

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

**In the Matter of:**

**CLAIMANT,**

**vs.**

**SOUTH CENTRAL LOS ANGELES REGIONAL CENTER,**

**Service Agency.**

**OAH No. 2022110804**

**DECISION**

Administrative Law Judge (ALJ) Chantal M. Sampogna, Office of Administrative Hearings, State of California, heard this matter by videoconference on October 4, 2023.

Foster mother (Grandmother), Claimant's authorized representative, appeared on behalf of Claimant, who was not present. (Titles are used to protect the privacy of Claimant and her family.) Spanish interpreter John Vega provided translation assistance to Grandmother.

Tami Summerville, Appeals Manager for South Central Los Angeles Regional Center (Service Agency), appeared on behalf of Service Agency.

Testimony and documents were received in evidence. The record closed and the matter was submitted for decision on October 4, 2023.

## **ISSUE**

Whether Claimant has a developmental disability as defined by the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.). (Statutory references are to the Welfare and Institutions Code unless otherwise designated.)

## **EVIDENCE RELIED UPON**

Documents: Service Agency's Exhibits 1 through 11; Claimant's Exhibit A.

Testimony: Laurie McKnight Brown, Ph.D.

## **SUMMARY**

Claimant is 14 years old and lives with Grandmother and her foster father (Grandfather). Claimant's Department of Children and Families Services' (DCFS) social worker referred Claimant to Service Agency for an eligibility assessment based on Claimant's struggles with school and self-care. Service Agency assessed Claimant for Intellectual Disability (ID) and Autism Spectrum Disorder (ASD) and assessed her adaptive functioning. Although the assessment results demonstrate Claimant has deficits in her adaptive functioning, they do not demonstrate Claimant has ID or ASD or any other condition which qualifies for Regional Center services. Accordingly, Claimant is not eligible for services under the Lanterman Act.

## **FACTUAL FINDINGS**

### **Jurisdiction**

1. Claimant is 14 years old and resides with Grandmother and Grandfather. Claimant is a dependent of the juvenile court. Approximately eight years ago, Claimant and her then 10-year-old sister were removed from the care of their parents due in part to neglect caused by the parents' substance abuse. Claimant and her sister were placed with Grandmother and Grandfather as a foster care placement, where Claimant continues to reside, though her sister has since moved out. Claimant's biological father died approximately five years ago, and the whereabouts of Claimant's biological mother are unknown.

2. During September 2021, Claimant's DCFS social worker, Francisca Lizarraga, referred Claimant to Service Agency for an eligibility assessment.

3. On September 9, 2021, Service Coordinator Jacqueline Aranda conducted a psychosocial assessment of Claimant. On May 3, 2022, Robert Candia, Ph.D., conducted a psychosocial evaluation of Claimant on behalf of Service Agency.

4. On September 22, 2022, Service Agency issued a Notice of Action informing Claimant she was not eligible for Lanterman Act services.

5. On October 13, 2022, Claimant submitted a timely Request for a Fair Hearing.

6. Jurisdictional requirements have been met.

## **Claimant's Educational and Psychological Assessments**

### **EDUCATIONAL ASSESSMENTS**

#### **2016**

7. Claimant's June 16, 2016, Psychoeducational Assessment (Exh. 8) and her Individualized Education Plan (IEP) from October 21, 2016 (2016 IEP) (Exh. 5), were conducted by the Los Angeles Unified School District (LAUSD) when Claimant was seven years old. Both assessments concluded Claimant was not eligible for special education services. The IEP team concluded Claimant did not currently present with any needs in the areas of speech or language and was able to access and participate fully in the general education curriculum. Claimant exhibited receptive language, expressive language, and pragmatic language skills in the normal range. She demonstrated overall average to high average cognitive ability and relative weakness on the auditory memory scale subtest, scoring below average in her ability to recall a series of numbers and words, and below average on auditory comprehension.

