading at grade level in the Alt. Ed. Curriculum." (*Id.* at p. 3.) The Transition Plan included in the 2010 IEP indicated that Claimant wanted to attend and finish the Independent Living Program. (*Id.* at p. 5.)

SCHOOL TRANSCRIPTS

29. Claimant's school transcripts were presented at the hearing. (Exhs. 10, 11.) The transcripts reflected variable grades, and the classes Claimant was taking appeared to be the standard academic curriculum expected for high school graduation. His classes included English, History, Biology, and World and American

² The 2010 IEP presented at the hearing was partially illegible.

Literature. The transcripts indicated that Claimant passed the CAHSEE³ for English/Language Arts in 2010, and came within 23 points of passing the CAHSEE for Mathematics. (Exh. 10, p. 5.)

Previous Application for Regional Center Services

30. Claimant previously applied for regional center services in May 2012 when he was 19 years old. The application was initially referred to South Central Los Angeles Regional Center, but it was NLACRC that ultimately made the determination that Claimant was not eligible for regional center services at that time. (Exhs. 17-20.) Claimant was incarcerated at the time of the application.

31. A Regional Center Social Assessment report dated May 17, 2012, was completed by Bobby Vargas, BSW, Law Enforcement Liaison, Specialized Services Unit. (Exh. 17.) In terms of Claimant's developmental history, the report noted that Claimant was unaware of his mother's age at his birth, unaware of any complications at his birth, and unaware of his developmental milestones being abnormal.

32. (A) The Social Assessment report summarized Claimant's then-current functioning in six areas. In the area of independent living, Claimant was able to dress himself, take care of his personal hygiene, perform simple household chores, make simple purchases, and prepare simple meals. He reported that he did not have a driver's license but he knew how to use public transportation. In the area of social functioning, Claimant reported that he had lots of friends, he could initiate interactions, and he enjoyed playing basketball and playing on computers. He denied any gang involvement.

³ CAHSEE stands for California High School Exit Examination.

(B) In terms of his cognitive functioning, Claimant reported that he was able to read and write, and complete simple math problems. In the area of communication, Claimant did not appear to have any significant limitations. He was able to express himself in a coherent manner. In terms of his emotional functioning, Claimant reported he had been hospitalized on three different occasions in a psychiatric hospital due to depression and fighting. In terms of motor skills, Claimant did not have any limitations in this area. He was fully ambulatory and demonstrated use of both extremities. Claimant reported he was taking seizure medication but he had not had a seizure for many months, and he also used an inhaler for asthma.

33. (A) On May 9, 2012, Ann L. Walker, Ph.D., a clinical psychologist, completed a psychological evaluation to assist in the processing of Claimant's May 2012 application for regional center services. The evaluation was conducted at the Twin Towers Correctional Facility. Dr. Walker reviewed a March 2, 2012 Psychological Evaluation report (school records and medical records were not available); she conducted a clinical interview of Claimant and a mental status exam; and she administered testing. Dr. Walker prepared a Psychological Evaluation report dated May 9, 2012, that summarized her findings and conclusions. (Exh. 16.)

(B) Dr. Walker noted that the March 2, 2012 Psychological Evaluation report (2012 report) indicated Claimant began to have seizures when he was age 6 or 7, after he was in car accident in which he hit his head. The 2012 report also indicated that Claimant began to have hallucinations when he was 11 years old; he was significantly depressed and started suicide attempts when he was 12 years old; and he was hospitalized in a psychiatric facility when he was 18 years old. At that time, Claimant was homeless and had attempted suicide. The 2012 report included testing results for the Wechsler Adult Intelligence Scale-4th edition (WAIS-IV), which indicated

Claimant's abilities ranged from borderline to normal. The recommended diagnoses were Cognitive Disorder NOS and Psychotic Disorder due to medical condition with seizures.

(C) Claimant's scores on the WAIS-IV administered by Dr. Walker indicated his cognitive abilities were in the low normal to high borderline range. (Exh. 16, p. 2.) Dr. Walker also administered the Wide Range Achievement Test-4th edition (WRAT-4), which resulted in scores indicating Claimant's word reading skills were at the ninth grade level, his reading comprehension skills were at the fifth grade level, and his math computation scores were at the sixth grade level. Claimant's performance on the WRAT-4 yielded scaled scores in the normal range for word reading and math computation, and in the borderline range for reading comprehension skills.

