BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

SOUTH CENTRAL LOS ANGELES REGIONAL CENTER

Service Agency

OAH No. 2019110783

DECISION

Eileen Cohn, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on January 9, 2020, in Los Angeles, CA.

Karmell Walker, Fair Hearings Legal Compliance Coordinator, represented South Central Los Angeles Regional Center (SCLARC or Service Agency).

Claimant's mother (Mother) represented claimant[1], who was present. Spanish-language interpreter, Mariana Rudy, was duly sworn, and provided simultaneous interpretation for Mother throughout the fair hearing.

Claimant requested eligibility for SCLARC services under the categories of intellectual disability or fifth category based upon the results of assessments and claimant's undisputed gene abnormality. SCLARC maintained claimant did not qualify under either category based upon reliable assessments and the review of the data by both the SCLARC psychologist-expert and the medical doctor-geneticist expert. Based upon a review of the evidence, claimant failed to show by a preponderance of the evidence that claimant met the criteria for either intellectual disability or fifth category, on cognitive or adaptive measures of eligibility.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on January 9, 2020.

ISSUE

Is claimant eligible for SCLARC services under the eligibility categories of Intellectual Disability (ID) or Fifth Category?[2]

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[1] In an effort to protect the privacy of claimant and claimant's family, their names, as well as any pronouns identifying the gender of claimant, have been omitted.

[2] The parties are in agreement that claimant does not qualify under the categories of Autism, Epilepsy or Cerebral Palsy. Several assessments were performed

EVIDENCE RELIED UPON

Documentary: SCLARC's exhibits 1-11; claimant's exhibits A-E.

Testimonial: For SCLARC, Laurie McKnight Brown, Ph.D., SCLARC Lead Psychologist Consultant, and Shirley Korula, M.D, SCLARC's medical doctor-geneticist consultant. For claimant, claimant's mother.

Jurisdictional Matters

1. Claimant was born in October 2011 and is eight years old. Claimant was made eligible for Early Start services in July 2013 due to communication delays. Claimant received speech services through insurance from Kaiser Permanente and Early Start services from a SCLARC vendor. (Ex. 8.) Claimant was not made eligible for regional center services after Early Start concluded. (Ex. 3.) In April 2019, Mother requested regional center services for claimant. On October 3, 2019, Service Agency sent claimant's parents a letter notifying them of its decision that claimant is not eligible for services.

2. On October 19, 2019, Mother timely filed a fair hearing request, on claimant's behalf, to appeal Service Agency's decision. In the fair hearing request, Mother wrote that she was requesting a fair hearing to challenge SCLARC's decision that claimant was not eligible.

3. Jurisdiction has been established for the fair hearing.

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in the area of autism and the various assessors concluded claimant did not qualify under this eligibility category.

Claimant's Background and Individualized Educational Program

4. Claimant lives with claimant's parents; the family's primary language is Spanish. There are no identified developmental disabilities in the family. Claimant was born with a genetic anomaly, a duplication of gene number four, and referred to as Chromosome 4q Duplication. At four years of age, claimant was hospitalized to surgically correct a heart murmur. Claimant has no other history of injuries, accidents or hospitalizations.

5. Various reports, attributed to Mother, state claimant was toilet-trained either by age three or four, and did not speak more than one word until age three. Claimant receives health care from Kaiser Permanente where claimant's genetic anomaly is also reviewed. At the intake interview in April 2019, Mother reported claimant's self-care to include eating independently, toileting with assistance with wiping, "sometimes" bed wetting at night, hand washing, dressing with assistance, and picking up toys and taking plates to the sink after eating. Mother reported claimant's very short attention span, anxiety when bored and emotional outbursts when doing non-preferred tasks like reading. (Ex. 3.) At the informal meeting held with SCLARC and memorialized in a letter prepared by SCLARC and dated December 19, 2019, Mother also reported that claimant could not tie shoe laces, could not clean up properly after toileting and yells out "done" so Mother can assist with wiping and overall does not do "typical things" like getting dressed and bathing. (Ex. 7.)

