

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

In the Matter of the Fair Hearing Request of:

CLAIMANT,

SOUTH CENTRAL LOS ANGELES REGIONAL CENTER,

Service Agency.

OAH No. 2020080828

DECISION

Ji-Lan Zang, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by video and telephonic conference on April 19, 2021, in Los Angeles, California.

Claimant's foster mother¹ appeared by telephone and represented claimant, who was not present.

Shantel Garcia, Fair Hearings Manager, appeared by video conference and represented Service Agency, South Central Los Angeles Regional Center (Service Agency or SCLARC).

¹ The names of claimant and her family are omitted to protect their privacy.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on April 19, 2021.

ISSUE

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

EVIDENCE RELIED UPON

Documents. Service Agency's Exhibits 1-12.

Testimony. Laurie McKnight Brown, Ph.D.; Michelle Lewis, claimant's social worker; and claimant's foster mother.

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is a 12-year-old female. Claimant's foster mother asked Service Agency to determine whether claimant is eligible for regional center services under the Lanterman Act based on a claim of autism, intellectual disability, or the Fifth Category.

2. By a Notice of Proposed Action and letter dated July 27, 2020, Service Agency notified claimant that she is not eligible for regional center services. Service

Agency's interdisciplinary team had determined that claimant does not meet the eligibility criteria set forth in the Lanterman Act.

3. On August 18, 2020, claimant filed a fair hearing request to appeal Service Agency's determination. This hearing ensued.

Claimant's Background

4. Claimant was exposed to several substances in utero, including alcohol, cocaine, marijuana, and methamphetamine. She suffered a head injury and a broken arm in 2014, when she was six years old. The Department of Child and Family Services (DCFS) detained claimant in 2015. Since that time, claimant has been placed at eight separate homes. Her father is currently incarcerated, and her mother's whereabouts are unknown. Claimant has a biological sister with whom she does not maintain regular visits.

5. At her current foster home placement, claimant exhibits violent temper tantrums and aggressive behavior towards other children. From September 2019 to July 2020, claimant was hospitalized three times for being a danger to others or herself. She has been diagnosed with Attention Deficient Hyperactivity Disorder (ADHD), Oppositional Defiant Disorder, Disruptive Mood Dysregulation Disorder, Post Traumatic Stress Disorder (PTSD), Persistent Depressive Disorder, and Fetal Alcohol Syndrome. She is currently being treated with various psychotropic medications, and she participates in psychotherapy twice a week. Claimant does not have any other significant medical issues.

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

Claimant's Special Education History

THE 2016 MULTIDISCIPLINARY ASSESSMENT

7. From August to September 2016, the school psychologist at claimant's elementary school performed an initial multidisciplinary assessment of claimant to determine her eligibility for special education services. At the time of this evaluation, claimant was seven years old. The school psychologist administered a battery of tests, which assessed claimant's cognitive development, perceptual motor skills, auditory processing skills, academic skills, social/emotional development, and academic achievement. Her findings, summarized in a report dated October 5, 2016, are described below.

8. A. The Cognitive Assessment System, Second Edition (CAS2) was administered to claimant to determine her cognitive abilities. Claimant's scores on the CAS2 were as follows: (1) 103 on the planning subtests, which assess the cognitive ability of an individual to determine, select, and use a strategy to solve a problem; (2) 100 on the simultaneous subtests, which assess the cognitive ability of an individual to integrate separate visual stimuli into a single whole or group; (3) 85 on the attention subtests, which assess the cognitive ability of an individual to selectively attend to a particular stimulus and resist distraction; and (4) 88 on the successive subtests, which assess the cognitive ability of an individual to serially order verbal information. Claimant earned a full scale IQ of 92 on the CAS2, placing her in the average range.