8. Claimant's teacher and Grandmother provided differing assessments of Claimant's social emotional functioning. Grandmother reported Claimant was hyperactive, has conduct problems, and struggles with activities of daily living. During the assessment Claimant was willing to test, had adequate self-awareness, and reported she has friends and positive relationships with her family members. Claimant's teacher reported Claimant demonstrated appropriate peer-adult relations and self-control and was well-behaved and responsible. Claimant was working at or near grade level and did not demonstrate challenges in other areas assessed, including motor and sensorimotor skills.

9. Included with the 2016 IEP was an Occupational Therapy Assessment Report, based on testing conducted in May and June 2016. The report concluded Claimant does not require occupational therapy services to assist her to benefit from her specially designed instruction.

## **2018**

10. By letter dated October 5, 2018, Claimant's then school principal notified Grandmother Claimant was not meeting grade level standards in multiple areas including making meaning from text, effective expression through writing, and number and operations in base ten; she was not showing respect or recognizing the opinions and feelings of others; and she was not making productive use of class time and staying on task. (Exh. 5.)

## **2020-2021**

11. Eugenia James, the Special Education Manager at KIPP: Comienza Community Prep (KIPP) conducted an assessment of Claimant on September 18, 2020, when Claimant was 11 years old and in the sixth grade and attending KIPP. (Exh. 5.) Ms. James also wrote an Academic Report, dated October 5, 2020 regarding Claimant. (Exh. 6.)

12. Ms. James administered curriculum-based assessments and individualized standardized tests, obtained information from Claimant's teacher and Grandmother, observed Claimant in school (virtual learning), and reviewed Claimant's school work. Based on this information, Ms. James concluded Claimant was "working in the low range when compared to her age/grade-level peers in the areas of reading and math. Written expression was a relative strength for [Claimant]. Her weaknesses in

math, reading, and writing are not due to the effects of environmental, cultural or economic disadvantage.” (Exh. 5, p. A61.)

13. KIPP’s School Psychologist Samantha Narick Ebrey, M.A., PPS, NCSP, conducted a Psychoeducational Assessment of Claimant on September 16 and 25, 2020, and summarized her findings in the Psychoeducational Assessment.

[Claimant] is an 11:4 year old 6th grade student attending [KIPP]. . . . Per nurse report, [Claimant] does not take any medications and [Grandmother] denies history of accident, injury, or hospitalizations. [Grandmother] reported that in the past, [Claimant] has received counseling for mental and emotional issues.

Current assessment, utilizing alternative measures per LAUSD policy, indicates that [Claimant’s] ability to learn, apply knowledge, generalize, utilize abstract concepts, and evaluate is the in Below Average range. On the Planning and Attention composites, she scored in the Average range. On the Simultaneous her scores was [*s/c*] Poor and on the Successive composite, Very Poor (CAS-2).

[Claimant’s] processing abilities vary. Visually, her taking in of information and processing is Poor (TVPS- 4). On measures of auditory processing, [Claimant’s] scores fell in the Below Average range on Phonological Awareness, Very Poor range on Auditory Memory, and Poor range on Listening Comprehension indexes (TAPS-4). Her Rapid

Symbolic Naming skills are Average (CTOPP-2) and so are her visual-motor capabilities (VMI-6). [¶] . . . [¶]

In the social-emotional arena, [Claimant's] 6th grade math teacher . . . rated her learning problems Clinically Significant and her Internalizing Problems (i.e. anxiety), School Problems (i.e. attention problems) and Adaptive Skills (i.e., adaptability, leadership, study skills, functional communication) as falling in the At-Risk range. . . .

[Grandmother] testified that [Claimant's] Problems (i.e., aggression, conduct problems), attention problems and Adaptive Skills (i.e., leadership, activities of daily living, functional communication) are all areas of Clinical Significance. What's more, she sees [Claimant's] Behavioral Symptoms and social skills as being At-Risk (BASC-3). When it comes to attention, [Claimant's teacher's] ratings placed [Claimant] in the Possible range (ADHD Index - 76) of having the probability of an ADHD diagnosis. . . . [Grandmother] feels that it is Very Likely (ADHD Index = 108) [Claimant] has an ADHD (ADHDT-2).

