

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA
In the Matter of the Fair Hearing Request of:

CLAIMANT,

vs.

SOUTH CENTRAL LOS ANGELES REGIONAL CENTER,
Service Agency.

OAH No. 2020100386

DECISION

Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on February 1, 2021.

Claimant was represented by her mother (Mother)¹ who appeared by telephone. Claimant was not present. Mother was assisted by a Spanish-language interpreter.

¹ Titles are used instead of names to protect the privacy of Claimant and Claimant's family.

Karmell Walker, Esq., Human Resources Director/Legal Compliance Director, represented the South Central Los Angeles Regional Center (SCLARC).

Oral and documentary evidence was received, and the matter was submitted for decision on February 1, 2021.

ISSUE

Whether Claimant is eligible for services under the Lanterman Developmental Disabilities Services Act.

EVIDENCE RELIED UPON

Documents: SCLARC exhibits 1 through 8. Testimony: Laurie McKnight-Brown, Psy.D and Mother.

SUMMARY

Claimant contends that she is eligible for SCLARC's services and that she suffers from Intellectual Disability, Autism or a Fifth Category disabling condition, which is a disabling condition closely related to Intellectual Disability or one that requires treatment similar to that of individuals with an Intellectual Disability SCLARC contends that its assessors did not find any indications of Autism, Intellectual Disability or the Fifth Category. Claimant's cognitive ability is in the low average to average range, with borderline adaptive skills which are inconsistent with a diagnosis of Intellectual Disability and with a Fifth Category disabling condition similar to that of Intellectual

Disability or requiring treatment similar to that required for Intellectual Disability. For the reasons set forth below, Claimant's appeal is denied.

FACTUAL FINDINGS

Jurisdictional Matters

1. On August 17, 2020, SCLARC received Claimant's Fair Hearing Request (FHR) to appeal SCLARC's denial of eligibility which it provided in a Notice of Proposed Action (NOPA). SCLARC filed and served the FHR on September 28, 2020. Claimant later waived her rights to have a fair hearing within 50 days of the date that SCLARC's decision was rendered and within 80 days of the date that SCLARC received the request (Welf. & Inst. Code², § 4712.5, subd. (a)).

2. SLACRC determines eligibility and provides funding for services to persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Lanterman Act), among other entitlement programs. (§ 4500 et seq.)

Background

3. Claimant is a six-year-old girl who was referred to SCLARC for evaluation. Mother expressed concerns about Claimant's speech, language, behavior, cognitive ability and distractibility. Claimant lives in a one-bedroom apartment with her parents and two siblings. Her seven-year-old sibling is a regional center consumer diagnosed with Autism. Her younger sibling participates in Early Start because of her

² Undesignated statutory references are to the Welfare and Institutions Code.

developmental delays. Claimant attends public school and is placed in a general education classroom. She attends classes via zoom because of the Covid-19 pandemic and related shutdown of academic facilities in Los Angeles County. She has not been evaluated for special education yet because of the Covid-19 school shutdowns.

Psycho-Social/Intake Evaluation

4. Claimant and Mother participated in an intake meeting on January 9, 2020 with Service Coordinator Raquel Vargas. Ms. Vargas did not testify at the administrative hearing. She prepared a report titled "Lanterman Psycho-Social" after the intake meeting. The report detailed Claimant's development history which included normal milestone achievement except in the area of expressive language. The report provides that Mother described Claimant as "a timid young girl and a girl with a temper." There were not concerns about Claimant's speech articulation. However, there were concerns about her not "being able to explain things to others" and general language production. There were no concerns about her gross or fine motor skills.

5. With respect to "Self-Care" the report provides:

[Claimant's] mother still bathes her, assists her in brushing her teeth and hair, ensures that she is clean at all times. She needs help with zipping articles of clothing. She can't tie her own shoes. When bathing, she doesn't know how to set the water temperature and she doesn't lather herself appropriately. She is completely toilet trained during the day and night. She only needs assistance at times when she releases feces even though she prefers to clean self; she doesn't experience any accidents at night time. She can

feed self-using utensils but there are times she needs to be encouraged to eat since most of the time she doesn't care for eating. [Claimant's] mother tries to give her responsibilities around the house, but she usually refuses to cooperate. She will not cross a street on her own and will wait for her mother. If she feels ill, she will inform others.