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

Overall, a formal review of records, observations and standard assessment procedures indicates that [claimant's]

cognitive abilities fall within the average range. . . . These abilities are consistent with [claimant's] current strengths and challenges observed in the classroom and reported by the teacher. [Claimant] appears to demonstrate a relative strength with non-verbal and visual concepts and demonstrates relative weaknesses and processing deficits in areas where [claimant] must sustain focus, concentration and process oral information.

(Ex. 6, p. 7.)

9. The Motor-Free Visual Perception Test-Fourth Edition was administered to claimant to assess her overall visual processing abilities. Claimant received a standard score of 105, which fell within the average range, placing her at the 63d percentile in comparison to her peers.

10. On the Memory Index of the Test of Auditory Processing Skills, Third Edition (TAPS-3), claimant's auditory memory fell within the average range with a standard score of 93, placing her at the 32d percentile in comparison to her peers. According to the school psychologist, this score indicates that claimant was able to remember orally presented series of words and numbers as well as sentences, and provide immediate recall information. On the Cohesion Index of the TAPS-3, claimant's auditory reasoning skills fell within the borderline range with a standard score of 78, placing her at the seventh percentile in comparison to her peers. Based on this score, the school psychologist opined that claimant demonstrated significant weaknesses when information is presented orally without visual assistance or when claimant was required to sustain full attention and concentration to make sense of higher order, more complex information.

11. On the Comprehensive Test of Phonological Processing, Second Edition, which measures awareness of, and access to, the sound structure of oral language, claimant obtained a score of 77, which placed her in the sixth percentile rank in comparison to her peers. Claimant, therefore, demonstrated significant processing deficits within the area of phonological awareness.

12. On the Adaptive Behavior Assessment System, Second Edition (ABAS-2), claimant's adaptive skills fell within the adequate to age-appropriate range, although her foster parent reported extremely low skills. In the school setting, claimant's teacher reported claimant was able to navigate her surroundings without difficulty, advocate for herself when needed, and take care of her personal needs.

13. To assess claimant's academic performance, the school psychologist administered to claimant the Woodcock-Johnson IV Test of Academic Achievement (WJIV). Claimant's scores on the reading subtests of the WJIV were 78 in basic reading skills and 74 in reading comprehension, placing her in the borderline range in these two categories. Her score was 67 in reading fluency, placing her in the low average range. Claimant's scores on the mathematics subtests of the WJIV were 85 in math calculation skills and 88 in math problem solving skills, placing her in the low average range. Claimant's score on the writing subtest of the WJIV was 88 for written expression, placing her in the borderline range. The school psychologist concluded:

Overall, using this formal measurement, all of [claimant's] academic skills appear to be within the borderline range to average range when compared to scores obtained by others at her age level. [Claimant] appears to be maintaining academic achievement skills within appropriate grade levels in areas of math and written expression.

However, she appears to require specialized academic instruction with regards to reading, work performance, and tests (assistance with timed tests). In addition, she would benefit from accommodations and modifications of class/homework in order to improve academic progress.

(Ex. 6, p. 13.)

14. Additionally, regarding claimant's language development, the school psychologist wrote, "Based on informal testing, observations and student interview, [claimant] was able to express her thoughts without difficulty. [Claimant] provided reciprocal conversational skills, good eye contact and intelligibility." (Ex. 6, p. 10.) During her assessment with the school psychologist, claimant was observed to be "chatty," "extremely friendly," and "energetic." (*Id.* at p.11.) She easily built a rapport with the school psychologist.

15. Based on this assessment, the school psychologist determined that claimant was eligible for special education services under the category of specific learning disability.

16. According to an Individualized Education Program (IEP) dated October 15, 2016, claimant was placed in general education with resource support, including 120 minutes of specialized academic instruction every week and 20 minutes of counseling every month. (Ex. 9, p. 18.)

THE 2017 IEP

17. According to an IEP dated November 8, 2017, claimant was administered the WJIV to assess her progress. On the WJIV, claimant achieved a score of 67 in broad

reading, which placed her in the very low range in reading relative to her peers. She achieved a score of 84 in broad mathematics, which placed her in the low average range in mathematics relative to her peers. She achieved a score of 71 in broad written language, which placed her in the low range in written language relative to her peers.