6. Claimant is currently in second grade at a public elementary school and had been found eligible for special education services and provided with an individual education plan (IEP) since claimant's initial assessment in October 2014, during preschool. As a result of the initial assessment, claimant was found eligible under the category of speech and language impairment (SLI), due to receptive and expressive

language delays. At that time, claimant was provided designated instructional services (DIS) for speech and language. Claimant was also designated an English-language learner. Spanish is the primary language spoken in the home. (Ex. D.) Claimant also received occupational therapy (OT) services to address deficits in fine and visual motor skills and sensory processing.

7. In the most recent IEP in evidence dated October 4, 2018, in addition to specialized instruction in a special education setting for the majority of the school day, claimant was provided with SLI 30 minutes per sessions, seven times monthly, in a group setting, and additional SLI in a group classroom setting, for ten minutes, four times weekly, for a total of 40 minutes a week. During the hearing, Mother only reported claimant's receipt of the ten-minute classroom sessions. (Ex. 6.)

8. As of the October 2018 IEP, claimant's eligibility for special education services was based on Other Health Impairment (OHI) and SLI. (Ex. 6.) From the triennial psycho-educational report of February 2017, the OHI designation is based on claimant's Chromosome 4q Duplication (Ex. B, p. 8). OHI is defined as a "pupil having limited strength, vitality or alertness, due to chronic or acute health problems, which adversely affect a pupil's educational performance. (Ex. B, p. 8.) Dr. McNight-Brown, SCLARC's consulting psychologist and Dr. Korula, SCLARC's consulting medical doctor-geneticist also opined that the OHI determination is consistent with claimant's attention deficit hyperactivity disorder (ADHD). Claimant spends the majority of time in a special day class (SDC) and receives specialized academic instruction. In that IEP it was reported that claimant requires maximum support for mainstreaming in general education, 30 minutes daily, has a very good vocabulary, but expressive language is difficult due to a weakness in grammar skills. The IEP describes claimant as social, very verbal and engaging in "frequent comments" during SLI therapy. Claimant is described

as a "happy, social student" who is "well liked" by peers. Consistent with claimant's noted attention difficulties, claimant "requires prompting and redirection to stay on task." Claimant becomes "emotional" at the end of the day when claimant makes "poor choices." (Ex. 6.)

9. There are no adaptive difficulties reported in the October 2018 IEP. Claimant can follow classroom routines, is independent and can share medical information. (Ex. 6.)

SCLARC's Eligibility Determination

10. There are several psychological assessments that provide various and conflicting reports of claimant's cognitive ability. SCLARC's expert consulting psychologist, Dr. McNight-Brown, who also has a multi-subject teaching credential, and is especially qualified to evaluate the school assessments and reports, was able to provide a clear and concise explanation for the variation in each report, by reference to both the definition of intellectual disability in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), and the claimant's diagnosis of ADHD. SCLARC's consulting medical expert and experienced geneticist, Dr. Shirley Korula, provided valuable and clear testimony of the relative weight to be given to claimant's genetic disorder in determining eligibility for regional center services. Taken together, the testimony of these experts and the supporting exhibits, did not support a determination of eligibility under either the category of ID or fifth category. Instead, the conflicting assessments of claimant's cognitive ability are explained by variations in attention attributed to ADHD. Further, claimant's genetic disorder may have contributed to ADHD, but is not clearly related to claimant's cognitive ability.

11. The assessments taken over time have certain diagnoses in common: ADHD and a language disorder. The assessments differ in their measurement of claimant's cognitive ability, which supports Dr. McNight-Brown's opinion that claimant's varying attention, mood, and energy, on a given day have impacted the assessment results. Most important to Dr. McNight-Brown is that the cognitive assessments, with the exception of one outlier composite score, referenced below, demonstrate little scatter in the sub-scores and an overall consistent and reliable full scale intelligent quotient (FSIQ) in the low average range. In contrast to individuals with ID, who obtain much lower scores, claimant has the ability to learn and improve academically over time.