(D) Dr. Walker assessed Claimant's adaptive skills using the Vineland Adaptive Behavior Scales – 2nd edition (Vineland II), with Claimant serving as the informant. Claimant's scores on the Vineland II indicated his communication skills, self-help skills, and social skills were all in the borderline range. Claimant reported that he was able to dress and bathe, he could prepare foods like spaghetti with sauce, and he could access the internet. He could take his medication as needed and follow medical directions. Claimant reported that his goal was to earn a high school diploma. He also reported that he could drive a car and that he had a learner's permit. Claimant told Dr. Walker that he had lots of friends and enjoyed sports like football. Claimant reported he was not easily angered, but Dr. Walker was informed by the Deputies on his floor that Claimant had been in fights in his unit.

(E) Based on her evaluation, Dr. Walker diagnosed Claimant with Cognitive Disorder NOS; Schizoaffective Disorder, Depressive Type; Cannabis Abuse; and Alcohol Abuse. Dr. Walker recommended that Claimant should continue in

psychiatric care, and he should be considered for psychotherapy and drug and alcohol rehabilitation and treatment.

Current Application for Regional Center Services

34. Claimant's current application for regional center services seeks eligibility under the fifth category, based on the clinical findings of: (1) a neuropsychological evaluation completed on May 18-19, 2017, by Paul D. Connor, Ph.D. (Exhibit 22); (2) an evaluation completed on September 19, 2017, by Kenneth L. Jones, M.D. (Exhibit 21); and (3) a psychological evaluation completed on October 22, 2018, by Timothy D. Collister, Ph.D. (Exhibit 23). The opinions of these doctors were presented through their written reports.

DR. CONNOR'S EVALUATION

35. Paul D. Connor, Ph.D., is a clinical psychologist with a specialization in neuropsychology and FASD. He is licensed in the states of Washington and Oregon. On May 18 and 19, 2017, Dr. Connor completed a neuropsychological evaluation of Claimant at the Twin Towers Correctional Facility in Los Angeles. Claimant was 24 years old at the time. The evaluation was requested by Claimant's public defender, Mr. McKee, to assess Claimant's pattern of cognitive strengths and weaknesses and determine if his current cognitive functioning was consistent with the diagnostic criteria for FASD. Dr. Connor was also asked to comment on whether Claimant's cognitive functioning and past history would qualify him for regional center services under the fifth category. Dr. Connor's findings and conclusions are summarized in a detailed Neuropsychological Report dated May 10, 2018. (Exh. 22.)

36. Based on his evaluation, Dr. Connor diagnosed Claimant with Neurodevelopmental Disorder Associated with Prenatal Alcohol Exposure (ND-PAE).

Dr. Connor found that Claimant demonstrated a pattern of current neuropsychological and past cognitive functioning that meets the Centers for Disease Control (CDC) diagnostic guidelines for FASD. He further noted that Claimant "demonstrates a pattern of decreasing levels of functioning across domains where IQ is within the moderately to severely impaired range. This pattern is seen extremely commonly in research on individuals with FASD." (Exh. 22, p. 15.)

37. In his written report, Dr. Connor stated it was his professional opinion that Claimant meets the requirements for regional center eligibility under the fifth category. First, Dr. Connor opined that Claimant functions in a manner that is similar to a person with intellectual disability. Dr. Connor explained:

Over the years, [Claimant's] intellectual functioning has been measured to be within the average to low average range. However, [Claimant] has demonstrated impairments across multiple domains throughout his life including impairments in executive functioning. Also, [Claimant] demonstrates significant impairments in all three aspects of adaptive functioning as measured both by self-report and the report of one of his program therapists. Indeed, his scores on adaptive functioning measures are within the traditional range of individuals with intellectual disabilities. Therefore, [Claimant] both currently and throughout his life has functioned in a manner similar to a person with intellectual disability.

(Exh. 22, p. 16.)