(Ex. 5.)

6. With respect to "Social/Behavioral/Emotional", the report provides:

When [Claimant] is at home, she enjoys watching television, playing with her toys, or using a cell phone. She will play at times with her siblings, but she has a hard time sharing and becomes aggressive towards them and prefers to set self to the side from them. If they attend birthday celebrations, she would rather eat and stay next to her parents than playing around with other children. If there are visitors at home, she becomes shy and runs to hide somewhere (her mother is not sure if it is a behavior she is getting because her brother tends to do that). She is affectionate towards her mother only when she feels like it. She enjoys going out to places and she doesn't feel overwhelmed with noises or a lot of people as she doesn't show any distress. If she gets bored, she will sometimes request to leave. During her vacation time, her mother noticed that she would pretend play a lot as if she was at school and acted out school scenes.

[Claimant's] mother is concerned in regards her behaviors and character. She usually wants what her siblings have and she has a hard time sharing with them. If they don't give her what she demands for, she will throw whatever is around, hit and has slapped her younger sister. She has also attempted to hit her parents, but no behavioral concerns of these characters are reported to the mother. On the other hand, [Claimant] as gone home after school with bruises on her eyes and arms and mother has filed a complaint since no one knows what happened and [Claimant] will not express who did that to her. When given directives, especially when she is upset and/or when she doesn't want to cooperate, she will not comply no matter if her mother slaps her on her buttocks once. She will not care who is around and will act such way when she is at home. There has not been any complain[t]s at school of [Claimant] being aggressive towards others. [Claimant]'s mother has noticed that at the beginning of the school, she was excited to attend school; however, she now cries that she doesn't want to attend.

(Ex. 5.)

7. With regard to "Communication" the report provides:

[Claimant] is verbal in English and Spanish and her utterances are clear. She can ask simple questions when needed but she has a hard time expressing things or

explaining her daily events. Her mother is concerned that she doesn't say who hurts her at school or why they hit her.

(Ex. 5.)

8. With regard to "Cognitive" the report provides:

[Claimant's] mother stated that [Claimant] still doesn't know letters or numbers. She still can't write her first name. She will state when she sees the letter "A" that it is her name but she will not say "A". She knows her basic colors including red, blue, green, and brown. She knows her basic body parts."

(Ex. 5.)

Evaluation by Dr. Carrillo

9. Thomas L. Carrillo, Ph.D. conducted a psychological evaluation of Claimant on April 8, 2020. Due to the requirements of social distancing, as a result of the Covid-9 pandemic, a remote psychological assessment was conducted. Interviews, testing and observations were conducted via videoconferencing applications such as Zoom, Google Hangouts and/or Facetime. Dr. Carrillo interviewed Mother and Claimant by videoconference and conducted a clinical observation. Dr. Carrillo also administered the Wechsler Preschool and Primary Scale of Intelligence-Fifth (WPPSI-5) (partial administration), Vineland Adaptive Behavior Scales-Third Edition (VABS-3) and the Autism Diagnostic Interview-Revised (ADI-R). Dr Carrillo reviewed the Psycho-Social Assessment prepared by Rachel Vargas.

10. Dr. Carrillo conducted clinical observations by videoconference. He observed Claimant to be a child who was “passive resistive.” He observed the following:

She avoided contact with her mother and was not cooperative. She tested limits. It is important to note that her eye contact was good and meaningful, did not display any hypersensitivity to sensory stimuli. In general, it is this psychologist’s impression that [Claimant] made a good-faith effort to respond to the test items to the best of her ability, and therefore the results seem to be a reasonable estimate of her overall intellectual and adaptive function.

(Ex.4.)

