

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

In the Matter of:

CLAIMANT

and

SAN GABRIEL/POMONA REGIONAL CENTER,

Service Agency.

DDS No. CS0018520

OAH No. 2024060782

DECISION

Administrative Law Judge (ALJ) Chantal M. Sampogna, Office of Administrative Hearings, State of California, heard this matter on March 24, 2025, via videoconference.

Mother appeared on behalf of Claimant, who was not present. (Titles are used to protect the privacy of Claimant and their family.)

Rosa Fernandez, Appeals and Resolutions Specialist for San Gabriel/Pomona 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 March 24, 2025.

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 19; Claimant's Exhibits A through E.

Testimony: Mother.

SUMMARY

Most recently in 2023, Mother requested Claimant be assessed for eligibility for services under the Lanterman Act based on concerns Claimant may have Autism Spectrum Disorder (ASD). Claimant was previously assessed by Service Agency in 2014. After each assessment, Service Agency concluded Claimant does not have ASD and is not otherwise eligible for services under the Lanterman Act. At most Claimant has presented with ASD in remission, not with ASD, which is not a qualifying condition.

//

Claimant presented evaluations completed between 2014 and 2025 which provided information consistent with the evidence submitted by Service Agency. Although Claimant experiences challenges with anxiety, focus, self-care, and aggressiveness, the evidence did not establish Claimant has ASD or another qualifying condition. Claimant's appeal is denied.

FACTUAL FINDINGS

Jurisdiction

1. Claimant is 14 and one-half years old and resides with Mother.
2. Claimant most recently requested an eligibility assessment in February 2023. In support of the request, Claimant submitted a neuropsychological assessment of Claimant completed in May 2023 (2023 assessment) in conjunction with Claimant's Individualized Education Program (IEP) process.
3. In June, 2023, Service Agency's Eligibility Team determined Claimant was not eligible for regional center services.
4. At the request of Mother, Claimant was reevaluated for eligibility. After review of the January 30, 2024 psychological evaluation (2024 evaluation), on April 12, 2024, Service Agency issued a Notice of Action (NOA) informing Claimant he was not eligible for Lanterman Act services.
5. On June 18, 2024, Claimant submitted a timely Request for a Fair Hearing.
6. Jurisdictional requirements have been met.

Service Agency's Assessments and Record Review

7. Service Agency's Eligibility Team assessed Claimant's eligibility for regional center services by reviewing his educational and psychological records. On April 12, 2024, the Eligibility Team determined Claimant did not meet Lanterman Act eligibility requirements. Specifically, the Eligibility Team concluded Claimant did not meet the diagnostic requirements of ASD as provided for in the Diagnostic and Statistical Manual – 5th Edition (DSM-5). To be eligible for Lanterman Act services under the category of ASD, the applicant must meet the definition of ASD as delineated in the DSM-5.

8. After issuance of the NOA, the Eligibility Team reviewed additional educational and psychological records submitted by Claimant, including a February 2025 letter written by Claimant's nurse, Nasreen Rahman, of Central City Community Health Center (CCC). However, the information contained in the additional information did not change Service Agency's determination that Claimant does not meet Lanterman Act eligibility requirements.

MEDICAL RECORDS

9. No medical records were provided or reviewed. However, Claimant does not claim he is eligible for services under the Lanterman Act based on a diagnosis of epilepsy or cerebral palsy.

PSYCHOLOGICAL ASSESSMENTS

2014 Psychological Assessment

10. On November 25, 2014, Jennie Mathess, Psy.D., a licensed psychologist, conducted a psychological assessment of Claimant (2014 assessment) on behalf of

Service Agency to determine if Claimant is eligible for services under the Lanterman Act under the category of ASD. Dr. Mathess did not assess Claimant for Intellectual Disability (ID). At the time of the 2014 assessment, Claimant was four years and two months old.

11. Dr. Mathess administered the Autism Diagnostic Interview - Revised (ADI-R), the Autistic Spectrum Disorder Observation - Second Edition (ADOS-2) - Module 2, the Gilliam Autism Rating Scale - 3 Edition (GARS-3), and the Vineland Adaptive Behavior Scales, 2nd Edition, Parent/Caregiver Rating Form (VABS-II). After reviewing Claimant's presentation during the 2014 assessment and his assessment scores, as well as her interview with Mother, Dr. Mathess concluded Claimant does not meet the criteria for ASD.