(Exh. 7, p. A110.)

14. Portions of Claimant's October 19, 2021 IEP were included in Exhibit 5, but the pages are not legible. (Exh. 5, pp. A62-A66.)

## **SERVICE AGENCY ASSESSMENTS**

### **Psycho-Social Assessment**

15. On September 9, 2021, Service Coordinator Lizarraga conducted a Psycho-Social Assessment of Claimant by telephone. Ms. Lizarraga reviewed Claimant's educational records and made the following observations: Claimant does not have difficulty with fine gross motor skills, e.g., she walks, runs, kicks, throws, and catches without struggle; Claimant performs much selfcare and chores with success, such as preparing simple meals, washing dishes, mopping, and grooming, though she has difficulty toileting (wiping) and rinsing her hair; Claimant plays with slime, Legos, draws, and plays the cello; she enjoys talking with peers and adults, sustains eye contact, and follows directions; Claimant speaks in full sentences with complete thoughts and sustains conversations; and Claimant's cognitive scoring was below grade level, she has difficulty focusing, comprehending, and retaining information, and she received tutoring three times per week in English and Math. Finally, based on Service Coordinator Lizarraga's review of Claimant's educational records she was ultimately found eligible for special education services under the category specific learning disability.

### **2022 Psychological Evaluation**

16. On May 3, 2022, Dr. Candia conducted a telehealth psychological assessment of Claimant and reported the following information in the 2022 Psychological Evaluation Report.

Intellectual/Academic Functioning. A direct measure of academic ability could not be obtained given the fact this testing was completed virtually. However, the IEP on record



shows that based on the Woodcock Johnson's 4th edition results suggest that [Claimant] is able to read and perform math problems at the Borderline range and [Claimant] is able to write at a low average range of ability. . . .

[Claimant] cooperated with administration of the Wechsler Intelligence Scale for Children 5th edition (WISC 5). She achieved a Verbal Comprehension IQ score of 70, and a Fluid Reasoning IQ score of 85. Her performance on these 2 subtests shows a significant difference. Her verbal comprehension skills correspond to a percentile of 2 and is significantly below the average range. However, her Fluid Reasoning score of 85 corresponds to a percentile of 16 and is within the low average range of ability. These results serve to rule out the presence of intellectual disability, but also point out that [Claimant] has significant difficulties with the processing and the understanding of verbal language. [¶] . . . [¶]

Adaptive Functioning. [Grandmother] acted as informant for completion of the Vineland 3. The results obtained identified significant deficits to exist across the domains of Communication, Daily Living Skills, and Socialization. [Claimant's] overall adaptive behavior composite of 67 corresponds to a percentile of 1 and is indicative of mild adaptive deficits.

[Claimant] is fully capable of drinking from a cup on her own and feeding herself with eating utensils. However [Grandmother] reports [Claimant] is not able to use or coordinate a knife and fork. [Claimant] is able to use the toilet independently and does not have any toileting accidents during the day or during the night. She is able to care for her menses with minimal reminders. She is able to wash her hands by herself with soap and water, and she is also able to bathe on her own although she does require some verbal prompting in order to do so. [Claimant] is described as able to dress and undress independently. She can put on her shoes on the correct feet, and she is also able to tie them.

Around the home she is well aware of basic dangers from the stove and from sharp objects. . . . [Grandmother] believes [Claimant] would be able to dial 911 in case of an emergency. . . . [Grandmother] notes that when prompted [Claimant] will help with minor chores such as mopping or washing dishes.

. . . [Claimant] is able to cross the street by herself and she has fairly good awareness of the danger from traffic. However [Grandmother] reports that [Claimant] does not typically leave the house on her own. . . . [Claimant] understands that money is necessary for buying items in the store and she is also able to understand the value of

coins such as quarters, dimes, or nickels. She does not yet make purchases on her own and she does not yet check or calculate change. [Claimant] is able to get herself some cereal when she is hungry but is not otherwise able to prepare anything else to eat on her own. She can use the stove but actually does not have any interest in using it.