11. Due to the limits of remote testing, Dr. Carrillo only administered the verbal portion of the WPPSI-5. According to Dr. Carrillo the Verbal Comprehension Skills Test is a strong indicator of overall cognitive abilities. Claimant received a Verbal Comprehension IQ Composite Score of 102, within the normal range.

12. Dr. Carrillo measured Claimant’s adaptive functioning using the VABS-3. Mother was the reporter. In the Communication Domain, Claimant demonstrated delays in both expressive and receptive language. Dr. Carrillo noted that Claimant’s “conversational content was impoverished and representative of a child younger than her chronological age.” He also noted that she did not display any unusual communication patterns such as those typically seen in children with Autism. On the communication portion of the VABS-3, Claimant received a standard score of 64 within the mild range of delay. She received a receptive language age equivalent of two

years, five months, an expressive language age equivalent of two years, six months and a written language age equivalent of three years, two months. At the time, Claimant's chronological age was five years and three months. Dr. Carrillo opined that Claimant's receptive; expressive and communication language abilities were within the mild range of delay likely due to a Language Disorder. (Ex. 4.)

13. Claimant received an overall Adaptive Behavior Composite Score of 79, within the Borderline Delay range.

A. Claimant received a Stand Score of 93 on the Motor Skills portion of the VABS-3 reflecting fine motor skills within the normal range.

B. Claimant received a standard score of 100 on the Daily Living Skills portion of the VABS-3, reflecting adaptive skills within the normal range.

C. Claimant received a Standard Score of 80 on the Socialization portion of the VABS-3, within the low-normal range.

14. Dr. Carrillo opined:

[Claimant's] adaptive delays were seen as being secondary to her delays in Communication Skills.

[Claimant] has also had difficulty in her social interaction with peers. It is not uncommon that children who are speech delayed can, at times, be overly aggressive with peers. The aggressive behavior can be a form of communication for children who have delayed speech and language abilities. It is hopeful that as [Claimant's]

communication abilities improve, her aggressiveness will begin to decline.

(Ex. 4.)

15. Dr. Carrillo observed Claimant to be "a strong willed-child" who was "under socialized" and "under disciplined." He witnessed her uncooperative behavior throughout the assessment and constantly testing limits with Mother. Dr. Carrillo did not observe Claimant to display any of the characteristics associated with Autism. Dr. Carrillo noted:

She made good and meaningful eye contact, and she was reported to have an interest and ability to interact with others, although, at times, she can be somewhat aggressive. [Claimant] is not described as having aggressive behavior at school and is reported to have friends at school. She does not have any hypersensitivity to sensory stimuli. She was easily distracted but did not display any symptoms associated with Attention-Deficit/Hyperactivity Disorder.

(Ex. 4.)

16. Dr. Carrillo administered the ADI-R to screen Claimant for Autism based upon the reported delays in speech and language. Claimant scored below the threshold for a diagnosis of Autism on the ADI-R. She received a score of 6 in the area of Qualitative Abnormalities in Reciprocal Social Interaction, a score of 4 in the area of Qualitative Abnormalities in Communication, and a score of 1 in the area of Restrictive, Repetitive and Stereotypical Patterns of Behavior; all below the threshold for diagnosis of Autism. Dr. Carrillo reviewed the Diagnostic and Statistical Manual of Mental

Disorders, Fifth Edition (DSM-5) criterion for diagnosis of Autism and determined that Claimant did not meet any of the criteria in Part A, Persistent Deficits in Social Communication and Social Interaction and met only one of the four listed factors under the Criteria set forth in Part B, Restricted, Repetitive Patterns of Behavior. Under Part B, Dr. Carrillo found only that Claimant was “inflexible and had difficulty transitioning from one activity to the next during the testing session. She was passive resistive.” (Ex. 4.) Accordingly, Dr. Carrillo opined that she did not meet the criteria for a diagnosis of Autism.

17. Dr. Carrillo diagnosed Claimant with Language Disorder and Borderline delays in adaptive skills. He determined that she had cognitive skills within the normal range. He recommended that Claimant be referred to her local school district for evaluation of her Language Disorder and special education programming. He also suggested that SCLARC re-evaluate Claimant’s cognitive abilities with a comprehensive evaluation when feasible.

