

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

In the Matter of:

CLAIMANT

vs.

SAN ANDREAS REGIONAL CENTER

OAH No. 2022070295

DECISION

Administrative Law Judge Carl D. Corbin, State of California, Office of Administrative Hearings, heard this matter on March 23 and April 20, 2023, by videoconference.

James Elliott represented San Andreas Regional Center.

Attorney Brian C. McComas represented claimant, who was not present at the hearing.

The record was held open for the submission of closing briefs and for claimant to submit additional evidence. San Andreas Regional Center timely filed a closing brief, which was marked for identification as Exhibit 17. Claimant timely filed additional evidence that was marked for identification and admitted as Exhibits B and C. Claimant also timely filed a closing brief, which was marked for identification as Exhibit D.

The record closed and the matter was submitted for decision on May 12, 2023.

ISSUE

Is claimant eligible for regional center services under the Lanterman Act because he is substantially disabled because of a condition that is closely related to intellectual disability or that requires treatment similar to that required for individuals with intellectual disability?

FACTUAL FINDINGS

Introduction and Procedural History

1. Claimant is 41 years old.¹ He is currently residing in a temporary placement through the County of Santa Clara.
2. On September 28, 2021, claimant was referred to the San Andreas Regional Center (SARC). The request for services stated claimant's suspected eligible condition was "fifth category."
3. After considering medical and various other records, conducting an Intake Social Assessment, and completing a Lanterman [Act] Eligibility Determination Report, a SARC eligibility team reviewed the evidence and determined claimant did not satisfy eligibility criteria. On May 25, 2022, SARC sent claimant a denial letter and a

¹ Claimant and his family members will not be referred to by name in order to protect claimant's privacy.

Notice of Proposed Action that stated he was not eligible for regional center services. On June 22, 2022, claimant submitted a Fair Hearing Request, challenging SARC's determination. This proceeding followed.

Applicable Diagnostic Criteria

INTELLECTUAL DISABILITY (ID)

4. The Lanterman Developmental Disabilities Services Act (Lanterman Act) provides assistance to individuals with five specified developmental disabilities including intellectual disability (ID), cerebral palsy, epilepsy, autism, and a fifth category which involves an individual who is also eligible for services if he or she has a disabling condition that is closely related to ID or that requires similar treatment as an individual with an ID.

The American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), sets forth the diagnostic criteria for ID² (DSM-5 at p. 33.) The essential features of ID are deficits in general mental abilities and impairment in everyday adaptive functioning, relative to an individual's age, gender, and socio-culturally matched peers. Three diagnostic criteria must be met for a diagnosis of ID. First, there must be deficits in intellectual functions, such as reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience. Intellectual functioning is typically measured using intelligence tests. Individuals with ID typically have intelligence quotient (IQ) scores of

² The term "intellectual disability" has replaced the formerly used term of "mental retardation" and the DSM-5 also references the equivalent term "intellectual developmental disorder."

70 or lower. Second, there must be deficits in adaptive functioning that result in failure to meet developmental and socio-cultural standards for personal independence and social responsibility. Third, the onset of the intellectual and adaptive deficits must occur during the developmental period.

FIFTH CATEGORY

5. The Lanterman Act also provides assistance to individuals under a “fifth category,” which involves a disabling condition closely related to an ID or that requires treatment similar to that required for an individual with an ID. (Welf. & Inst. Code, § 4512, subd. (a).)

The courts have discussed the requirements of the fifth category of regional center eligibility. In *Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, 1129, the court held that the fifth category condition must be very similar to ID, with many of the same, or close to the same, factors required in classifying a person as ID. Another decision has found that fifth category eligibility may also be based on the established need for treatment similar to that provided for individuals with an ID, notwithstanding IQ scores within the average range of intellectual functioning. (*Samantha C. v. State Dept. of Developmental Services* (2010) 185 Cal.App.4th 1462, 1492.) However, the court in *Samantha C.* rejected the argument that adaptive functioning impairment standing alone is sufficient for fifth category eligibility. (*Id.* at pp. 1486-1487.) In *Ronald F. v. State Department of Developmental Services* (2017) 8 Cal.App.5th 84, 97–99, the court held that disabling conditions merely requiring services similar to those required for individuals with ID do not qualify for regional center services as the term “treatment” has a different and narrower meaning than “services.”