[Grandmother] describes [Claimant] as able to play with other children and interested in playing and interacting with children. [Claimant] is able to understand if [Grandmother] is angry, and she is also able to say how she feels. She does try to make friends in school although [Grandmother] does not know if [Claimant] actually has friends in school at this time. . . .

Affective/Behavioral Issues. The Childhood Autism Rating Scale 2nd edition was completed today based on the information provided by [Grandmother] and also based on my observations and my interactions with [Claimant] today. The results obtained do not support the presence of autism spectrum disorder.

(Exh. 4, pp. A28-29.) Dr. Candia provided two DSM-5 diagnoses: Borderline Intellectual Functioning (ranging from 70 to 85 FSIQ), and Upbringing Away from Parents.

## **2023 Psychological Assessment**

17. On July 22 and August 3, 2023, Jennie M. Mathess, Psy.D., conducted a Psychological Assessment of Claimant. On the Wechsler Intelligence Scale for Children

– 5th Edition, Claimant scored 84 on verbal comprehension, 109 on the fluid reasoning index, and Claimant’s Full Scale Intellectual Quotient (FSIQ) scored at 98. Dr. Mathess summarized her remaining assessment findings:

Behaviorally, [Grandmother] reported several concerns. She noted that toward the end of last school year [Claimant] cut herself on the wrists on one occasion. When [Grandmother] asked her why she did it, [Claimant] indicated that she was feeling stressed and sad because she noticed her peers had families and she does not have contact with her parents. She currently receives mental health therapy once every 2-3 weeks. She reportedly misbehaves at school and does not obey or respect her teachers. [Grandmother] noted that it is difficult for [Claimant] to trust others and it takes time for her to be comfortable with others. . . . Socially, [Claimant] has friends at school, but she does not get together with them outside of school. [Grandmother] indicated that [Claimant] initiates interactions with others if they are familiar to her. . . . [¶] . . . [¶]

During the session with [Claimant], she appeared well-groomed and neatly dressed. She presented with a typical gait and appropriate eye contact coordinated with social smiling. She transitioned to testing with ease and was fully cooperative throughout the session. [Claimant] displayed good attention and concentration and seemed to enjoy the challenge that some tasks provided. She communicated

with the examiner in English using sentences. No articulation difficulties, echolalia, or stereotyped and repetitive behaviors were observed. [¶] . . . [¶]

According to [Grandmother], [Claimant] follows instructions with two related actions, responds to questions that ask who or where, asks questions beginning with why, says her first and last name when asked, uses simple sentences to communicate, reads and understands material of at least a 4th grade level, and accurately interprets visual instructions. . . .

. . . . [Claimant] uses at least two simple kitchen appliances, prepares a simple snack or meal, is careful when using sharp objects, washes and rinses her own hair, buttons small buttons in their correct holes, makes small purchases at the store, and avoids dangerous or risky activities. She cannot combine coins to equal a specific amount, does not get up on time when needed, does not show awareness that some foods are healthier than others, does not use a sharp knife to cut hard foods, does not wipe up her own spills, does not know what to do in dangerous situations, and does not put clean clothes away where they belong.

. . . . [Claimant] tries to make friends with others her age, responds politely when familiar adults make small talk, uses words to express her own emotions, apologizes for small unintentional mistakes, recovers quickly from minor

disappointments, follows rules in games or sports without being told, and joins in with a group when she is verbally welcomed. . . .

[Claimant] is a 14-year-old girl whose overall cognitive functioning is in the average range. Her adaptive functioning was rated in the low range in all areas. The diagnosis of Intellectual Disability requires significant deficits in intellectual functioning with concurrent deficits in adaptive functioning. The onset of such deficits must have occurred during the developmental period. Based on her level of cognitive functioning, [Claimant] does not meet criteria for a diagnosis of Intellectual Disability. While that is the case, she has a history of Specific Learning Disability, per school records.