Initial Determination of Ineligibility

18. The SCLARC interdisciplinary staff team met on May 26, 2020 and considered Claimant’s medical records, Dr. Carrillo’ report and Ms. Vargas’s Psycho-Social Assessment. The team determined that Claimant was not eligible for SCLARC’s services because she was not substantially disabled by a qualifying developmental disability. Mother was provided with a Notice of Proposed Action (NOPA).

Informal Meeting

19. A “voluntary informal meeting” was held on or before October 14, 2020. Mother and the Executive Director’s designee, Karmell Walker, met to discuss SCLARC’s determination that Claimant was not eligible for its services. At the

conclusion of the meeting, SCLARC's representative agreed to have an additional assessment of Claimant conducted by video. Claimant was notified of the decision to conduct a second assessment by certified letter dated October 14, 2020.

Evaluation by Dr. Alvarez

20. Maritza Alvarez, Psy.D., performed a telehealth psychological evaluation to assess Claimant. The evaluation was conducted by zoom teleconference on November 7, 2020 and by telephone on November 20, 2020. Dr. Alvarez did not testify at the administrative hearing. Her evaluation was summarized in her report dated December 11, 2020. The evaluation was conducted in English and in Spanish.

21. Dr. Alvarez reviewed available records provided by SCLARC including the previous evaluation by Dr. Carrillo and Ms. Vargas, interviewed Mother and Claimant and conducted a clinical observation. She administered the Stanford-Binet Intelligence Scales 5th Edition (SB-V) (Verbal only), Developmental Profile 3(DP-3), VABS-3, Gilliam Autism Rating Scale-3rd Edition (GARS-3) and the Attention Deficit/Hyperactivity Disorder (ADHD) Test Second Edition (ADHDT-2).

22. In relevant part, Dr. Alvarez summarized her clinical and behavioral observations as follows:

...¶[Claimant] presented as a happy, well-adjusted child with congruent affect and with no apparent physical or emotional distress. When greeted, she was observed to make appropriate eye contact and returned a social smile. Initially, [Claimant] presented as quite shy and guarded. Once rapport was established, she became more engaged. While [Claimant] was mostly quiet while sitting with her

mother, she occasionally smiled and was responsive to questions. She was able to combine words and use phrase speech. She named several colors, knew her age, and counted to 5. She does not yet know her ABC's. She enjoys "play with dolls" and watching programs/playing games on her school issued tablet. [Claimant] engaged in pretend play with her doll and her behavior appeared normal. During the administration of the Verbal Routing Domain from SB-V, Claimant was cooperative and appeared to do her best. She was able to engage with the evaluator, sustain focus, and remain on task for short durations. She was not observed making any unusual hand gestures or other body movements and no maladaptive behaviors were noted.

(Ex. 3.)

23. Dr. Alvarez administered the SB-V, abbreviated battery IQ. The abbreviated battery IQ is based on two routings subtest, one nonverbal and one verbal. The abbreviated battery IQ provides a quick estimate of two major cognitive factors: fluid reasoning and crystallized ability. The abbreviated battery IQ can be used for quick yet reliable assessment to verify the general cognitive status of an individual. The abbreviated battery IQ measures the areas of nonverbal fluid reasoning and verbal knowledge and includes two of the most important abilities predictive of academic and/or vocational advancement. Claimant was administered only the verbal routing subtest for general estimate of verbal knowledge. Claimant received a scaled score of seven which falls in the low-average range.

24. Dr. Alvarez also administered the DP-3, a cognitive scale completed by a parent or caregiver. In this case, the DP-3 was completed by Mother as an additional measure of Claimant's current cognitive ability. Claimant received a standard score of 58 in cognitive ability. A standard score of 58 is estimated at the 39-month-old level and falls in the delayed range.

25. To measure adaptive functioning, Dr. Alvarez administered the VABS-3. Mother provided responses to the VABS-3 rating scales. Claimant received an overall Adaptive Behavioral Composite (ABC) score of 73, which is within the moderately low range.