38. (A) Secondly, regarding fifth category eligibility, Dr. Connor opined that Claimant requires treatment similar to that required of an individual with intellectual disability. Dr. Connor, in his written report, explained:

On testing throughout his life [Claimant] has demonstrated significant deficits in adaptive functioning abilities and in performance on tasks that are less structured and require him to develop his own structure in order to function appropriately. When asked to perform day-to-day skills in the structured environment of the testing room, he was able to demonstrate the skills fairly well. However, when in non-structured settings, [Claimant] is reportedly not able to apply those skills appropriately. In addition, he demonstrates significant suggestibility, indicating that he would be prone to being taken advantage of by others and thus would be in need of protection. Therefore, [Claimant] requires multiple avenues of treatment and support.

(Exh. 22, p. 16.)

(B) Dr. Connor described the “multiple avenues of treatment and support” he believes Claimant requires, as follows:

[Claimant] will require self-help and independent living skills training for all aspects of his life. He will require vocational training and supported employment settings. He will require services including supported or semi-independent living arrangements with monitoring to ensure

that he is able to maintain appropriate functioning and to ensure his safety. Finally, [Claimant] will need to receive coordinated management services to ensure that he is receive appropriate and integrated services that would be required in order to function to the best of his abilities. The level of services that [Claimant] requires is indeed similar to that which is required by an individual with intellectual disability.

(Exh. 22, p. 16.)

DR. JONES' EVALUATION

39. Kenneth L. Jones, M.D., is a Distinguished Professor, Department of Pediatrics, at the U.C. San Diego School of Medicine. He evaluated Claimant on September 19, 2017, at the request of Claimant's public defender, Mr. McKee, to render an opinion as to whether Claimant had been affected by prenatal exposure to alcohol. Claimant was 25 years old at the time of the evaluation. Dr. Jones' findings and conclusions are summarized in a letter dated February 19, 2018. (Exh. 21.) In that letter, Dr. Jones' wrote: "Based on [Dr. Connor's] evaluation, [Dr. Connor] concluded that [Claimant's] neurobehavioral examination is not inconsistent with a diagnosis of FASD. In addition, [Claimant's] father . . . has confirmed that [Claimant's mother] drank alcohol during her pregnancy with [Claimant]. Thus, I believe that [Claimant] has the diagnosis of Alcohol Related Neurodevelopmental Defects AKA ND-PAE." (Exh. 21, p. 3.) Dr. Jones' report explained that Alcohol Related Neurodevelopmental Defects (ARND) "is a diagnostic category that refers to children affected prenatally by alcohol who have neurodevelopmental defects, but who lack the physical features of [Fetal Alcohol Syndrome]." (Exh. 21, p. 2.)

DR. COLLISTER'S EVALUATION

40. On October 22, 2018, Timothy D. Collister, Ph.D., completed a psychological evaluation of Claimant, who was 26 years old at the time. Claimant was seen at the Los Angeles County Men's Jail facility. Dr. Collister prepared a detailed Psychological Evaluation report, which summarized records and previous assessment results. (Exh. 23.) Based on his evaluation, Dr. Collister's recommendations were stated in his report, in part, as follows: "With respect to recommendations, [Claimant] should be referred to Regional Center for consideration of eligibility via the 5th category. Dr. Connor has provided a very thorough argument for how he should be eligible for Regional Center services via the 5th category. That will not be reiterated here. Simply to say the results of this evaluation are in congruence, and support the findings that eligibility through the 5th category should be pursued as justified." (Exh. 23, p. 26.)

Other Evaluations

41. A Psychiatric Report dated May 27, 2011, by Jack Rothberg, M.D., Ph.D., was presented at the hearing. Dr. Rothberg completed a psychiatric evaluation of Claimant to assess his mental status and competency to stand trial. Claimant was 18 years old and was arrested on April 30, 2011, and charged with second degree commercial burglary and grand theft of personal property. In his report, Dr. Rothberg indicated that Claimant's mother died of cirrhosis of the liver when he was seven years old, and that "[s]he presumably had been an alcoholic." (Exh. 12, p. 2.) But Dr. Rothberg did not mention any concern about FASD. Dr. Rothberg's report indicated that Claimant's past psychiatric history included several suicide attempts including drinking bleach, cutting himself, and attempting to hang himself. Dr. Rothberg noted that Claimant's "fund of knowledge, ability to abstract and general intellectual

functioning are slightly below average,” and he “demonstrates some capacity for insight.” (Exh. 12, p. 3.)