18. The IEP further notes that claimant made progress in her socialization skills. Claimant is described in the IEP as “motivated to get along with her peers. She is making friends and beginning to cooperate with others” (Ex. 8, p. 4.) In addition, the IEP states that claimant’s adaptive/daily living skills were “age appropriate.” (*Ibid.*)

19. The 2017 IEP indicates that claimant continued to be eligible for special education services based on the category of specific learning disability. She was placed in general education with resource support, including 120 minutes of specialized academic instruction every week.

THE 2020 IEP²

20. According to an IEP dated May 7, 2020, no formal assessment was conducted to measure claimant’s progress in the areas of reading, mathematics, and writing. However, work samples and informal assessments indicate that claimant was making slow but steady progress across all three areas. Claimant still experienced challenges, including difficulty reading grade-level sight words, problems with organizing her ideas and using descriptive details, and struggles with solving math word problems.

21. The 2020 IEP indicates that claimant continued to be eligible for special education services based on the category of specific learning disability. She was placed

² Claimant’s 2018 and 2019 IEPs were not submitted into evidence.

in general education with resource support, including extended school year, parent counseling and training, and instructional accommodations.

Service Agency's Psychological Evaluation

22. On June 4 and June 17, 2020, at the request of Service Agency, Aurielle Mason, Psy.D., supervised by Krystel Edmonds-Biglow, Psy.D., conducted a psychological evaluation of claimant to determine her eligibility for regional center services. Dr. Mason reviewed claimant's prior evaluations and administered standardized tests to complete her evaluation. Even though the standard administration of the standardized tests involves in-person, face-to-face methods, Dr. Mason conducted her assessments using telehealth methods, including remote observation of performance via videoconferencing, due to the COVID-19 pandemic. Dr. Mason set forth her findings in an undated psychological evaluation report.

23. Regarding claimant behavior during the first session of the assessment on June 4, 2020, Dr. Mason wrote:

During the virtual observation, [claimant] was observed to engage in appropriate eye contact with the caregiver. [Claimant] consistently looked directly into the screen, in the direction of the examiner. [Claimant] engaged in a reciprocal conversation with the examiner, she was able to independently maintain the interaction, asking and responding to questions of the examiner. . . . During the observation period, no repetitive motor mannerisms or restricted/repetitive behaviors were observed.

(Ex. 4, p. 3.)

24. Due to the COVID-19 pandemic, formal cognitive testing was not administered. Instead, Dr. Mason administered the Developmental Profile, Third Edition (Dp-3) cognitive scale, based on reporting from claimant's caregiver, to measure claimant's cognitive abilities. Claimant obtained a standard score of 92, which placed her in the average range. According to Dr. Mason, this score indicates that claimant's cognitive skills are typical for her age.

25. Dr. Mason administered the Adaptive Behavior Assessment System, Third Edition (ABAS-3), to measure claimant's adaptive behavior and skills. Claimant obtained a general adaptive composite score of 80, which indicates that her current overall level of adaptive behavior is in the below-average range. Claimant's conceptual composite score, which summarizes performance across areas in communication, functional academics, and self-direction, was 79 and fell within the low range. Claimant's social composite score, which summarizes performance in leisure and social skill areas, was 78 and fell within the below average range. Claimant's practical composite score, which summarizes performance across areas in community use, home living, health and safety, and self-care skill areas, was 86 and fell within the average range.

26. Dr. Mason also administered the Autism Diagnostic Interview, Restructured (ADI-R), and Autism Spectrum Rating Scales to assess for the presence of autism. On the ADI-R, claimant obtained a score of 2 on qualitative impairments in social interaction, 2 on verbal communication, and 0 on repetitive behaviors and stereotyped patterns. All of these scores were below the cutoff for the presence of autism disorder. Claimant's ratings on the Autism Spectrum Rating Scales yielded a T-score of 41, which was ranked at the 18th percentile and fell in the average range.