12. During the 2014 assessment, Claimant presented with an appropriate gait and eye contact, and did not demonstrate any restrictive or repetitive behaviors. (Exh. 5, pp. A16-A17.)

[Claimant] was cooperative throughout the session and demonstrated fair attention and concentration. He did require redirection at times and on occasion displayed oppositional behavior. He was quite engaging and sought the examiner out to play and interact throughout the session . . . and spontaneously made conversation with the examiner. Subtle articulation difficulties were observed, but his speech was generally intelligible. No echolalia or stereotyped and repetitive behaviors were observed at any time.

(*Id.* at p. A16.)

13. On the ADOS-2 and the ADI-R Claimant scored below the ASD cutoff scores. The ADOS-2 scores were not included in the evidence presented, but on the ADI-R Claimant had a Qualitative Abnormalities in Reciprocal Social Interaction score of 7 (cutoff 10), a Qualitative Abnormalities in Communication score of 3 (cutoff 8), a Restricted, Repetitive, and Stereotyped Patterns of Behavior score of 2 (cutoff 3), and an Abnormality of Development Evident at or before 36 Months score of 1 (cutoff 1).

14. At the conclusion of the 2014 assessment, Dr. Mathess diagnosed Claimant with Unspecified Disruptive, Impulse-Control, and Conduct Disorder and concluded the following:

The diagnosis of [ASD] requires persistent deficits in social communication and social interaction, as well as the presence of restricted, repetitive patterns of behavior, interests and activities. . . . [Claimant] does not meet criteria for a diagnosis of [ASD]. While that is the case, he does present with significantly disruptive behaviors that indicate a diagnosis of Unspecified Disruptive, Impulse-Control, and Conduct Disorder.

(Exh. 5, p. A18.)

15. On January 21, 2015, Service Agency's Eligibility Team determined Claimant was not eligible for services under the Lanterman Act. (Exh. 6.)

//

//

2015 Reconsideration of Eligibility

16. In June 2015 Mother submitted a June 8, 2015 letter written by Zinovi Rosenblat, M.D. Dr. Rosenblat was a psychiatrist with Foothill Family Services (Foothill) and had been treating Claimant for one month, since May 13, 2015. Dr. Rosenblat provided the following information regarding Claimant's developmental assessment:

At the time of his evaluation [Claimant] presented with symptoms such as but not limited to; repetitive behaviors, inability to relate to people or animals, is aggressive, has problem sleeping since birth. [Claimant] has had language delay but ASD was [ruled out] by [Service Agency] with diagnosis made of Disruptive Disorder. [Claimant's] Conner's Teacher Scale and Vanderbilt Parent scales are positive for combine form of ADHD. Based on all information gathered and provided by parent, psychotherapist and teacher my provisional impression is; ADHD combined type and [ASD].

(Exh. 7.)

17. Service's Agency's staff psychologist Borah Langenbacher considered Dr. Rozenblat's letter. However, on June 29, 2015, Dr. Langenbacher redetermined Claimant was not eligible for services under the Lanterman Act. (Exh. 8.)

2016 Reconsideration of Eligibility

18. On March 3, 2016, Mother requested Service Agency conduct an intake assessment of Claimant to determine his eligibility under the category of ASD. At the

time of the March 2016 request Claimant was five and one-half years old. In the intake assessment form, Mother reported Claimant was below average academically and displayed symptoms such as being unable to button his shirt or put on clothes correctly, was sensitive to certain foods and loud noises, and that he tended to play on his own and to need structure and consistency in his daily activities. In Mother's completed ASD screening questionnaire, Mother reported Claimant had difficulties with communication and social skills. (Exh. 9.)

19. Dr. Langenbacher considered Claimant's 2016 intake information. However, on March 8, 2016, Dr. Langenbacher concluded the additional information did not warrant reevaluation and determined Claimant was not eligible for services under the Lanterman Act. (Exh. 10.)

2023 Neuropsychological Evaluation

20. On March 13 and 15, 2023, Talin Babikian, Ph.D., an associate clinical professor at the University of California Los Angeles Geffen School of Medicine, conducted a neuropsychological evaluation of Claimant (2023 evaluation). The 2023 evaluation was conducted pursuant to an Independent Educational Evaluation (2023 IEE) of Claimant as part of Claimant's IEP process with the Duarte Unified School District (Duarte District). Claimant was 12 and one-half years old at the time of the 2023 IEE. On May 16, 2023, Dr. Babikian issued his written neuropsychological evaluation of Claimant. (Exh. 11.)