42. On December 8, 2011, Ronald S. Gabriel, M.D., completed a Pediatric Neurological Consultation with Claimant, his attorney representative, and two custodial officers. The consultation is summarized in a four-page letter dated December 8, 2011. (Exh. 14.) At the time of the consultation, Claimant was 19 years old and having active auditory hallucinations and engaging in self-mutilation with cutting. Claimant reported he “believes that his mother did not utilize alcohol or drugs during his gestation.” (*Id.* at p. 2.) He also reported that he played football as a lineman on the varsity team in high school. Dr. Gabriel noted that Claimant “was able to answer questions indicating at least average verbal conceptualization,” and that his “cognitive function did not represent a young man who had cognitive retardation.” (*Id.* at p. 3.) Dr. Gabriel found that Claimant “has organic psychoses, which have markedly impaired his ability to function on a day-to-day basis.” He strongly recommended that Claimant be removed from the penal system and placed in a long term residential care facility.

43. On July 7, 2011, Edward Fischer, Ph.D. (Dr. E. Fischer), completed a mental condition examination of Claimant to address his competency to stand trial. The examination findings and conclusions are summarized in a written report dated March 21, 2012. (Exh. 15.) Claimant was 19 years old at the time of the examination. Dr. E. Fischer’s report states Claimant was seven years old when his mother died of cirrhosis of the liver secondary to alcoholism at age 32, but Claimant told the jail mental health unit staff that his mother was schizophrenic and killed herself. Dr. E. Fischer concluded that the “inconsistencies in the social history that [Claimant] provides to different clinicians appear to be the result of confabulation.” (Exh. 15, p. 2.) Based on Claimant’s report that his mother was severely alcoholic and died of cirrhosis, Dr. E. Fischer

asserted that fetal exposure to alcohol was a possible contributing cause of Claimant's brain dysfunction. Dr. E. Fischer administered the WAIS-IV to Claimant, which resulted in a full-scale IQ score in the low average range. (Exh. 15, p. 10.) Based on his evaluation, Dr. E. Fischer concluded that Claimant was competent to stand trial. Further, Dr. E. Fischer also stated that Dr. Gabriel's evaluation "should provide an adequate basis for [Claimant's] acceptance for client status by Regional Center." (Exh. 13, p. 13.) However, Dr. Gabriel's report makes no mention or recommendation of regional center services for Claimant.

Service Agency's Denial of Eligibility

44. Sandi J. Fischer, Ph.D. (no relation to Dr. E. Fischer discussed above), testified at the hearing. Dr. Fischer is licensed as a psychologist in California. Dr. Fischer has been employed by NLACRC since 2011. She was a Staff Psychologist for NLACRC for six years. She has been Co-Supervisor of NLACRC's Clinical and Intake Departments for the past three years. Prior to NLACRC, Dr. Fischer worked for nine years for the UCLA TIES⁴ for Adoption (now TIES for Families) program working with foster children. Prior to UCLA, Dr. Fischer owned her own business that conducted testing for children in foster care.

45. Dr. Fischer was a member of the interdisciplinary eligibility committee that made Service Agency's determination that Claimant was not eligible for regional center services. The determination was based on the committee's review and consideration of all available records. The committee utilized the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) diagnostic criteria for

⁴ TIES stands for Training, Intervention, Education, and Services.

intellectual disability (Exh. 29), and also considered the ARCA⁵ Guidelines for Determining 5th Category Eligibility for the California Regional Centers (ARCA Guidelines). (Exh. 31.) The ARCA Guidelines were developed in 2002.

46. Under DSM-5, a diagnosis of intellectual disability requires that 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.

(Exh. 29.)

⁵ ARCA stands for Association of Regional Center Agencies.

47. Under the Lanterman Act,⁶ a “fifth category” condition is one that is found to be “closely related to intellectual disability” or “to require treatment similar to that required for individuals with an intellectual disability.” (See Legal Conclusions 3, 7, 8.) The ARCA Guidelines set forth suggested factors for regional centers to consider in determining eligibility under the fifth category. (Exh. 31.)