27. Based on her evaluation, Dr. Mason did not reach any diagnosis for claimant under the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5). She wrote in her summary:

Per caregiver report, [claimant] presents with typical functioning and development in all areas. Caregiver stated adaptive/self-help concerns while at home. Based on the examiner's impression, [claimant] engaged in reciprocal conversation, and expressive and receptive language appeared typical, with minimal articulation concern. Due to the COVID-19 "stay at home" orders, formal cognitive testing was not administered and is recommended in the future. Based on review from her Psychological Evaluation in 2016, cognitive scores were estimated in the Average range. Currently, cognitive skills were estimated based on the caregiver's report (Dp-3). The results of the survey indicate cognitive ability likely in the Average range. [Claimant's] history of trauma and abuse has likely impacted her behaviors, continued mental health treatment is recommended.

(Ex. 4, p. 5.)

Psychological Evaluation by Kristen Wheldon, Psy.D.

28. On September 3 and 10, 2020, at the request of DCFS, Kristen Wheldon, Psy.D., conducted a psychological evaluation of claimant. The purpose of this evaluation was "to differentiate whether [claimant's] problematic behaviors are a result or function of personality traits, traumatic stress, attention deficits, attachment issues,

and/or an intellectual deficit.” (Ex. 3, p. 1.) Dr. Wheldon performed an extensive review of claimant’s records, including her prior evaluations, her special education history, her psychiatric records, and her legal records relating to her DCFS detention. Dr. Wheldon also administered standardized tests to complete her evaluation, which is summarized in a report dated October 5, 2020.

29. Dr. Wheldon saw claimant in her office on two separate occasions. She described claimant’s behavior as follows:

During both visits, her presentation was consistent. She arrived fairly groomed, calm, and cooperative. She was oriented to person, place, time, and circumstance. She denied suicidal and homicidal ideations as well as auditory and visual hallucinations. She did not appear to be responding to internal stimuli. Her thoughts appeared fluid and organized. She described her mood as "good" and she demonstrated a full range of affect.

(Ex. 3, p. 3.)

30. On standardized testing, Dr. Wheldon administered the Rorschach Inkblot Test, which reveals personal motivations, emotions, conflicts, and thought distortions. Regarding claimant’s results on this test, Dr. Wheldon noted that “[her] responses incorporate a high degree of general psychopathology. She probably experiences some disturbance in thinking, an impaired ability to accurately perceive events and internal experiences (i.e., poor reality testing), crude and disturbing thought content, and interpersonal misunderstanding and disturbance that are likely to compromise effective day-to-day functioning.” (Ex. 3, pp. 8-9.)

31. The Personality Inventory for Youth (PIY), which provides a multidimensional measure of emotional and behavioral adjustment of youths ages 9 to 19, was administered to claimant. Dr. Wheldon observed that claimant exhibited an elevated defensiveness on the PIY, raising concerns about the validity of this test. Claimant generally described herself as exceptionally well-adjusted and denied many problems and conflicts that commonly occur during school years. In Dr. Wheldon's opinion, this pattern of responses is atypical and suggests claimant is either in denial of her current problems or needs to appear unusually virtuous.

32. On the Trauma Symptom Checklist for Children, a standardized trauma measure for children, Dr. Wheldon suspected that claimant underreported the presence of any trauma symptoms because none of the clinical scales were elevated.

33. On the Connor's Behavior Rating Scale, which provides a complete overview of child and adolescent concerns and disorders, claimant did not report any concerns that were elevated to a scale of statistical significance. However, based on reporting from claimant's foster mother, her DCFS social worker, and her school teacher, claimant's challenges stem from many areas, including emotional distress, upsetting thoughts, social problems, defiant/aggressive behaviors, academic difficulty, and hyperactivity/impulsivity.