12. Claimant has been evaluated numerous times for cognitive delays with varying results. The most recent evaluation administered on behalf of SCLARC by Thomas L. Carrillo, Ph.D., dated August 21, 2019, is striking for the conflict between claimant's inattention and Dr. Carrillo's ultimate conclusion that the assessment results were nonetheless valid. (Ex. 11.) Dr. Carrillo remarked that claimant was in "constant motion, fidgety and somewhat impulsive, requiring "constant and continual redirecting in order to sustain his attention on the stimulus presented." (Ex. 11, p.3.) Dr. Carrillo's results in the area of claimant's cognitive ability on the Wechsler Intelligence Scale for Children-Fifth Edition (WISC-5) contained a composite score in the area of visual-spatial reasoning of 64, which measures the ability to evaluate visual details between designs, which suppressed the full scale measure of claimant's cognitive ability to a very low-average full scale intelligence quotient (FSIQ) of 76. The other composite scores were in the low average range: verbal comprehension (84); fluid reasoning (85), working memory (82), and processing speed (83).

13. Dr. Carrillo diagnosed claimant with ADHD, and a language disorder, secondary to chromosome duplication syndrome in the form of Chromosome 4Q Duplication, and a language disorder, also secondary to chromosome duplication syndrome. These diagnoses are consistent with other assessments and behavior observations. However, Dr. Carrillo's diagnosis of borderline intellectual functioning secondary to chromosome duplication syndrome in the form of Chromosome 4Q Duplication, is not. Further, as Dr. McKnight-Brown testified, borderline intellectual functioning is not described in the DSM-5 as an ID or separate diagnosis. The identification of borderline intellectual functioning demonstrates a clinical concern, and something to watch over time. In claimant's case, from the review of assessments and school reports, claimant's cognitive functioning is lower than average, but higher than ID, and claimant is capable of learning.

14. Dr. McNight-Brown considered the visual spatial score claimant obtained in the WISC-5, an outlier. She compared the visual spatial score in Dr. Carrillo's assessment to an assessment administered for the school district by clinical psychologist Victor Sanchez, Ph.D. in June 2014, which was in the average range (94), (Ex.5, p.5) Dr. Sanchez's assessment was also referenced in the school district's initial psychoeducational assessment report. (Ex. A.) Using the Wechsler Preschool and Primary Scales of Intelligence, Fourth Edition, claimant's FSIQ was measured as 89, in the low average range, with composite scores of 89, low average, on the verbal comprehension index, in addition to the average range score on the visual spatial index.

15. In its initial 2014 assessment report, the school district concluded that claimant's low average range of "cognitive development is not a concern at this time." (Ex. A, p. 3.) It also concluded claimant's social emotional functioning was not an area

of concern (Ex. A., p. 5.) The report referred to claimant's speech and language needs as an area of focus for special education services.

16. Dr. McNight-Brown also compared Dr. Carrillo's assessment to the results obtained in the school districts February 2017 psychoeducational assessment report. In that report, claimant achieved a below average score of 87 in the Development Assessment of Young Children – Second Edition (Cognitive Domain). Claimant's nonverbal memory skills were measured in one assessment as borderline.

17. Dr. McNight-Brown's opinion that claimant's inattention resulted in artificially suppressed scores in other assessments was supported by the assessment reports obtained from Kaiser Permanente by referral from claimant's medical doctor and developmental pediatrician, Dr. Marvin Tan. In an assessment report of August 2018, claimant achieved a FSIQ on the WISC-V of 50, with a score on the nonverbal index of 48, a processing speed index score of 56, a verbal comprehension index score of 68, a visual spatial score of 49, working memory of 55. These scores were not reliable based upon claimant's displayed behavior which was characterized as "uncooperative," "low motivation," "task avoidance," by claimant's desire to "go home, buy chips in the cafeteria and go to McDonalds," by claimant's random answers, "giving the same answers (1,2,3) sometimes without even looking at the stimulus book, and claimant's fidgeting and touching of items in the room, etc. (Ex. 4.)