48. Dr. Fischer testified that eligibility under the Lanterman Act requires a developmental disability that is attributable to one of five specified conditions. Two of the conditions (cerebral palsy and epilepsy) are medical conditions determined by medical doctors. The other three conditions (autism, intellectual disability, and fifth category) are determined by psychological testing and assessment.

49. Dr. Fischer testified that Lanterman Act eligibility requires that the qualifying condition must constitute a “substantial disability” for the individual. Dr. Fischer testified that “substantial disability” is determined by reviewing the individual’s adaptive functioning during the developmental period (i.e., prior to age 18), and determining whether the person has significant functional limitations in three or more of the areas of major life activity specified in the Lanterman Act. (See Welf. & Inst. Code, § 4512, subd. (j)(1).) Dr. Fischer testified that if the functional limitations are not attributable to one of the five categories discussed above, then the person is not “substantially disabled” for purposes of establishing Lanterman Act eligibility.

50. Dr. Fischer testified that, in assessing “substantial disability,” the eligibility committee typically reviews adaptive skills questionnaires that are normed to the person and completed by an informant who knows the person (e.g., parent, spouse, or teacher) or by self-reporting from the person seeking eligibility. The committee looks

⁶ See Legal Conclusion 1.

at all available information, such as school records, mental health records, medical records, and affidavits. Dr. Fischer testified that adaptive functioning may be influenced by motivational factors, mental health, and learning disabilities.

51. Dr. Fischer testified that NLACRC's interdisciplinary eligibility committee reviewed all available records and determined that Claimant was not eligible for regional center services on the basis of intellectual disability or under the fifth category.

INTELLECTUAL DISABILITY

52. Dr. Fischer testified that part of the assessment for intellectual disability involves individual testing of the person's intellectual ability, cognitive abilities, and adaptive functioning, review of school and mental health records, and caregiver interviews. She explained that deficits in adaptive functioning means that a person is not functioning at the level expected for his or her age. As a person gets older, their expected level of functioning increases. A diagnosis of intellectual disability requires that the adaptive functioning deficits must be caused by intellectual deficits, and not by other factors such as lack of motivation to perform a task.

53. Service Agency's eligibility committee concluded that Claimant's cognitive functioning did not establish a qualifying diagnosis of intellectual disability. Records from Claimant's developmental period reflected that he had low average to average cognitive ability. (E.g., Exh. 3, p. 3; Exh. 5, p. 12; Exh. 12, p. 3.) Claimant was able to pass the English/Language Arts portion of the CAHSEE, and he was 23 points short of passing the Mathematics portion. (Exh. 10, p. 5.) Further assessment results established that Claimant maintained cognitive abilities in the low average to average range beyond the developmental period (Exh. 12, p. 3; Exh. 15, p. 10); his cognitive

functioning did not reflect cognitive retardation (Exh. 13, p. 3); and his intellectual functioning was described as “broadly within the average range.” (Exh. 12, p. 10.)

54. (A) Service Agency’s eligibility committee determined that Claimant’s adaptive functioning during the developmental period did not meet the diagnostic criteria for intellectual disability. Claimant’s adaptive skills were described as age appropriate. (Exh. 5, p. 10; Exh. 6, p. 7.) It was reported that Claimant met all developmental milestones at the expected times. (Exh. 5, pp. 4-5.) Claimant’s 2008 IEP indicated he was able to pass driver’s education, do his laundry, cook basic meals, use public transportation, make correct change, and that he had a job working as a lane scorer in a bowling alley. (Exh. 6, p. 6.)

(B) Records also indicated that, following high school, Claimant could perform independent living functions such as dressing and bathing, taking care of his person hygiene, taking his medications and following medical directions, performing simple household chores, preparing simple meals, making simple purchases, using a computer to access the internet, using public transportation, and he could drive a car because he had obtained his learner’s permit. (Exhs. 16, 17.) Additionally, Claimant reported that he had a job as a sales representative for nine months, and, while incarcerated, he worked as a trustee, passed out food, cleaned the dorms, gave haircuts, and performed maintenance duties. (Exh. 22, p. 4.)