34. On the Test of Variables Attention, which measures attention and inhibitory control, Dr. Wheldon found that claimant's scores were not within normal limits and may be suggestive of a possible attention deficit disorder, including ADHD.

35. Finally, Dr. Wheldon administered the Stanford Binet V (Binet) to claimant. According to Dr. Wheldon, the Binet is a highly reliable assessment of an individual's intellectual and cognitive abilities. On this test, claimant earned a score of

88 in nonverbal intellectual quotient (IQ), and 83 in verbal IQ. She obtained a full scale IQ of 85, which fell within the low average range. Based on these scores, Dr. Wheldon opined:

[Claimant] does not meet the criteria for an intellectual disability nor does she appear to have a borderline IQ. . . . [Claimant's] IQ scaled scores across areas of nonverbal, verbal, and full-scale intelligence fell within the low average range. Similarly, her knowledge scaled score was within the borderline impaired or delayed range.

(Ex. 3, p. 19.)

36. Based on her evaluation, Dr. Wheldon diagnosed claimant with Fetal Alcohol Syndrome Disorder, Mild Neurocognitive Disorder (subtype: Traumatic Brain Injury), PTSD, ADHD, and Specific Learning Disorder. Dr. Wheldon concluded:

Records indicate the child has had significant exposure to substances in utero. Unfortunately, she also experienced a head injury involving a skull fracture at just six years old. Within six months of the accident, she was being treated for behavioral problems and hyperactivity. Although she intellectually appears to function within the low average range, she struggles with a learning disability, processing difficulties, and other executive function impairments. The child would benefit from neuropsychological testing in order to gain a better understanding of her neurological impairments.

(Ex. 3, p. 21.)

Testimony of Dr. Laurie McKnight Brown

37. Laurie McKnight Brown, Ph.D. is SCLARC's lead psychologist consultant. She obtained her doctorate in psychology with a clinical emphasis from Walden University.

38. At the hearing, Dr. McKnight Brown provided a detailed explanation of Dr. Mason's psychological evaluation. Dr. McKnight Brown noted that a formal cognitive assessment was not conducted of claimant due to the COVID-19 pandemic. However, claimant's score on the Dp-3 was 92, which is in the average range and is not indicative of intellectual disability. For an individual with intellectual disability, she would expect to see a much lower score, somewhere in the low 70's.

39. Furthermore, Dr. McKnight Brown testified claimant was screened for autism based on the ADI-R, one of the gold standard instruments to assess for the presence of autism. However, claimant's scores on the ADI-R did not meet the cut-off for autism spectrum disorder. In Dr. McKnight Brown's opinion, claimant's scores on the ADI-R are consistent with Dr. Mason's clinical observations that claimant did not exhibit any autism-like behavior during the evaluation. For example, Dr. Mason noted that claimant engaged in appropriate eye contact and reciprocal conversation. According to Dr. McKnight Brown, these are not behaviors that demonstrate social communication deficits as would be present in a child with autism spectrum disorder.

40. In Dr. McKnight Brown's opinion, claimant also does not qualify for regional services under the Fifth Category, because claimant's cognitive and adaptive functions are not similar to an individual with an intellectual disability. She opined that claimant suffers from Fetal Alcohol Syndrome, ADHD, and learning disability, none of

which are qualifying conditions for regional center services. Dr. McKnight Brown confirmed that, before her testimony, she reviewed Dr. Wheldon's psychological evaluation, which did not alter her opinions about claimant's condition.

Testimony of Michelle Lewis

41. At the hearing, Michelle Lewis, who has been claimant's DCFS social worker since November 20, 2019, testified on behalf of claimant. Ms. Lewis recounted claimant's development history, including her exposure to alcohol in utero and her head injury at the age of six. Ms. Lewis testified that she sees claimant once per month, and she described claimant as sweet, kind, and sensitive. However, Ms. Lewis reported that claimant's cognitive skills are similar to that of a toddler. She does not have a large vocabulary and needs questions to be repeated to her. Claimant's spelling and grammar are at the kindergarten to first grade level, and she is unable to perform any consequential thinking. Claimant also has tantrums and meltdowns.