Developmental, Social, and Educational History

6. Claimant was born in the United States, and is the third oldest of six brothers. When claimant was approximately four years old, his father was deported and took his family back to a rural village in Mexico. The population of the town was highly illiterate with an average schooling level of sixth grade. Claimant's family was impoverished, and his parents worked as indentured laborers.

7. According to claimant and his family members, when he was four years old, he was kicked by a horse and dragged, which caused him to become unconscious and resulted in injuries to his left forehead and behind his left ear, which required stitches to treat and left him with three scars on his face and scalp. Claimant was taken to a hospital where he received treatment for approximately three weeks and was unconscious for some undetermined period of time. After the injury, claimant needed more help at home. The evidence did not further establish claimant's injuries or treatment as no other medical records were available.

8. Claimant had difficulties in elementary school, which was comprised of one class of approximately 20 students of different ages that did not continue after sixth grade. He repeated the fourth grade twice, intermittently attended school, and stopped attending school sometime after he passed the sixth-grade exit examination.

9. At around age 10, claimant, like his brothers, began working to support the family. It was common in the local community for children to start working after completing elementary school.

10. Claimant began drinking alcohol when he was 10 years old and started experiencing alcohol-induced blackouts and withdrawal-related "sweats and shakes"

when he 16 years old. He began using cannabis and cocaine when he was 12 to 13 years old, and "crack" cocaine and methamphetamines when he was 17 years old.

11. At approximately age 11, claimant was sexually abused by a neighbor.

12. When claimant was 16 or 17 years old, his father and at least two of his older brothers moved to the San Jose, California, area. Shortly thereafter, claimant traveled by himself from Mexico to rejoin his brothers in the San Jose area.

13. At age 18, claimant began injecting methamphetamines in his hands and feet. Throughout his adulthood, claimant has continued to engage in polysubstance use of alcohol, heroin, and methamphetamines (his primary drug of abuse) with intermittent periods of reduced consumption or sobriety.

14. As an adult, claimant has been charged and convicted of various crimes including auto burglary, carjacking, and possession and use of controlled substances, and he has spent years incarcerated.

15. For approximately two years during the period of 2016 to 2019, claimant and one of his brothers lived together. During this period, claimant was abstinent from methamphetamines and other drugs and regularly attended Alcohol Anonymous meetings. Claimant worked as a painter for two commercial painting companies, he paid his share of rent, he paid his other bills, and he drove a car.

16. After this period of sobriety, claimant began re-engaging in polysubstance use, lived in an encampment for the unhoused, and was suspected of, charged with, and incarcerated for various crimes.

17. On June 3, 2020, while at the encampment, he suffered injuries after being “pinned” between two vehicles. Claimant also has a history of medical treatment, since at least 2016 for urinary system-related and rectal health concerns.

Assessment by Dr. Perez

18. Robert Perez, Ph.D., is a clinical psychologist who is a diplomate of the American Board of Professional Neuropsychology, has approximately 30 years of experience, has assessed approximately 1000 individuals, and has regularly testified regarding superior court matters.

19. On August 25-26, 2021, over a period of six hours, Dr. Perez assessed claimant while claimant was incarcerated at the Elmwood Detention facility. At the time of assessment, claimant was 40 years old and had been incarcerated for approximately 13 months. Dr. Perez reviewed several hundred pages of claimant’s medical records and other documents, such as a social history of claimant. Dr. Perez prepared a report of his assessment results, dated September 8, 2021, and testified at hearing.