A. The Communication Domain measures how well Claimant listens and expresses herself. The Communication Domain standard score was 72. This is classified as moderately low. Dr. Alvarez reported that:

[Claimant] uses in a sentence but does not consistently follow "if – then" instructions. She follows simple directions involving two different objects. She has some difficulties paying attention to a story. Mother reports that she is constantly moving. She uses pronouns correctly, uses plural nouns and adjectives to describe things in response to food, what you want questions but is not always consistent when answering questions involving when. [Claimant] knows her age but not her full name. She makes her wants and needs known and occasionally tries to explain things in a different way when not understood.

(Ex. 3)

B. The Daily Living Skills Domain assesses Claimant's performance of the practical, everyday tasks of living that are appropriate for her age. Her standard score for daily living skills was 80 which falls within the moderately-low range. Dr. Alvarez reported the following regarding Claimant's daily living skills:

[Claimant] feeds herself with a spoon and/or fork and drinks from a regular cup. She is able to dress herself and needs typical assistance with hygiene and grooming. She is fully toilet trained. She cleans her face and hands when they are dirty from eating. She is unable to count objects up to 10, one by one. She was able to turn on the faucet and adjust the temperature. She wipes up her own spills. [Claimant] is careful around things that can burn her, remains within safe distance of caregiver when in a public place and keeps her seatbelt on. She is careful with using sharp objects such as a knife or scissors. Mother reports that [Claimant] does not always pay attention when walking and tends to bump into things.

(Ex. 3.)

C. The Socialization domain assesses Claimant's social adaptive skills. Claimant received a standard score of 73 within the Moderately Low range in the Socialization Domain. With respect to Claimant's socialization skills, Dr. Alvarez reported:

[Claimant] engages in pretend play and make-believe games. She does not imitate complex actions as they are

performed by others. She uses words to express her own emotions. She engages in Smalltalk and makes appropriate eye contact. She does not have a best friend or a few good friends. She prefers to play with other children than by herself. She shares her toys and take turns without being told. She handles changes in her routine without becoming overly upset and usually uses words or gestures to express how she feels rather than screaming, hitting, throwing something. She is careful around strangers. At times she has temper tantrums when she does not get her way.

(Ex. 3.)

26. Claimant's social emotional and behavioral deficits were measured using the GARS-3 and the ADHDT-2.

A. The GARS-3 is an Autism screening tool. It screens for abnormalities in social interaction, restricted/repetitive behaviors, social communication, emotional responses, cognitive style and maladaptive speech. Dr. Alvarez reported that Claimant's scores based on all six subscales suggest that Autism is "unlikely."

B. The ADHDT-2 is a tool used by clinicians and to identify ADHD in students and its estimated severity. The measure has two subscales. The subscales are (1) Inattention and (2) Hyperactivity/Impulsivity. The ADHD-2 rating scale was completed by Mother. Claimant received an index score of 84 which suggests that ADHD Is "Likely."

27. Based upon all of the information reviewed and the testing data, Dr. Alvarez concluded: "The current results together with a review of available records, reported deficits and observations do not support a diagnosis of Intellectual Disability or Autism at this time." She further opined that Claimant met the criteria for a Language Disorder and that her testing showed that she also likely suffers from ADHD, Predominantly Inattentive Presentation.

A. Dr. Alvarez did not find Claimant demonstrated the characteristics of Autism. The results of the GARS-3 suggest that Autism is unlikely. Dr. Alvarez's clinical observations did not reveal the presence of any characteristics or behaviors typically seen in children diagnosed with Autism. She noted that "[w]hile [Claimant] presents as mostly quiet and shy, she was friendly, pleasant and cooperative. She was able to engage in back-and-forth conversation; however, her speech appeared limited for her age...[¶] She was not observed making unusual hand gestures or body movements, repetitive and/or maladaptive behaviors."