42. Ms. Lewis opined that claimant is not sufficiently supported at her school, which is only providing tutoring services. Ms. Lewis testified that as claimant grows older, she is lagging further behind her peers. Ms. Lewis believes that claimant would benefit from Applied Behavior Analysis (ABA) therapy and any other services that the regional center can offer.

Testimony of Claimant's Foster Mother

43. Claimant's foster mother testified at the hearing on her daughter's behalf. Claimant's foster mother stated that it is heartbreaking to see claimant, who is chronologically 12 years old, but is not developmentally at the same age as her peers. Claimant's foster mother expressed a desire to help her daughter, but she does not know where to begin because claimant has not been properly diagnosed. She thanked the

Service Agency for performing the psychological evaluation, which has provided her with greater insight into her daughter's condition.

LEGAL CONCLUSIONS

Burden and Standard of Proof

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

2. Claimant did not establish that she suffers from a developmental disability entitling her to receive regional center services, as set forth in Factual Findings 1 through 43 and Legal Conclusions 1 through 16.

Applicable Law

3. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 et seq.) Eligibility for regional center services is limited to those persons meeting the criteria for one of the five categories of developmental disabilities set forth in Welfare and Institutions Code section 4512, subdivision (a), as follows:

"Developmental disability" means a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual.... [T]his term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to intellectual disability or to

require treatment similar to that required for individuals with intellectual disability ["Fifth Category"], but shall not include other handicapping conditions that are solely physical in nature.

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

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

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

(A) Receptive and expressive language;

(B) Learning;

(C) Self-care;

(D) Mobility;

(E) Self-direction;(F) Capacity for independent living;

(G) Economic self-sufficiency.

5. In this case, the parties do not dispute that claimant does not suffer from cerebral palsy or epilepsy. Thus, the sole question is whether claimant qualifies for regional center services based on autism, intellectual disability, or a disabling condition that is closely related to intellectual disability or requires treatment similar to that required for individuals with intellectual disability.

Claimant is Not Eligible Based on a Claim of Autism

6. To be eligible for regional center services under the category of autism, claimant must be diagnosed with autism spectrum disorder under the DSM-5. Under the DSM-5, section 299.00, to diagnose autism spectrum disorder, it must be determined that an individual has persistent deficits in social communication and social interaction (Criterion A) across multiple contexts, as manifested by the following, currently or by history: (1) deficits in social-emotional reciprocity, (2) deficits in nonverbal communication behaviors used for social interaction, and (3) deficits in developing, maintaining, and understanding relationships. The individual must also have restricted, repetitive patterns of behavior, interests, or activities (Criterion B), as manifested by at least two of the following, currently or by history: (1) stereotyped or repetitive motor movement, use of objects or speech, (2) insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior, (3) highly restricted, fixated interests that are abnormal in intensity or focus, and/or (4) hyper- or hypo-reactivity to sensory input or unusual interest in sensory aspects of the environment. In addition, symptoms must be present in the early developmental period and must cause clinically significant impairment in social, occupational, or other important areas of current functioning (Criteria C and D). (DSM-5, p. 50-51.)

7. In this case, little evidence was presented that claimant suffers deficits in social communication or that she exhibits repetitive or restrictive behavior. During the

2016 Multidisciplinary Assessment by her school psychologist, claimant engaged in good eye contact and reciprocal conversation. She easily built a rapport with her school psychologist, displaying good social skills. During her 2020 psychological evaluation with Dr. Mason, claimant also exhibited appropriate eye contact and reciprocal conversation skills. Additionally, Dr. Wheldon observed that claimant demonstrated a full range of affect during her evaluation in September 2020. There is no indication in claimant's school records that she exhibited any repetitive or restrictive behavior by history. In 2020, claimant scored 0 on the ADI-R in stereotyped and repetitive behavior. Claimant's scores in social interaction, verbal communication, and stereotyped/repetitive behavior on the ADI-R, which is a gold standard instrument in assessing autism, did not meet any of the cutoff scores.