(C) Dr. Connor, who evaluated Claimant at age 24, found that Claimant’s adaptive functioning was in the impaired range, based on self-report and administration of the Vineland Scales of Adaptive Behavior-3rd edition (VABS-3), using one of Claimant’s program therapists as the informant. Dr. Fischer questioned the validity of Dr. Connor’s finding that Claimant’s adaptive functioning was in the impaired range, because that finding was based on the doctor administering the

VABS-3 when Claimant was age 24 and using Claimant's program therapist, Marianne Grant, as the informant. Ms. Grant reported on Claimant's functioning "when she worked with him most at the age of 22." (Exh. 22, p. 13.) The results from Dr. Connor's administration of the VABS-3 to Claimant at age 24 was entitled to little weight as evidence of his functioning during the developmental period (i.e., prior to age 18).

55. Dr. Fischer testified that Claimant's school transcripts indicated he did not function like a person with intellectual disability. His transcripts showed he was taking an academic workload required for earning a high school diploma. He was taking courses, like economics, science, and literature, which were not the types of courses typically expected for a student with intellectual disability. Dr. Fischer testified that students with intellectual disability typically take less rigorous courses. The transcripts also noted Claimant passed driver's education and obtained a learner's permit, and he passed English/Language Arts portion of the high school exit exam.

56. Dr. Fischer explained that adaptive skills are not natural, but are learned through the process of a person being exposed to the skill, being expected to perform the skill, and having the opportunity to practice the skill. Dr. Fischer testified that, for much of his developmental period, Claimant had a history of multiple out-of-home placements, including jail, juvenile hall, and group homes. Consequently, he did not have the opportunity to learn adaptive skills he would have learned if he lived in a family home. For example, a person living in juvenile hall does not need to learn how to take a bus. Another example is that a person living in a group home does not learn to cook meals where meals are prepared and served by others. Dr. Fischer, in her testimony, noted that when Claimant has an opportunity to obtain skills, he has shown to be capable. For tasks that Claimant could learn on his own and be responsible for, he did learn, such as dressing and bathing himself.

FIFTH CATEGORY

57. Dr. Fischer disagrees with Dr. Connor's opinion that Claimant meets fifth category eligibility due to his diagnosis of ND-PAE. In order to establish fifth category eligibility, the person's cognitive functioning and adaptive skills during the developmental period must be examined to determine whether the person functions like, or requires treatment similar to, a person with intellectual disability. Here, Dr. Connor evaluated Claimant, and made the diagnosis of ND-PAE, six years beyond the developmental period, when Claimant was 24 years old. Similarly, Dr. Jones evaluated Claimant and made his diagnosis of ARND when Claimant was 25 years old. According to Dr. Fischer, the eligibility committee gave little weight to the findings of Drs. Connor and Jones as evidence of Claimant's functioning during the developmental period.

58. Dr. Fischer commented that Dr. Connor's diagnosis of ND-PAE was not based on medical records indicating prenatal alcohol exposure. Rather, it was based on Claimant's report that his mother died from cirrhosis relating to alcohol use, and another unattributed report that Claimant's mother and grandmother both had trouble with alcohol in their lives. (Exh. 22, p. 6.) Dr. Fischer testified she saw no records from the developmental period confirming prenatal alcohol exposure or FASD characteristics in Claimant. Dr. Jones made his diagnosis on the basis of a report by Claimant's father that Claimant's mother used alcohol during pregnancy.

LEGAL CONCLUSIONS

1. This matter is governed by the Lanterman Developmental Disabilities Services Act (Lanterman Act), set forth at Welfare and Institutions Code section 4500 et seq., and the implementing regulations set forth at California Code of Regulations, title

17, § 54000 et seq. A state level fair hearing to determine the rights and obligations of the parties, if any, is referred to as an appeal of the service agency's decision. Claimant properly and timely requested a fair hearing and therefore jurisdiction for this case was established. (Factual Findings 1-6.)

2. When a person seeks to establish eligibility for government benefits or services, the burden of proof is on him. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits]; *Greator v. Board of Admin.* (1979) 91 Cal.App.3d 54, 57 [retirement benefits].) The standard of proof in this case is preponderance of the evidence. (Evid. Code, § 115.) Thus, Claimant has the burden of proving his eligibility for services under the Lanterman Act by a preponderance of the evidence.