18. Consistent with claimant's diagnosis of a language disorder, Dr. McNight-Brown also looked at complainant's receptive and expressive language scores from assessments administered by the school district in 2017. Claimant performed in the average range, and exhibited a strength in receptive language and a relative weakness in expressive language. (Ex. C.)

19. Dr. McKnight-Brown did not consider claimant's behaviors as requiring treatment similar to that of individuals with ID. Under the DSM-5 adaptive deficits must be related to cognitive deficits and the treatment required for ID and the fifth category must be consistent with treatment required for those with ID, e.g. tasks broken down in small components, with constant repetition. Significantly, with ID, the individual demonstrates a plateau in the ability to learn, adapt and advance, a characteristic not evident in claimant's assessments, observations and school reports. Claimant demonstrated some adaptive deficits in his assessments, but by observation, claimant responded to interventions for inattention and demonstrated the capacity to adapt.

20. Claimant's behavioral issues are not clearly related to claimant's cognitive abilities, but appear to be related to claimant's inattention or frustration with language. As set forth in the 2014 school district assessments, as well as Mother's reports, claimant's attention span was short, and claimant's inattention required redirection, prompting and reinforcements to complete tasks (Ex. A.) When claimant was younger Mother reported tantrums at home which decreased after Mother attended a parenting class. (Ex. 4.) In Dr. Sanchez's 2014 assessments, Mother reported no significant behavior problems at home. (Ex. 5.) Claimant's school speech pathologist reported claimant to be "amicable," "easily redirected to attend to task at hand," and able to work for 20 minutes without a break, able to follow classroom instructions, interact appropriately and able to transition." (Ex. C.) In 2017, Mother's behavioral concern with the school was claimant's off-task behavior. (Ex. B.) During Dr. Carrillo's assessment in 2018, respondent was in "constant motion, fidgety and somewhat impulsive." (Ex. 11.)

21. Dr. Shirley Korula, an experienced geneticist, debunked the assumption that the claimant's chromosome duplication disorder is coextensive with eligibility under the category of ID. Dr. Korula described claimant's chromosome duplication disorder as a duplication in a certain region of chromosome four, which contains a large segment of genes, not easily isolated. There are very few cases with this type of duplication and what is known of that region is that it does not necessarily result in any significant cognitive problems. The few cases reported did not find the individuals had cognitive impairment. Based upon Dr. Korula's credited expert testimony, there is no reliable foundation for the proposition that claimant's cognitive or attentional deficits are related to the chromosome duplication disorder. Without knowing the exact region of the gene that is duplicated, no conclusions can be reached about the impact of this genetic abnormality on claimant's cognitive ability or attentional deficits.

22. Mother provided heartfelt and candid testimony at hearing. She shared her concerns about claimant's intellectual and behavioral status. She discussed claimant's early heart problems and surgery, allergies, and developmental delays. She confirmed claimant's limitations with speech and communication. She established her tireless efforts to obtain assistance for claimant. She shared her concerns about claimant's frustration and anger with communication. She has always been told claimant is "in the middle" and not eligible, either for behavior interventions or sufficient speech interventions. Recently, Kaiser Permanente cancelled speech because the speech pathologist claimed claimant was not and could not progress, presumably because of claimant's extremely low, but invalid, cognitive scores, on a test performed by Kaiser at the insistence of claimant's pediatrician. Mother has been frustrated with the lack of resources at the school district which, according to her experience, limited claimant's speech to 15 minutes, several times a week.

23. In closing, SCLARC commended mother for her efforts, but reiterated the limitations of the Lanterman Act. SCLARC reminded mother to request the resumption of speech and language services from Kaiser Permanente based upon SCLARC's conclusion that claimant is not ID and school reports which demonstrate claimant is capable of learning and advancing. In particular, SCLARC recommended that mother pursue interventions with Kaiser Permanente to address claimant's ADHD which it considers a primary obstacle to claimant's attention and focus. SCLARC reminded mother that regional centers remain the payer of last resort even with qualifying consumers, and that necessary services should be sought from insurance and the school district. SCLARC recommended claimant pursue a combination of one-on-one assistance, small classes and more hours of speech services with the school district.