20. Dr. Perez is fluent in Spanish and administered his assessments in Spanish to claimant based on claimant’s Spanish language dominance.

21. Dr. Perez administered four tests to claimant, including the Wechsler Adult Intelligence Scale - Fourth Edition (WAIS-IV), a Spanish version IQ test. Four index scores on the WAIS-IV comprise the Full Scale IQ composite score. Claimant’s index scores on the WAIS-IV showed significant scatter (variation) with a standard score of 80 on the Verbal Comprehension Index, which is described as “Low Average,” a standard score of 66 on Perceptual Reasoning Index, a standard score of 50 on Working Memory Index, and a standard score of 62 on Processing Speed Index. Except

for the Verbal Comprehension Index, claimant's other index scores are described as "impaired." Claimant's overall Full Scale Composite IQ score was 54, which is described as impaired.

22. Dr. Perez did not administer a standardized assessment that measures adaptive functioning. A diagnosis of ID, among other criteria, requires an IQ standard score of 70 or below and significant deficits in adaptive functioning. Dr. Perez did not diagnose claimant with ID. Dr. Perez did diagnose claimant with a neurocognitive disorder secondary to childhood traumatic brain injury.³

23. Dr. Perez opined that the head injury claimant sustained at age four would typically leave various "physical stigmata" and he recommended claimant receive a neurological evaluation and neuroimaging to determine if findings were consistent with claimant's history.

24. Dr. Perez acknowledged that a history of substance abuse, such as with claimant, will result in damage to an individual's cognitive abilities.

25. While acknowledging claimant's extensive and sustained history of polysubstance abuse, Dr. Perez attributed claimant's cognitive impairment to claimant's head injury and opined it cannot be primarily attributed to claimant's substance abuse.

³ At hearing, Dr. Perez testified that in his report he should have diagnosed claimant with major neurocognitive disorder.

Intake Social Assessment

26. On April 7, 2022, SARC Clinical Psychologist Faith Langlois-Dul, Psy.D., and SARC Intake Service Coordinator Antonia Mendoza conducted an Intake Social Assessment meeting with claimant through videoconference. Mendoza served as a Spanish-language interpreter during the meeting. In addition to reviewing records regarding claimant, claimant answered questions. Mendoza wrote a report summarizing the meeting. The report does not make a specific determination of claimant's eligibility under the Lanterman Act.

27. In the report, Mendoza summarized claimant's developmental history including the head injury at age four, other injuries and medical issues (including his long history of polysubstance abuse), school history, and criminal background.

28. The report summarized claimant's current functioning:

- Motor Domain – claimant reported no difficulty in this area and is able to walk unaided and has full use of his upper and lower extremities.
- Communication Domain – claimant reported he is able to socialize well with Spanish speaking individuals and speaks "broken" English. He provided insight into his ongoing challenges and was able to express his emotions and feelings. During the interview, claimant was able to hold a back-and-forth conversation with staff and answer questions while staying on topic.
- Social Domain/Emotional – claimant reported he does not have friends, he has "severe depression," struggles emotionally, and sometimes struggles to bathe and to work, has engaged in self-harming behaviors in the past, has

been “in and out” of treatment centers, and cannot hold a job because he reverts to substance abuse.

- Cognitive Domain – claimant reported he knows numbers one through a hundred, cannot do math problems, and spends his free time on his iPad.
- Independent Living Domain/Self-Help Skills – claimant reported he can dress, bathe, brush and floss teeth, toilet, eat, and self-medicate. He also reported he can prepare basic foods, buy food, pick up his medication at a pharmacy, make and receive telephone calls, understands emergency procedures, has had a driver’s license since he was 20 years old, and owned a vehicle that he drove to and from work on a daily basis.
- Vocational Domain – marked with only “N/A.”