B. Dr. Alvarez did not find Claimant met the criteria for Intellectual Disability. She noted that although claimant's cognitive skills "could not be thoroughly assessed due to inability to conducted in person assessment due to Covid-19 restrictions." The one subtest of the SB-V that was administered showed that Claimant's verbal knowledge falls in the below average range and her general developmental score falls in the delayed range. Additionally, Claimant's adaptive functioning was measured to be in the moderately low range. At this time, Claimant is able to communicate her basic needs and complete activities of daily living that are appropriate for her age.

28. Dr. Alvarez recommended that Claimant be referred for a mental health evaluation to further assess for the presence of ADHD and to her local school district

to assess her speech and language and to rule out any learning disabilities including an auditory processing disorder. Dr. Alvarez also recommended that the regional center reevaluate in one year to assess progress and/or changes in behavior.

29. Claimant's Mother received Dr. Alvarez's report for the first time, three days before the fair hearing, as part of SCLARC's exhibit packet. Mother does not speak or read English and was unable to understand the assessment. At the ALJ's instruction, the Spanish language interpreter, translated the assessment report for Mother at the beginning of the administrative hearing.

Testimony of Laurie McKnight-Brown

30. Laurie McKnight-Brown (Dr. Brown) was SCLARC's sole witness. Dr. Brown holds a bachelor's degree in Psychology, a master's degree in Psychology with a clinical specialty and a Ph.D. in Psychology with a clinical specialty. Dr. Brown is a licensed Clinical Psychologist. She also holds a Multi-Subject Clear teaching credential. Dr. Brown is the lead psychological consultant for SCLARC. Dr. Brown is a member of various interdisciplinary teams at SCLARC including the eligibility team. Dr. Brown reviews the work of others, assists with evaluations, talks to parents of consumers and connects consumers with health care resources.

31. Dr. Brown reviewed the reports of Dr. Alvarez, Dr. Carrillo and Ms. Vargas. Dr. Brown acknowledged that the evaluations were limited to screening Claimant for eligibility under the categories of Intellectual Disability, Autism and Fifth Category. There is no contention that Claimant suffers from Epilepsy or Cerebral Palsy. Although the video evaluation was not ideal, Dr. Brown opined that sufficient information was obtained from the evaluations to determine that Claimant does not have a qualifying disability.

32. Specifically, Dr. Brown testified that Claimant's cognitive scores reflected average to low average cognitive ability and adaptive scores in the low range. Although Claimant demonstrated adaptive skills deficits and cognitive deficits, her scores were not low enough to demonstrate Intellectual Disability and did not show a need for the type of repetitive skills-based training that is required for consumers with Intellectual Disability. Instead, Respondent was diagnosed with ADHD, Inattentive type and Speech and Language Disorder. Dr. Brown opined that Respondent's distraction is characteristic of the type of ADHD that was diagnosed by Dr. Alvarez and that Respondent's performance on the cognitive testing reflects an ability to learn.

33. Dr. Brown testified that the assessors' observations of Claimant and information received from Mother on the GARS-3 rating scales, indicated that Claimant was not disabled by Autism. Specifically, Claimant was observed to interact with the assessors, display a social smile and make direct eye contact. The assessors' observations of Claimant were not consistent with the manifestations of Autism.

34. Dr. Brown opined that Claimant's deficits and behaviors were consistent with a Speech and Language Disorder, Learning Disorder and/or ADHD as diagnosed by Dr. Alvarez. Dr. Brown recommended that Claimant seek special education services from her local school district and a mental health evaluation from her health care provider.

Mother's Testimony

35. Mother testified briefly that Claimant is distracted and cannot count. She was advised by Claimant's teacher that Claimant is distracted and does not complete her schoolwork.

LEGAL CONCLUSIONS

General Legal Standards

1. The Lanterman Act provides facilities and services to meet the needs of persons with developmental disabilities, regardless of age or degree of disability. (§ 4501.) Under the Act, "'[d]evelopmental disability' means 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." (§ 4512, subd. (a).) "'Substantial disability means the existence of significant functional limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person: [¶] (A) Self-care. [¶] (B) Receptive and expressive language. [¶] (C) Learning. [¶] (D) Mobility. [¶] (E) Self-direction. [¶] (F) Capacity for independent living. [¶] (G) Economic self-sufficiency." (§ 4512, subd. (1)(1).