LEGAL CONCLUSIONS

1. Jurisdiction exists to conduct a fair hearing in the above-captioned matter, pursuant to section 4710 et seq., based on Factual Findings 1 through 3.

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

3. The Lanterman Act is a comprehensive statutory scheme to provide treatment, services, and supports for persons with developmental disabilities. (Welf. &

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

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

5. To be eligible for services under section 4512, subdivision (a), a person must not only have a qualifying "developmental disability," but that disability must also constitute a "substantial disability for that individual." (§ 4512, subd. (a).) Subdivision (l) of section 4512 defines "substantial disability" as "the existence of significant functional limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person: [¶] (A) Self care. [¶] (B) Receptive and expressive language. [¶] (C) Learning. [¶]

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

(D) Mobility. [¶] (E) Self-direction. [¶] (F) Capacity for independent living. [¶] (G) Economic self-sufficiency." Claimant demonstrated that claimant currently suffers from a substantial disability in receptive and expressive language, learning, and self-direction (due to his attention). However, claimant did not show that these substantial disabilities were related to a qualifying development disability.

6. The determination of eligibility under the category of ID is guided by the DSM-5, which states in pertinent part as follows:

> Intellectual disability (intellectual developmental disorder) is a disorder with onset during the developmental period that includes both intellectual and adaptive functioning deficits in conceptual, social, and practical domains. The following three criteria must be met:
>
> A. Deficits in intellectual functions, such as reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience, confirmed by both clinical assessment and individualized, standardized intelligence testing.
>
> B. Deficits in adaptive functioning that result in failure to meet developmental and sociocultural standards for personal independence and social responsibility. Without ongoing support, the adaptive deficits limit functioning in one or more activities of daily life, such as communication, social participation, and independent living, across multiple environments, such as home, school, work, and community.

C. Onset of intellectual and adaptive deficits during the developmental period

[¶] . . . [¶]

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

...[¶] IQ test scores are approximations of conceptual functioning but may be insufficient to assess reasoning in real-life situations and mastery of practical tasks. For example, a person with an IQ score above 70 may have such severe adaptive behavior problems in social judgment, social understanding, and other areas of adaptive functioning that the person's actual functioning is comparable to that of individuals with a lower IQ score. Thus, clinical judgment is needed in interpreting the results of IQ tests.

Deficits in adaptive functioning (Criterion B) refer to how well a person meets community standards of personal independence and social responsibility, in comparison to others of similar age and socio-cultural background. Adaptive functioning involves adaptive reasoning in three domains: conceptual, social, and practical. The conceptual (academic) domain involves competence in memory, language, reading, writing, math reasoning, acquisition of practical knowledge, problem solving, and judgment in novel situations, among others. The social domain involves awareness of others' thoughts, feelings, and experiences; empathy; interpersonal communication skills; friendship abilities; and social judgment, among others. The practical domain involves learning and self-management across life settings, including personal care, job responsibilities, money management, recreation, self-management of behavior and school and work tasks organization, among others. Intellectual capacity, education, motivation, socialization, personality features, vocational opportunity, cultural experience, and coexisting general medical conditions or mental disorders influence adaptive functioning. . ..

[¶] . . . [¶]

Criterion B is met when at least one domain of adaptive functioning – conceptual, social, or practical – is sufficiently impaired that ongoing support is needed in order for the

> person to perform adequately in one or more life settings at school, at work, at home, or in the community. To meet the diagnostic criteria for intellectual disability, the deficits in adaptive functioning must be directly related to the intellectual impairments described in Criterion A.

(DSM-5, pp. 37-38).