29. During the interview with claimant, he reported he has worked painting houses, as a fumigator, and at “random” jobs over the years. He also reported that at some point, when he lived with his brother, he paid rent, bought food, and contributed to bills.

Lanterman Eligibility Determination Report

30. Dr. Langlois-Dul has approximately 30 years of experience as a clinical neuropsychologist completing assessments of children and adults with diagnoses, such as autism, brain injury, and ID. Some of Dr. Langlois-Dul’s responsibilities at SARC are to conduct eligibility evaluations pursuant to the Lanterman Act and Early Start (under the Individuals with Disabilities Act, Part C), competency evaluations, and conservatorship evaluations. Dr. Langlois-Dul has received extensive trainings on topics such as the requirements for eligibility under the Lanterman Act.

31. On May 19, 2022, Dr. Langlois-Dul authored a Lanterman Eligibility Determination report regarding claimant. The purpose of her report was to provide guidance to SARC on claimant's request for eligibility under the Lanterman Act and was not intended to be a comprehensive neuropsychological evaluation.

32. Dr. Langlois-Dul testified at hearing. She opined that claimant was not eligible under the Lanterman Act because he does not have a developmental disability and does not have a substantial disability with significant functional limitations in three or more areas of major life activity.

33. The process at SARC for determining claimant's eligibility under the Lanterman Act required claimant (or someone on his behalf) to complete and submit an application; to participate in an intake social assessment meeting; to, if possible, complete a self-rating protocol that measures his adaptive skills; request someone that knows claimant to, if possible, complete a rating protocol that measures claimant's adaptive skills; and then all of this information, along with any records provided by claimant, were reviewed to determine his eligibility.

34. Claimant, when offered, declined to complete the Adaptive Behavior Assessment System, Third Edition (ABAS-3) protocol, which measures adaptive skills, because he did not believe he could read well enough to complete the instrument.

35. Claimant's oldest brother was sent a Spanish version of the ABAS-3 protocol to be completed, but he never returned it to SARC.

36. In completing her report, Dr. Langlois-Dul reviewed various records including: the Intake Social Assessment; the SARC application; the September 8, 2021, assessment report from Dr. Perez; an August 20, 2021, social history investigative report completed by Investigator Carlos Gonzalez; various custody records; and

medical records from Santa Clara Valley Medical Center (2018-2020). Dr. Langlois-Dul also considered the information from the April 7, 2022, SARC interview and observation of claimant in the completion of her report.

37. In her report, Dr. Langlois-Dul detailed claimant's relevant history, including: his incarceration at the Elmwood Detention facility; his past and current medical issues, including the head injury when he was four years old; his educational history, including learning issues; his occupational history; his self-injurious behaviors; his history of abuse as a child (sexual and physical); criminal activities including incarcerations; and extensive history of polysubstance abuse.

38. In her report and testimony, Dr. Langlois-Dul did not directly dispute the cognitive assessment results referenced in Dr. Perez's September 8, 2021, report. However, Dr. Langlois-Dul credibly disputed the conclusion by Dr. Perez that claimant's current limited cognitive functioning was attributable to the accident claimant sustained when he was four years old instead of attributing claimant's current cognitive functioning to approximately 30 years of intense polysubstance abuse. Dr. Langlois-Dul credibly testified her opinion on this issue was based on the lack of contemporaneous medical (including any clear evidence of brain injury), school, or other records when claimant was a child under 18 years of age combined with the inability to fully rely upon the recollections of his older brothers and other family members on claimant's functioning before age 18 years of age due to the inconsistency of their recollections, the passage of time, and their age at the time. In addition, Dr. Langlois-Dul also credibly opined that claimant's etiology of cognitive challenges was not demonstrated through any current imaging studies that could reveal structural or metabolic changes in his brain that could be associated with a traumatic brain injury in childhood.

39. Dr. Langlois-Dul opined that for there to be a substantial disability in a major life activity under the Lanterman Act, an individual would need to demonstrate functioning at the third percentile, meaning ninety-seven percent of the population would perform at a higher level of functioning.