3. In order to be eligible for regional center services, a person must have a qualifying developmental disability. Welfare and Institutions Code section 4512, subdivision (a), defines "developmental disability" as:

a disability that originates before an individual attains 18 years of age; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for that individual. . . . [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, but shall not include other handicapping conditions that are solely physical in nature.

4. To prove the existence of a developmental disability within the meaning of Welfare and Institutions Code section 4512, a person must show that he has a "substantial disability." The term "substantial disability" means a condition which results in major impairment of cognitive and/or social functioning, and 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: receptive and expressive language, learning, self-care, mobility, self-direction, capacity for independent living, and economic self-sufficiency. (Cal. Code Regs., tit. 17, § 54001, subd. (a); Welf. & Inst. Code, § 4512, subd. (1)(1).) "'Cognitive' as used in this chapter means the ability of an individual to solve problems with insight, to adapt to new situations, to think abstractly and to profit from experience." (Cal. Code Regs., tit. 17, § 54002.)

5. Excluded from eligibility are handicapping conditions that are solely psychiatric disorders, learning disabilities and/or disorders solely physical in nature. (Cal. Code Regs., tit. 17, § 54000, subd. (c).) If a person's condition is *solely* caused by one or more of these three "handicapping conditions," he is not entitled to eligibility.

6. "Solely learning disabilities" is defined as "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." (Cal. Code Regs., tit. 17, § 54000, subd. (c)(2).) "Solely physical in nature" includes "congenital anomalies or conditions acquired through disease, accident, or faulty development which are not associated with a neurological impairment that results in a need for treatment similar to that required for [intellectual disability]." (Cal. Code Regs., tit. 17, § 54000, subd. (c)(3).)

7. In addition to proving a "substantial disability," a claimant must show that his disability fits into one of the five categories of eligible conditions set forth in Welfare and Institutions Code section 4512. The first four categories are specified as intellectual disability, cerebral palsy, epilepsy, and autism. The fifth and last category, commonly known as the "fifth category," is described as "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.*)

8. A more specific definition of a "fifth category" condition is not provided in the statutes or regulations. Whereas the first four categories of eligibility are specific, the disabling conditions under the residual fifth category are intentionally broad so as to encompass unspecified conditions and disorders. But the condition must be "closely related" or "require treatment similar" to intellectual disability. "The fifth category condition must be very similar to mental retardation [the prior diagnostic term for intellectual disability], with many of the same, or close to the same, factors required in classifying a person as mentally retarded." (*Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, 1129.)

9. "In determining if an individual meets the definition of developmental disability contained in subdivision (a) of Section 4512, the regional center may consider evaluations and tests, including but not limited to, intelligence tests, adaptive functioning tests, neurological and neuropsychological tests, diagnostic tests performed by a physician, psychiatric tests, and other tests or evaluations that have been performed by, and are available from, other sources." (Welf. & Inst. Code, § 4643, subd. (b).)

10. With regard to eligibility for regional center services, "the Lanterman Act and implementing regulations clearly defer to the expertise of the DDS (California

Department of Developmental Services) and RC (regional center) professionals' determination as to whether an individual is developmentally disabled." (*Mason, supra*, 89 Cal.App.4th at p. 1127.)

Discussion

11. Claimant applied for regional center eligibility under the fifth category on the basis that he has a disabling condition due to prenatal exposure to alcohol. He relied on the evaluations by Dr. Connor, who diagnosed Claimant with ND-PAE, and Dr. Jones, who diagnosed Claimant with ARND. Claimant's evidence was not sufficient to establish he has a "developmental disability" (as defined in Welfare and Institutions Code section 4512, subdivision (a)) that qualifies him for regional center services.