Regarding Autism Spectrum Disorder, diagnosis requires persistent deficits in social communication and social interaction, as well as the presence of restricted, repetitive patterns of behavior, interests and activities. Based on [Grandmother's] report, test data, and the examiner's observations, [Claimant] does not meet criteria for Autism Spectrum Disorder. Any additional mental health diagnoses are deferred to her current treating therapist.

DIAGNOSIS

History of Specific Learning Disability (per school/IEP records)

Mental health diagnoses are deferred to [Claimant's] therapist

(Exh. 3, pp. A21-A23). Dr. Mathess provided four recommendations for Claimant: ongoing special education services; weekly, rather than every 2-3 weeks, continued mental health services; continued work on the development of self-help and daily living skills; and providing Claimant with opportunities to develop her strengths and interests.

### **Testimony of Laurie McKnight Brown, Ph.D.**

18. Laurie McKnight Brown, Ph.D., testified at hearing on behalf of Service Agency. Dr. Brown has been a licensed psychologist since 2015 and the lead psychologist consultant for Service Agency since 2017. Dr. Brown's duties for Service Agency include reviewing the work of other Service Agency psychologists and assisting with appeals and fair hearings.

19. Dr. Brown explained the Lanterman Act eligibility requirements: Claimant must have a qualifying condition (cerebral palsy, epilepsy, ID, ASD, or a disabling condition found to be closely related to ID or to require treatment similar to that required for individuals with ID); Claimant must be substantially disabled in at least three areas of daily life functioning as a result of a qualifying condition; and the qualifying condition must have developed within the development period, before Claimant was 18 years of age. Dr. Brown reviewed the assessments above, found them valid, and agreed with the respective conclusions. Dr. Brown explained the 2023 Psychological Assessment was completed based on Grandmother's request at the

informal meeting and her concerns about the accuracy of the 2022 Psychological Evaluation. Dr. Brown explained Claimant did not allege, and no information reviewed tended to establish, the Claimant has cerebral palsy or epilepsy. Dr. Brown concluded that while Claimant has low adaptive functioning scores, she does not have a qualifying condition. Specifically, Claimant does not demonstrate symptoms of ASD and her cognitive functioning is too high to qualify as intellectually disabled.

## **Claimant's Evidence**

20. Grandmother chose to not testify at hearing regarding Claimant's functioning or needs. In review of OAH's documents establishing Grandmother held developmental rights for Claimant, the ALJ found that OAH only had a June 12, 2018 juvenile court minute order denoting Grandmother was Claimant's foster parent, which is insufficient to qualify Grandmother as Claimant's authorized representative. (§ 4701, subd. (d)). In response to the ALJ's inquiry, Grandmother submitted a March 22, 2016, juvenile court minute order which denotes the juvenile court appointed Grandmother as the holder of Claimant's educational rights, and Grandmother testified the juvenile court appointed her to hold Claimant's educational and developmental rights. (Exh. A.) Based on the evidence presented, Grandmother qualified as Claimant's authorized representative.

## **LEGAL CONCLUSIONS**

### **Jurisdiction**

1. The Lanterman Act governs this case. An administrative "fair hearing" to determine the rights and obligations of the parties is available under the Lanterman Act. (§§ 4700-4716.) (Factual Findings 1-6.)



## **Burden and Standard of Proof**

2. The party asserting a condition which would make the individual eligible for a benefit or service has the burden of proof to establish he or she has the condition. (*Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 160-161.) In this case, Claimant bears the burden of proving by a preponderance of the evidence Claimant has a developmental disability as defined by the Lanterman Act and is eligible for regional center services. (Evid. Code, § 115.)