40. Dr. Langlois-Dul addressed in her report claimant's functioning in the seven areas of major life activities required for eligibility under the Lanterman Act:

- Receptive and Expressive Language – Dr. Langlois-Dul noted Dr. Perez found claimant's oral language was well-preserved in that claimant can speak and comprehend language and, in addition, claimant was able to fully participate in the Intake Social Assessment, providing considerable information with simple language and full sentences. Dr. Langlois-Dul opined claimant did not have a substantial disability in this area.
- Learning – Dr. Langlois-Dul opined claimant does have current learning "issues" suggesting a substantial disability in this area, but it was unclear as to the etiology of the learning issues, which were likely multifactorial with inconsistent school attendance, abusive teaching methods/trauma in school, termination of his education at an early age, and substance abuse.
- Self-Care – Dr. Langlois-Dul noted claimant is able to brush his teeth, dress, bathe, use the toilet, and eat independently. Dr. Langlois-Dul opined claimant did not have a substantial disability in this area.
- Mobility - Dr. Langlois-Dul noted claimant is able to ambulate independently without assistive devices. Dr. Langlois-Dul opined claimant did not have a substantial disability in this area.

- Self-Direction - Dr. Langlois-Dul noted claimant has engaged in polysubstance abuse for many years and supported his abuse through illegal activity. Dr. Langlois-Dul opined claimant did have a substantial disability in this area, but attributed the disability to his polysubstance abuse.
- Capacity for Independent Living - Dr. Langlois-Dul noted a number of skills claimant has demonstrated in this area such as, but not limited to, being able to cross over the border into the United States by himself around 16-17 years of age, driving a car, renting an apartment, paying his share of bills, attending medical appointments, and obtaining his own prescriptions. Dr. Langlois-Dul opined claimant did not have a substantial disability in this area.
- Economic Self-Sufficiency - Dr. Langlois-Dul noted claimant's polysubstance abuse tended to cause him to spend his money to obtain drugs, but, when sober, he had the capacity for economic self-sufficiency as he was employed as a painter and fumigator, provided gifts of food and money to his family, and paid his bills. Dr. Langlois-Dul opined claimant did not have a substantial disability in this area.

Claimant's Additional Evidence

REPORT BY S. ALEX STALCUP, M.D.

41. Claimant was referred to S. Alex Stalcup, M.D., for a substance abuse evaluation. Dr. Stalcup authored a report dated June 28, 2022.⁴ Dr. Stalcup opined in his report that claimant was a "late-stage methamphetamine addict" with "hypofrontality, in which decision-making forebrain regions are impaired, leaving drug craving unopposed." Dr. Stalcup recommended treatment for claimant's addiction in a residential treatment program.

TESTIMONY BY GANTT P. GALLOWAY, PHARM.D.

42. Gantt P. Galloway, Pharm.D., testified at hearing regarding substance abuse issues including addiction and associated cognitive issues. Dr. Galloway is an expert on addiction and pharmacological issues. Dr. Galloway did not interview claimant, but testified from his general knowledge in his areas of expertise. Dr. Galloway testified that acute doses of methamphetamines cause neurocognitive functioning issues and injury to the front part of the brain could make addiction more likely. Dr. Galloway did not recall working with any individuals that were clients of a regional center and he was not trained in neurological assessments that relate to ID.

Ultimate Factual Findings

43. The evidence did not establish that claimant has a developmental disability that originated before he attained 18 years of age. While acknowledging

⁴ Dr. Stalcup was deceased as of the date of the hearing and, therefore, did not testify.

claimant's extensive and sustained history of polysubstance substance, Dr. Perez attributed claimant's cognitive impairment to claimant's head injury and opined it cannot be primarily attributed to claimant's substance abuse. Dr. Perez's opinion on this issue was not persuasive as the evidence of the long-term effects of claimant's head injury was not fully established by the record. Both Dr. Perez and Dr. Langlois-Dul agreed that claimant has not received a neurological evaluation and neuroimaging, which would establish whether or not claimant has structural or metabolic changes in his brain from the head injury he sustained when he was four years old. Ultimately, Dr. Perez's assessment established claimant's cognitive functioning as of the date claimant was assessed at age 40, but did not establish claimant's functioning prior to the age of 18.