8. Both Drs. Mason and McKnight Brown declined to diagnose claimant with autism for failure to meet any of the criteria set forth under the DSM-5. Their opinions on this issue are unrefuted, consistent with the evidence in this case, and accorded significant weight.

Claimant is Not Eligible Based on a Claim of Intellectual Disability

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

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

A. Deficits in intellectual functions, such as reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience, confirmed

by both clinical assessment and individualized, standardized intelligence testing.

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

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

(DSM-5, p. 33.)

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

11. Although a standardized IQ test was not administered when claimant underwent her evaluation with Dr. Mason, claimant's score on the Dp-3 was 92, consistent with her scores on the CAS2 administered by her school psychologist in 2016. Although claimant's score on the Dp-3 is an estimate of her actual IQ, the validity of this result is confirmed by the claimant's full scale IQ of 85 on the Binet, which was obtained by Dr. Wheldon during her evaluation in September 2020. As Dr. McKnight Brown explained in her testimony, these scores are not indicative of intellectual disability, as she expects the IQ of an individual with intellectual disability to be in the low 70's. Moreover, a review of claimant's special education history did

not reveal any concerns about cognitive delays by the school psychologist or by claimant's teachers.

12. Claimant's adaptive functioning also does not seem to be considerably impacted by any cognitive deficits. In 2016, the school psychologist administered the ABAS-2, the results of which showed that claimant's adaptive skills fell within the adequate to age-appropriate range. In 2020, Dr. Mason administered the ABAS-3. Consistent with prior testing, claimant obtained a general adaptive composite score of 80, which indicates that her current overall level of adaptive behavior is in the below average range. Dr. Mason did not diagnose claimant with intellectual disability. Similarly, Dr. Wheldon, based on her record review, standardized testing, and clinical observations, opined that claimant did not meet the criteria for a diagnosis of intellectual disability under the DSM-5. Dr. McKnight Brown concurred with this conclusion. Given the convergence of the opinions of all three experts on this issue, there is little evidence to indicate that claimant suffers from intellectual disability.

Claimant is Not Eligible under the Fifth Category

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

The fifth category condition must be very similar to mental retardation [now, intellectual disability³], with many of the same, or close to the same, factors required in classifying a

³ The DSM-5 changed the diagnosis of mental retardation to intellectual disability.

person as mentally retarded. Furthermore, the various additional factors required in designating an individual developmentally disabled and substantially handicapped must apply as well.

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

15. Dr. McKnight Brown opined, during her testimony, that claimant does not qualify for regional center services under the Fifth Category because she does not function like an individual with intellectual disability. The evidence in this case supports this opinion. In the school setting, although claimant has qualified for special education services through her school district since 2016, eligibility for special education services is generally more inclusive than eligibility for regional center services. Ms. Lewis, claimant’s DCFS social worker, testified about the many challenges that claimant faces as she grows older. She believes that claimant would benefit from ABA therapy and other services offered by the regionals center. However, the criterion is not whether someone would benefit from the provision of *services*, but whether that person’s condition requires *treatment*, which has a narrower meaning under the Lanterman Act than *services*. (*Ronald F. v. State Dept. of Developmental Services*

(2017) 8 Cal.App.5th 94, 98.) Many people, including those who do not suffer from intellectual disability, or any developmental disability, could benefit from the types of services offered by regional centers (e.g., counseling, vocational training, living skills training, speech therapy, or occupational therapy). In this case, little evidence was presented that the services claimant is seeking, such as ABA therapy, are treatments similar to that required for an individual with intellectual disability.

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

ORDER

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

DATE:

JI-LAN ZANG

Administrative Law Judge

Office of Administrative Hearings

NOTICE

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