## **Lanterman Act Eligibility Requirements**

3. A developmental disability is a disability that originates before an individual turns 18 years old. This disability must be expected to continue indefinitely and must constitute a substantial disability for the individual. Developmental disabilities are limited to cerebral palsy, epilepsy, ASD, ID, or a disabling condition found to be closely related to intellectual disability or to require treatment similar to that required for an individual with an intellectual disability (5th Category). Developmental disabilities do not include other handicapping conditions that are solely physical in nature, or which are solely psychiatric disorders or learning disabilities. (§ 4512, subd. (a); Cal. Code Regs., tit. 17, § 54000.)

## **DSM-5 DEFINITIONS OF AUTISM SPECTRUM DISORDER AND INTELLECTUAL DISABILITY; DEFINITION OF 5TH CATEGORY**

### **Autism Spectrum Disorder**

4. The Diagnostic and Statistical Manual – 5th Edition (DSM-5) defines ASD as having the following four essential features. First, an individual must have persistent impairment in reciprocal social communication and social interaction (Criterion A), as

manifested either currently or historically by all of the following: (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. Second, the individual must have restricted, repetitive patterns of behavior, interests or activities (Criterion B), as manifested by at least two of the following: (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 (4) hyper- or hypo-reactivity to sensory input or unusual interest in sensory aspects of the environment. Third, these symptoms must be present in early childhood (Criterion C). Fourth, these symptoms must limit or impair everyday functioning. (Criterion D). (Exh. 9, p. A142.)

5. The evaluations, assessments, and other evidence presented at hearing did not establish Claimant has ASD. For example, evidence was not presented, nor did Claimant allege, that she had deficits in social-emotional reciprocity or restricted, repetitive patterns of behavior, interests, or activities. (Factual Findings 16 & 17.)

### **Intellectual Disability**

6. The DSM-5 provides that the following three diagnostic criteria must be met to be diagnosed with ID. (Exh. 10, p. A151)

An individual must have 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 (Criterion A). Individuals with ID have Full-Scale Intelligence Quotient (IQ) scores between 65 to 75, including a five-point

margin for measurement error. The DSM-5 cautions that IQ tests must be interpreted in conjunction with considerations of adaptive function. The DSM-5 explains that a person with an IQ score above 70 may have such severe challenges in adaptive behavior, such as problems with social judgment or social understanding, that the individual's actual functioning is comparable to that of individuals with a lower IQ score.

The DSM-5 definition of ID also requires individuals with ID to have deficits in adaptive functioning that result in a failure to meet developmental and socio-cultural standards for personal independence and social responsibility, which, without ongoing support, 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 (Criterion B). This criterion is met when at least one domain of adaptive functioning – conceptual, social, or practical – is sufficiently impaired such that the individual requires ongoing support to perform adequately in one or more life settings at school, at work, at home, or in the community. The levels of severity of ID are defined on the basis of adaptive functioning, and not IQ scores, because the adaptive functioning determines the level of supports required.

Finally, individuals with ID must experience the onset of these symptoms during the developmental period (before reaching 18 years of age) (Criterion C).

7. The DSM-5 includes descriptions of the three severity levels of ID, mild, moderate, and severe. Mild ID presents as follows (Exh. 10, p. A152):

Conceptual Domain: In adults, abstract thinking, executive function (i.e., planning, strategizing, priority setting, and cognitive flexibility), and short-term

memory, as well as functional use of academic skills (e.g., reading, money management), are impaired. There is a somewhat concrete approach to problems and solutions compared with age-mates.

Social Domain: Compared with typically developing agemates, the individual is immature in social interactions. For example, there may be difficulty in accurately perceiving peers' social cues. Communication, conversation, and language are more concrete or immature than expected for age. There may be difficulties regulating emotion and behavior in age-appropriate fashion; these difficulties are noticed by peers in social situations. There is limited understanding of risk in social situations; social judgment is immature for age, and the person is at risk of being manipulated by others (gullibility).