44. It is undisputed that claimant requires polysubstance abuse treatment. However, claimant has not established by a preponderance of the evidence that he has ID or a condition that is closely related to ID or that polysubstance abuse treatment is a treatment similar to that required for individuals with ID.

45. Dr. Langlois-Dul's opinion that claimant has only significant functional limitations in the major life activity of self-direction and has "learning issues" was persuasive and consistent with the evidence in the record. Dr. Langlois-Dul persuasively opined that claimant did not have a substantial disability in the areas of self-care, receptive and expressive language, mobility, capacity for independent living, and economic self-sufficiency. The evidence was insufficient to establish that claimant has a substantial disability with significant functional limitations in at least three major life activities as defined by the Lanterman Act.

LEGAL CONCLUSIONS

1. In a proceeding to determine whether an individual is eligible for regional center services, the burden of proof is on the claimant to establish that he or she has a qualifying developmental disability. The standard of proof required is a preponderance of the evidence. (Evid. Code, §§ 115, 500.)

2. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act. The purpose of the Lanterman Act is to rectify the problem of inadequate treatment and services for the developmentally disabled, and to enable developmentally disabled individuals to lead independent and productive lives in the least restrictive setting possible. (Welf. & Inst. Code, §§ 4501,⁵ 4502; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.) The Lanterman Act is a remedial statute; as such it must be interpreted broadly. (*California State Restaurant Association v. Whitlow* (1976) 58 Cal.App.3d 340, 347.)

3. A developmental disability is 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 term "developmental disability" includes ID, cerebral palsy, epilepsy, and autism. (*Ibid.*) Under the fifth category, an individual is also eligible for services if he or she has a disabling condition that is closely related to ID or that requires similar treatment as an individual with an ID. (*Ibid.*) Such condition must also have originated

⁵ All further statutory references are to the Welfare and Institutions Code unless stated otherwise.

before the individual attained 18 years of age, and must continue or be expected to continue indefinitely. (Cal. Code Regs., tit. 17, § 54000, subd. (b).) Developmental disability shall not include solely psychiatric disorders, learning disabilities, and conditions that are physical in nature. (*Id.*, § 54000, subd. (c).).

4. A qualifying disability must be “substantial,” meaning that it causes “significant functional limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to age of the person: (A) self-care, (B) receptive and expressive language, (C) learning, (D) mobility; (E) self-direction, (F) capacity for independent living, and (G) economic self-sufficiency.” (§ 4512, subds. (a), (l)(1); Cal. Code Regs., tit. 17, § 54001, subd. (a)(2).)

5. Claimant has not met his burden of establishing he has a developmental disability as that term is defined in the Lanterman Act. (Factual Findings 43-45.) There is insufficient evidence that claimant has a disabling condition such as ID or a condition closely related to ID or that he requires treatment similar to that required for individuals with ID, which originated before he attained 18 years of age, and there is insufficient evidence that he has a substantial disability with significant functional limitations in three of more major life activities. Accordingly, his claim for eligibility must be denied.

ORDER

Claimant's appeal of the regional center's denial of eligibility is denied. Claimant is not eligible for regional center services.

DATE:

CARL D. CORBIN

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision. Each party is bound by this decision. Either party may request a reconsideration pursuant to subdivision (b) of Welfare and Institutions Code section 4713 within 15 days of receiving the decision, or appeal the decision to a court of competent jurisdiction within 180 days of receiving the final decision.