21. Dr. Babikian noted Claimant had previously been diagnosed with ASD and ADHD and was, at the time of the 2023 evaluation, on several medications to help manage emotional and behavioral functioning. However, Dr. Babikian's conclusion that

Claimant had previously been diagnosed with ASD was not supported with an evaluation or conclusion consistent with the DSM-5.

22. Dr. Babikian reviewed Claimant's September 20, 2014 psychoeducational report completed by the Azusa Unified School District (Azusa District) when Claimant was four years old. Based on his review, Dr. Babikian noted that during the 2014 psychoeducational assessment Claimant made some eye contact and had appropriate verbal responses but at other times he was aloof and non-responsive. Claimant displayed some characteristics typically seen in children with ASD but to a very mild degree. The Azusa District could not determine whether Claimant displayed mild ASD-like characteristics or if attention deficit hyperactivity disorder (ADHD) characteristics were impeding his ability to access the general education curriculum. It was also indicated that Claimant may have presented with a subtype of severe ADHD that presents as ASD in the preschool years. In conclusion, the Azusa District determined Claimant displayed characteristics of ADHD to a marked degree. The Azusa District determined Claimant would benefit from a specialized academic instruction with a focus on pragmatic language and socialization skills.

23. Dr. Babikian also reviewed the April 25, 2016 developmental evaluation of Claimant (2016 evaluation) completed by Patricia Valdez, Ph.D., of Foothill, when Claimant was six years and seven months old. Dr. Valdez assessed Claimant's Full Scale Intelligence Quotient (FSIQ) to be 105. Dr. Valdez diagnosed Claimant with ASD in partial remission (as defined by the DSM-5, but which does not constitute a diagnosis of ASD pursuant to the DSM-5), requiring support, and with ADHD, severe.

24. In addition, Dr. Babikian reviewed a 2019 IEE conducted of Claimant during an IEP evaluation with the Duarte District (2019 evaluation). As with the 2016 evaluation, the 2019 evaluation determined Claimant had ASD in partial remission. In

response, the Duarte District changed Claimant's special education eligibility from Other Health Impairment to ASD. (Exh. 11, p. A33.) However, despite this change, the Duarte District determined Claimant met the diagnostic criteria of ADHD, predominantly inattentive presentation across multiple settings, and that he did not meet the Duarte District's school code eligibility criteria for ASD. (*Ibid.*) (Notably, the eligibility requirements for special education services based on a diagnosis of ASD, as found in the Education Code and Federal Regulations, are less stringent than eligibility requirements for Lanterman Act services based on a diagnosis of ASD, as found in the DSM-5.)

25. In conclusion, Dr. Babikian determined Claimant showed solid intellectual and neurocognitive abilities, with two areas of neurocognitive weakness. The first area of weakness was in Claimant's coordinated visuomotor skills as well as fine motor speed and dexterity, which can make all written work laborious. The second area of weakness was Claimant's difficulty with rapid information processing. (Exh 11, p. A41.) Dr. Babikian diagnosed Claimant with Developmental Coordination Disorder, most notably writing, and with Specific Learning Disorder, with Impairment in Reading, as demonstrated by Claimant's slow processing speed. (*Id.* at p. A42.) Regarding ASD Dr. Babikian added:

[Claimant] . . . meets some but not all criteria from both the social/communication and restricted/repetitive symptom categories. Therefore, a diagnosis of [ASD], in partial remission (DSM- 5 299,00) is offered at this time. [¶] . . . [¶] It is likely that many of [Claimant's] current problematic behaviors are due to a combination of neurodevelopmental wiring and environmental stressors, including significant

personal and family history of trauma, culminating in a pattern of learned and reinforced behaviors that are maladaptive and concerning. For this reason, a diagnosis of Adjustment Disorder, with Mixed Disturbance of Emotions and Conduct (DSM-5 309.4) is offered and the primary recommendation for [Claimant] is to undergo trauma-informed therapy and for [Mother] to receive intensive supports to help manage [Claimant's] behaviors at home. Further diagnostic clarification addressing residual ADHD and/or [ASD]-like symptoms can be sought once he and his family receive appropriate supports as his neurodevelopmental profile will be clearer at that point.