Practical Domain: The individual may function age-appropriately in personal care. Individuals need some support with complex daily living tasks in comparison to peers. In adulthood, supports typically involve grocery shopping, transportation, home and child-care organization, nutritious food preparation, and banking and money management. Recreational skills resemble those of age-mates, although judgment related to well-being and organization around recreation requires support. In adulthood, competitive employment is often seen in jobs that do not emphasize conceptual skills. Individuals generally need support to make health care decisions and legal decisions and to learn to perform a skilled vocation competently. Support is typically needed to raise a family.

8. The evaluations, assessments, and other evidence presented at hearing did not establish Claimant has ID. Initially, Claimant's 2023 Psychological Assessment FSIQ score of 98 is not within the DSM-5 eligible range for ID. Though Dr. Candia did not include an FSIQ score in the 2022 Psychological Evaluation, Claimant's Verbal

Comprehension IQ score was 70, and her Fluid Reasoning IQ score was 85, and Dr. Candia diagnosed Claimant with borderline intellectual functioning which places Claimant's 2022 FSIQ between 70 and 84, at approximately 77 and not within the DSM-5 eligible range for ID. In addition, though Claimant has deficits in adaptive functioning she did not demonstrate challenges in the social domain, and did not show deficits in, for example, abstract thinking or executive functioning, areas within the conceptual domain. (Factual Findings 16 & 17.)

### **Fifth Category**

9. Under the fifth category of eligibility the Lanterman Act provides for assistance to individuals with "disabling conditions found to be closely related to [ID] or to require treatment similar to that required for [individuals with ID]," but does "not include other handicapping conditions that are solely physical in nature." (§ 4512, subd. (a); see *Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, 1129 (*Mason*)). The fifth category is not defined in the DSM-5.

10. On March 16, 2002, in response to the *Mason* case, the Association of Regional Center Agencies (ARCA) approved the Guidelines for Determining 5th Category Eligibility for the California Regional Centers (Guidelines). These Guidelines list the following factors to be considered when determining eligibility under the fifth category: whether the individual functions in a manner that is similar to that of a person with ID; whether the individual requires treatment similar to that required by an individual who has ID; whether the individual is substantially handicapped; and whether the disability originated before the individual was 18-years-old and is it likely to continue indefinitely. In *Samantha C. v. State Department of Developmental Services* (2010) 185 Cal.App.4th 1462 (*Samantha C.*), the court cited with approval to the ARCA Guidelines and recommended their application to those individuals whose "general

intellectual functioning is in the low borderline range of intelligence (I.Q. scores ranging from 70-74)" for fifth category eligibility. (*Id.* at p. 1477.)

11. The evidence does not establish Claimant is eligible for services under the 5th Category. Initially, Claimant's FSIQ does not fall within the range provided by the court in *Samantha C.* as her FSIQ scored above 74. (Factual Finding 17.) In addition, the evidence did not establish Claimant functions in a manner that is similar to that of a person with ID. (Legal Conclusion 8.) Finally, as is explained below, Claimant does not have a substantial disability.

### **SUBSTANTIAL DISABILITY**

12. "Substantial disability" means:

(a) (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.

(Cal. Code Regs., tit. 17, § 54001, subd. (a); see § 4512 (1)(1).)

13. The evidence did not establish Claimant has a substantial disability. The evidence did not establish Claimant has a condition which results in major impairment of her cognitive or social functioning. Although the evidence demonstrated Claimant has functional limitations in self-care and learning, these are only two areas of major life activity, and the evidence did not establish these two limitations were significant. (Factual Findings 7-20.)

## **Analysis**

14. Claimant did not establish she is eligible for services under the Lanterman Act. Claimant does not have a qualifying condition; Claimant does not have cerebral palsy, epilepsy, ASD, or ID, and is not eligible under the 5th Category. In addition, Claimant does not have a substantial disability. Claimant's appeal is denied.

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## **ORDER**

Claimant is not eligible for regional center services under the Lanterman Act.  
Claimant's appeal is denied.

DATE:

CHANTAL M. SAMPOGNA  
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 under Welfare and Institutions Code section 4713, subdivision (b), 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.