7. Although each of claimant's evaluations note certain intellectual and adaptive deficits, there is insufficient evidence to establish that claimant's disabling condition is similar to intellectual disability. The DSM-5 provides that the "essential feature" of intellectual disability is significantly sub average general intellectual functioning, which it defines as an FSIQ of about 70 or below. Claimant had disparate test results, but none of the results established FSIQ of 70 or below, and the most reliable test results, showed an FSIQ in the high 80's. Claimant's scores were also adversely affected by attentional issues. Further, as Dr. McKnight-Brown testified, individuals who suffer from intellectual disability show consistent, relatively low-level functioning across all domains, and claimant's scores did not reflect such consistent low-level functioning.

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

9. In *Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, the appellate court held that "the fifth category condition must be very similar to

[intellectual disability], with many of the same, or close to the same, factors required in classifying a person as [intellectually disabled]. Furthermore, the various additional factors required in designating an individual developmentally disabled and substantially handicapped must apply as well." *(Id.*, at p. 1129.) It is therefore important to track factors required for a diagnosis of intellectual disability when considering fifth category eligibility.

10. The presence of adaptive deficits alone is not sufficient to establish intellectual disability or fifth category eligibility. (*Samantha C. v. Department of Developmental Services* (2010) 185 Cal.App.4th 1462, 1486 [intellectual disability "includes both a cognitive element and an adaptive functioning element" and to "interpret fifth category eligibility as including only an adaptive functioning element" misconstrues section 4512, subdivision (a)].) Claimant has not established with sufficient evidence that claimant suffers from the kind of general intellectual impairment found in persons with intellectual disabilities. Nor is there sufficient evidence to establish that claimant's adaptive deficits stem from cognitive deficits. Instead, the evidence suggests that claimant's untreated ADHD and language disorder are likely causes of claimant's adaptive deficits. Indeed, the record of claimant's test-taking demonstrates that claimant's untreated attention problems interfered with claimant's completion of tasks.

11. Determining whether a claimant's condition "requires treatment similar to that required" for persons with intellectual disability is not a simple exercise of enumerating the services provided and finding that a claimant would benefit from them. Many people, including those who do not suffer from intellectual disability, or any developmental disability, could benefit from the types of services offered by regional centers (e.g., counseling, vocational training, living skills training, or

supervision). The criterion therefore is not whether someone would benefit from the provision of services, but whether that person's condition requires treatment similar to that required for persons with intellectual disability, which has a narrower meaning under the Lanterman Act than services. (*Ronald F. v. Dept. of Developmental Services* (*Ronald F.*), (2017) 8 Cal.App.5th 84, 98.)

> That the Legislature intended the term "treatment" to have a different and narrower meaning than "services" is evident in the statutory scheme as a whole. The term "services and supports for persons with developmental disabilities" is broadly defined in subdivision (b) of section 4512 to include those services cited by the court in *Samantha C.*, e.g., cooking, public transportation, money management, and rehabilitative and vocational training, and many others as well. (§ 4512, subd. (b); *Samantha C.*, *supra*, 185 Cal.App.4th at p. 1493, 112 Cal.Rptr.3d 415.) "Treatment" is listed as one of the services available under section 4512, subdivision (b), indicating that it is narrower in meaning and scope than "services and supports for persons with developmental disabilities."
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> The term "treatment," as distinct from "services" also appears in section 4502, which accords persons with developmental disabilities "[a] right to treatment and habilitation services and supports in the least restrictive environment. Treatment and habilitation services and supports should foster the developmental potential of the

> person and be directed toward the achievement of the most independent, productive, and normal lives possible. Such services shall protect the personal liberty of the individual and shall be provided with the least restrictive conditions necessary to achieve the purposes of the treatment, services, or supports." (§ 4502, subd. (b)(1).) The Lanterman Act thus distinguishes between "treatment" and "services" as two different types of benefits available under the statute.

(*Ibid.*)

12. At this time, it has not been established that claimant requires treatment similar to that of an individual with ID. As Dr. McKnight-Brown testified, claimant is capable of learning and progressing and is not limited to learning the same task with constant repetition of small segments of the task.

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13. Based upon the evidence and Dr. McKnight-Brown's testimony, until claimant's severe attentional difficulties are addressed, claimant's true capabilities and potential will remain unknown.

ORDER

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

DATE:

EILEEN COHN
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.