(Exh 11, p. A42.)

26. Dr. Langenbacher considered Claimant's 2023 evaluation. On June 14, 2023, Dr. Langenbacher redetermined Claimant was not eligible for services under the Lanterman Act. (Exh. 10.)

2024 PSYCHOLOGICAL EVALUATION

27. On January 30, 2024, Christopher Cooper, Ph.D., of The Psychological Group, conducted a psychological evaluation of Claimant (2024 evaluation) on behalf of Service Agency. At the time of the 2024 evaluation Claimant was 13 years and four months old.

28. Dr. Cooper administered a parental interview and the Wechsler Intelligence Scale For Children-Fifth Edition (WISC-V), Vineland Adaptive Behavior Scales - Third Edition (VABS-3), and the ADOS-2 - Module 3. Claimant's FSIQ score was

85, low average. However, Dr. Cooper qualified this score by considering Claimant's General Ability Index (GAI), an ancillary index score that provides an estimate of general intelligence that is less impacted by working memory and processing speed, relative to the FSIQ.

29. Claimant's GAI consisted of subtests from the verbal comprehension, visual spatial, and fluid reasoning domains. Overall, Claimant's GAI index score was 94. Dr. Cooper noted the GAI index score does not replace the FSIQ as the best estimate of overall ability. However, Dr. Cooper advised it should be interpreted along with the FSIQ and all of the primary index scores. Dr. Cooper concluded that Claimant's GAI score was significantly higher than his FSIQ score, and the significant difference indicates that the effects of Claimant's cognitive proficiency, as measured by his working memory and processing speed, may have led to a lower overall FSIQ score. (Exh. 13, p. A52.)

30. Dr. Cooper also reported that during the 2024 evaluation Claimant's language consisted of complete sentences and he did not exhibit any echolalia or stereotype or idiosyncratic use of words or phrases, and Claimant displayed good eye contact for the majority of the observation. In addition, Claimant was able to carry on a basic back-and-forth conversation with Dr. Cooper and responded appropriately to Dr. Cooper's comments. The quality of Claimant's social response and reciprocal social conversation were comfortable, sustained and enjoyable. As well, Claimant used gestures throughout the examination, demonstrated good pretend play abilities and imagination when creating a story, and was able to direct facial expressions towards Dr. Cooper to convey his emotions. Further, Claimant did not exhibit any unusual sensory interests during the evaluation and did not demonstrate any repetitive or stereotyped movements or compulsions or rituals during the assessment. (Exh. 13, p.

A55.) Regarding relationships, Dr. Cooper observed Claimant demonstrated limited insight into relationships and friendships and it appeared to Dr. Cooper that Claimant misunderstood his role in these relationships. However, in review of the 2024 evaluation, including Claimant's scores on the ADOS-2, Module 3, Claimant's scores and presentation were not consistent with ASD. Accordingly, Dr. Cooper concluded Claimant does not meet DSM-5 diagnostic criteria for ASD. (*Id.* at p. A56.)

31. On April 10, 2024, Service Agency's Eligibility Team determined Claimant was not eligible for services under the Lanterman Act. (Exh. 14.)

Claimant's Evidence

32. Mother believes Claimant is eligible for services under the Lanterman Act under the category of ASD. Mother presented evidence similar to that submitted by Service Agency. However, Claimant's evidence did not establish Claimant has a developmental disability as defined by the Lanterman Act.

33. Mother submitted a July 23, 2013, letter from Andrea Lee, MFT, from Almansor Clinical Services (2013 letter). (Exh. A.) In the 2023 letter, Ms. Lee affirmed she had been seeing Claimant every-other week since December 6, 2012 (for seven months, and beginning when Claimant was two years and three months old), for outpatient mental health services.

34. Mother submitted a psychoeducational report completed by the Azusa District on October 31, 2014. However, this evaluation determined Claimant displayed little to no symptoms of ASD. (Exh. D, p. B17.)

35. Mother submitted the 2016 evaluation completed by Dr. Valdez and reviewed by Dr. Babikian. In addition to the information summarized by Dr. Babikian

(see Factual Finding 23), the 2016 evaluation includes an intelligence assessment and FSIQ score of 105. (Exh. E, p. B31.)