2. SCLARC determined Claimant does not have a developmental disability as defined in the Lanterman Act. Claimant disagrees and has properly exercised her right to an administrative fair hearing. (See §§ 4700-4716.) As an applicant seeking to establish eligibility for government benefits or services, Claimant has the burden of proof. (See, e.g., *Lindsay v. San Diego County Retirement Board* (1964) 231 Cal.App.2d 156, 161 [disability benefits]; see also *Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, 1136 [denying eligibility where an applicant's expert

opinion evidence did not "sufficiently refute" the regional center's expert opinion evidence[.]) This burden requires proof by a preponderance of the evidence, because no provision in the Lanterman Act or another law provides otherwise. (Evid. Code, § 115 ["Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence."].) A preponderance of the evidence means "'evidence that has more convincing force than that opposed to it.' [Citation.]" (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

3. Welfare and Institutions Code section 4643, subdivision (b), provides: "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."

Analysis

4. Claimant did not meet her burden of proof that she had a qualifying disability to meet the eligibility requirement for SCLARC services under the Lanterman Act. Claimant has never been diagnosed with a qualifying disability and failed to provide a diagnosis from a competent professional, such as a medical doctor, psychiatrist, or psychologist. (Factual Findings 1-35.)

INTELLECTUAL DISABILITY

5. Claimant did not meet her burden of proof that she qualifies for SCLARC services under the category of Intellectual Disability. The expert evidence presented by

SCLARC was persuasive and does not support that diagnosis. Claimant offered no evidence to refute SCLARC's experts. (Factual Finding 1-35.)

AUTISM

6. The Lanterman Act and its implementing regulations contain no specific definition of the neurodevelopmental condition of "Autism." However, the DSM-5, which came into effect in May 2013, provides Autism Spectrum Disorder (ASD) as the single diagnostic category for the various disorders previously considered when deciding whether one has Autism. (Ex. 7.) Therefore, a person diagnosed with ASD should be considered someone with the qualifying condition of "Autism" pursuant to the Lanterman Act.

7. Claimant failed to meet her burden of proof that she qualifies for SCLARC services under the eligibility category of Autism. In this case, no qualified service provider or expert has diagnosed Claimant with ASD. Two psychologists that assessed Claimant both concluded there is no evidence suggesting Claimant has Autism. Dr. Brown, a third SCLARC psychologist, agreed with their conclusion that Claimant does not have Autism. Claimant failed to provide any contrary expert assessment or opinion. (Factual Findings 1-35.)

EPILEPSY/CEREBRAL PALSY

8. Claimant does not contend that she suffers from cerebral palsy or epilepsy and there was no evidence to support either diagnosis. (Factual Finding 1-35.)

FIFTH CATEGORY CONDITION

9. Claimant did not prove by a preponderance of the evidence that she has a "fifth category" developmental disability, that is, a "disabling condition[] . . . closely

related to intellectual disability or . . . requir[ing] treatment similar to that required for individuals with an intellectual disability. . . ." (§ 4512, subd. (a); *see Samantha C. v. State Dept. of Developmental Services* (2010) 185 Cal.App.4th 1462, 1486-1487 (*Samantha C.*)). SCLARC's assessors and Dr. Brown opined that Claimant was not suffering from a disabling condition closely related to Intellectual Disability and did not need the repetitive skill-oriented training or treatment required by individuals with Intellectual Disability. Claimant did provide evidence to refute SCLARC's experts. (Factual Findings 1-35.)

10. Claimant has failed to meet her burden of proving she suffers from a qualifying developmental disability that is substantially disabling to her. (Factual Findings 1-35 and Legal Conclusions 1-9.)

11. Since Claimant failed to establish, she has a qualifying developmental disability, she is not eligible for regional center services under the Lanterman Act. (Factual Findings 1-35; Legal Conclusions 1-10.)

ORDER

Claimant's appeal is denied.

DATE:

GLYNDA B. GOMEZ
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.