12. Claimant failed to establish by a preponderance of the evidence that he had a disabling condition of prenatal exposure to alcohol which originated prior to age 18. The ND-PAE and ARND diagnoses were based on evaluations of Claimant made six and seven years beyond the developmental period, when he was age 24 and 25, respectively. Those evaluations did not convincingly demonstrate that Claimant's deficits arose from a purported prenatal exposure to alcohol, and not from other disability conditions, such as bipolar disorder and ADHD. The available records from Claimant's developmental period contained no report of Claimant having prenatal exposure to alcohol. The ND-PAE and ARND diagnoses were based on one anecdotal report by Claimant's father that Claimant's mother used alcohol during pregnancy, and another unattributed report that Claimant's mother had trouble with alcohol. Claimant himself reported that he believed his mother did not use alcohol or drugs during his gestation. As such, these later evaluations are entitled to less weight than records from the developmental period as evidence of Claimant's disabilities prior to age 18.

13. (A) The preponderance of the evidence did not establish that Claimant had a “substantial disability” due to prenatal exposure to alcohol. It was not shown that, during the developmental period, Claimant had significant functional limitations in at least three of the seven specified areas of major life activity (i.e., self-care; receptive and expressive language; learning; mobility; self-direction; capacity for independent living; and economic self-sufficiency), as appropriate to his age.

(B) Records from the developmental period, and Dr. Fischer’s testimony, established that Claimant exhibited age-appropriate adaptive skills. Claimant could take care of his self-care needs (e.g., dressing, bathing, personal hygiene). He had age-appropriate receptive and expressive language skills. He was mobile and ambulatory. He demonstrated self-direction in that, for example, he could take his medications and follow medical instructions. He showed capacity for independent living in that he could prepare meals for himself, make purchases, do household chores, and use public transportation. Claimant demonstrated economic self-sufficiency, in that he had been employed during his developmental period and while incarcerated.

(C) In terms of learning, Claimant’s demonstrated cognitive abilities within the average to low average range. He took an academic course load in school that was geared towards earning a high school diploma. His grades were variable, but he was able to pass English/Language Arts portion of the high school exit exam. He passed driver’s education and obtained a driver’s learning permit. Notably, Claimant’s teachers reported he could complete his class work when he could maintain focus on the assignment, and that his difficulties in school were due to lack of motivation, his impulsivity and attention issues, and deficits in study skills.

14. (A) Claimant’s evidence was not sufficient to establish that his disabling condition of a purported prenatal exposure to alcohol was closely related to

intellectual disability or required treatment similar to that required for individuals with intellectual disability. Dr. Connor's opinion that Claimant has functioned throughout his life in a manner similar to a person with intellectual disability was not persuasive. Records from the developmental period established that Claimant functioned in the average to low average range of cognitive abilities. Dr. Connor, in his written report, described Claimant's overall intellectual functioning as being "broadly within the average range." Dr. Connor's conclusion that Claimant had impaired adaptive skills was based on the results of the VABS-3, using Claimant's program therapist from when he was age 22, to assess his skills at age 24. That conclusion was not persuasive and not supported by the documentary evidence from Claimant's developmental period indicating age-appropriate adaptive functioning.

(B) Dr. Connor's opinion that Claimant requires treatment similar to that required by an individual with intellectual disability is not sufficient to establish fifth category eligibility. Dr. Connor, in his written report, stated that Claimant requires "multiple avenues of treatment and support," including self-help and independent living skills training; supported or semi-supported independent living arrangements; and coordinated management services to ensure he receives appropriate and integrated services needed to function to the best of his abilities. Fifth category eligibility requires "treatment," not "services," similar to that required for a person with intellectual disability. What Dr. Connor describes are services that could benefit persons with all types of disabilities, not just those with intellectual disability. Fifth category eligibility requires similar treatment that is specifically for persons with intellectual disability. (See *Ronald F. v. Dept. of Developmental Services* (2017) 8 Cal.App.5th 84, 98-99.)

15. Based on the foregoing, the weight of the evidence supported Service Agency's determination that Claimant is not eligible for regional center services based on intellectual disability or under the fifth category. Claimant's evidence was insufficient to refute that determination. Therefore, Claimant's appeal shall be denied. (Factual Findings 1-58; Legal Conclusions 1-14.)

ORDER

Claimant's appeal is denied. North Los Angeles County Regional Center's determination that Claimant is not eligible for services under the Lanterman Act is sustained.

DATE:

ERLINDA G. SHRENGER

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.