36. Mother submitted a letter from Nurse Rahman dated December 16, 2022 (2022 letter). (Exh. B.) In the 2022 letter, Nurse Rahman summarizes that Claimant's current diagnoses include ADHD and ASD. The bases for the ASD diagnosis are not provided and there is no supportive evaluation providing Claimant meets DSM-5 requirements for a diagnosis of ASD. The 2022 letter also describes Claimant's recent physical aggressiveness with Mother.

37. Finally, Mother submitted a letter from Nurse Rahman dated February 25, 2025 (2025 letter). (Exh. C.) In the 2025 letter, Nurse Rahman provides a similar diagnosis as she did in the December 2022 letter but adds a recommendation that Claimant be placed in a residential care facility in part because his physical aggression has escalated to punching Mother, injuring Mother and causing her bruises.

38. Finally, in her testimony, Mother primarily relied on the previous diagnoses of ASD to support Claimant's request for eligibility. However, as provided above, these diagnoses were not sufficient to meet the standards of a DSM-5 ASD diagnosis. Mother added that as a younger child Claimant put everything in color order; currently, he can go into an extreme state of anxiety and lose his orientation to place, and he daily throws tantrums like a five year old. In addition, Mother added Claimant, now 14 years and one-half years old, cannot provide basic self-care, such as tying shoes or basic hygiene, and that he is incontinent and needs assistance with activities of daily living. Mother explained she provides for all his needs including toileting support. Most recently, Claimant has refused to go to school. Mother explained that if she does not cook for Claimant, he will starve; however, Mother acknowledged Claimant can use the microwave and make himself a sandwich, but

believes if he were left to do so, he would choose not to and would starve. Finally, Mother explained she believes Claimant's adaptive deficits are due both to a lack of motivation and a lack of capacity.

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 that would make the individual eligible for a benefit or service has the burden of proof to establish they have 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 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 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. 17, pp. A68-A69, 72-74.)

5. The evaluations, assessments, and other evidence presented at hearing did not establish Claimant has ASD as defined by the DSM-5. Claimant's scores on the ADOS-2 fell below the cut-off mark to meet the DSM-5 criteria of ASD. (See Factual Finding 30.) In addition, there was no evidence showing Claimant has deficits in social-

emotional reciprocity or restricted, repetitive patterns of behavior, interests, or activities. (Factual Findings 7-30.)

Intellectual Disability

6. The DSM-5 provides an individual must meet the following three criteria to be diagnosed with ID (Exh. 18, pp. A84-A89):

First, 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 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.

Second, the DSM-5 definition of ID requires individuals with ID to have deficits in adaptive functioning that fail to meet developmental and socio-cultural standards for personal independence and social responsibility, and 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 based on adaptive functioning, and not IQ scores, because adaptive functioning determines the level of supports required.

Third, 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. 18, pp. A85-A88):

Conceptual Domain: For school-age children, there are difficulties in learning academic skills involving reading, writing, arithmetic, time, or money, with support needed in one or more behaviors in an age-appropriate fashion. There is a somewhat concrete approach to problems and solutions compared with age-mates.

Social Domain: Compared with typically developing age-mates, 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 this age. There may be difficulties regulating emotion and behavior in an 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 most recent FISQ score was 85, above the five-point margin for error allowed by the DSM-5 to meet the criterion for ID. Claimant's previous FSIQ scores included scores of 105, and Dr. Cooper advised that Claimant's most recent FSIQ score of 85 may have been inadvertently lowered by Claimant's challenges with working memory and processing speed. Finally, Claimant did not demonstrate the deficits in adaptive functioning required by the DSM-5. (Factual Findings 7-38.)

Fifth Category

9. Under the 5th category of eligibility, the Lanterman Act provides 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 5th 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 5th category: whether the individual functions in a manner 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 5th category eligibility. (*Id.* at p. 1477.)

11. The evidence does not establish Claimant is eligible for services under the 5th category. Initially, all of Claimant’s FSIQ scores did not fall within the range provided by the court in *Samantha C.* as his FSIQ scores were above 74. (Factual Findings 23 & 28.) In addition, the evidence did not establish Claimant functions in a manner similar to that of a person with ID. (Factual Findings 7-38.)

Analysis

12. Claimant did not establish he 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. Claimant’s appeal is denied.

//

//

//

//

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.