BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: CLAIMANT, v. ALTA CALIFORNIA REGIONAL CENTER, Service Agency.	OAH No. 2016090070

DECISION

A fair hearing was held on December 21, 2016, before Erin R. Koch-Goodman, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, in Sacramento, California.

Robin Black, Legal Services Manager, represented Alta California Regional Center (ACRC).

Claimant's mother represented claimant, who was not present at hearing.

Evidence was received, the record closed, and the matter submitted for decision on December 21, 2016.

ISSUE

Does claimant qualify for services from ACRC under the Lanterman Developmental Disabilities Services Act (Lanterman Act - Welfare and Institutions Code section 4500 et seq.), because he is an individual with an intellectual disability, autism, or

has a disabling condition that is closely related to intellectual disability or requires treatment similar to that required for individuals with an intellectual disability?[1]

FACTUAL FINDINGS

1. Claimant was born in 1991. He is currently 25 years old. At the time of hearing, claimant was staying in a psychiatric institution. However, since February 2016, claimant has been living in a group care home in Sacramento. Prior to the group care home, claimant lived independently for three years.

2. In May 2016, claimant requested services from ACRC, referred by Patrick Wong, M.D., Kaiser psychiatrist, for concerns related to learning and cognitive skills, social communication, and behavioral difficulties. On June 21, 2016, Susan Wheelwright, Licensed Clinical Social Worker and ACRC Intake Specialist, conducted an intake interview of claimant and his mother and wrote a social assessment. On July 13, 2016, Cynthia A. Root, Ph.D., ACRC Licensed Staff Psychologist, conducted a psychological evaluation of claimant and wrote a report. On August 1, 2016, ACRC's Eligibility Review Team met and determined claimant does not have a developmental disability under the Lanterman Act. The same day, ACRC sent a letter to claimant denying his request for services. On August 30, 2016, claimant appealed the denial.

DR. ROOT'S PSYCHOLOGICAL EVALUATION

3. On July 13, 2016, Dr. Root conducted a psychological evaluation of claimant and wrote a report. During the evaluation, Dr. Root administered several

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[1] The language used to describe the developmental disabilities relevant in this matter has changed over time. The Lanterman Act was recently amended to change the term "mental retardation" to "intellectual disability."

assessment tests, including: the Adaptive Behavior Assessment System, Third Edition (ABAS-3) Adult Form; the Autism Diagnostic Observation Scale, Second Edition (ADOS-2) Module 4; the Social Communication Questionnaire, Lifetime Form (SCQ); and the Wechsler Adult Intelligence Scale, Fourth Edition (WAIS-IV). She also observed claimant, interviewed claimant and his mother, separately, and reviewed claimant's academic and mental health records, including: his Health for All records (June 2016); Kaiser Permanente medical records (February 2011 to February 2016); Elk Grove Unified School District (EGUSD) records (2005 to 2009), including two psychological reports and one language, speech, and hearing report; and Santa Clara County school records (11/98 to 11/03).

4. Dr. Root's testing of claimant revealed the following:

(a) Adaptive Functioning. The ABAS-3 is a survey completed by parents, caregivers, and/or teachers regarding the adaptive behavior of the person being evaluated. The survey includes statements that are rated according to the frequency of the behavior observed in the examinee. Claimant's mother completed the survey on July 13, 2016. Claimant's General Adaptive Composite score was Extremely Low, suggesting that he is functioning significantly below age-appropriate levels of ability in all areas. Dr. Root noted: "It is important to remember that the ABAS-3 measures whether an individual is able to correctly perform a particular behavior when needed; thus, these results indicate that [claimant] does not consistently perform age-appropriate behaviors, but do not necessarily reflect whether he is inherently capable of performing these behaviors."

(b) Autism Spectrum Disorder Testing.

The SCQ is a 40-question screening tool used to evaluate whether symptoms of an autism spectrum disorder (ASD) might be present. Claimant's mother completed the

questionnaire with a score of 30; scores of 15 or above are considered clinically significant. Given the result, Dr. Root performed further ASD assessments.

The ADOS-2 is a standardized assessment for ASD, testing an individual's communication, social interaction, imagination, and stereotyped behaviors or restricted interests. Dr. Root identified the ADOS-2 as the "gold standard" tool in assessment of ASD. Using Module 4, Dr. Root evaluated claimant's language and communication, reciprocal social interaction, imagination, stereotyped behaviors and restricted interests, and other abnormal behavior. Claimant's scores on the ADOS-2 were consistent with a "classification of non-spectrum." Dr. Root noted: "His scores on the Communication and Reciprocal Social Interaction scales were both at the cutoff score of autism spectrum. However, his Overall Total score (Communication and Reciprocal Social Interaction combined) was below the cutoff for autism/autism spectrum, and thus [claimant] received a classification of non-spectrum."

Dr. Root also evaluated claimant under the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) diagnostic criteria for ASD, which, in relevant part, includes:

> A. Persistent deficits in social communication and social interaction across multiple contexts, as manifested by the following, currently or by history…:
>
> 1. Deficits in social-emotional reciprocity, ranging, for example, from abnormal social approach and failure of normal back-and-forth conversation; to reduced sharing of interests, emotions, or affect; to failure to initiate or respond to social interactions.
>
> 2. Deficits in nonverbal communicative behaviors used for social interaction, ranging, for example, from poorly integrated verbal and nonverbal communication; to abnormalities in eye contact and body language or deficits

in understanding and use of gestures; to a total lack of facial expressions and nonverbal communication.

3. Deficits in developing, maintaining, and understanding relationships, ranging, for example, from difficulties adjusting behavior to suit various social contexts; to difficulties in sharing imaginative play or making friends; to absence of interest in peers.

[¶] … [¶]

B. Restricted, repetitive patterns of behavior, interests, or activities, as manifested by at least two to the following, currently or by history…:

1. Stereotyped or repetitive motor movements, use of objects, or speech (e.g., simple motor stereotypes, lining up toys or flipping objects, echolalia, or idiosyncratic phrases).

2. Insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior (e.g., extreme distress at small changes, difficulties with transitions, rigid thinking patterns, greeting rituals, need to take same route or eat same food every day).

3. Highly restricted, fixated interests that are abnormal in intensity or focus (e.g., strong attachment to or preoccupation with unusual objects, excessively circumscribed or perseverative interests).

4. Hyper- or hyporeactivity to sensory input or unusual interest in sensory aspects of the environment (e.g., apparent indifference to pain/temperature, adverse response to specific sounds or textures, excessive smelling or touching of objects, visual fascination with lights or movement).

[¶] … [¶]

C. Symptoms must be present in the early developmental period (but may not become fully manifest until social demands exceed limited capacities, or may be masked by learned strategies later in life).

D. Symptoms cause clinically significant impairment in social, occupational, or other important areas of current functioning.

E. These disturbances are not better explained by intellectual disability (intellectual developmental disorder) or global developmental delay….

Following her observation and interviews, Dr. Root found claimant to meet only one DSM-5 criteria (subd. A(3)), because he showed "[d]eficits in developing, maintaining, and understanding relationships, ranging, for example, from difficulties adjusting behavior to suit various social contexts; to difficulties in sharing imaginative play or making friends; to absence of interest in peers." In this area, Dr. Root noted: "[claimant] reported that he has never had a true friendship. His understanding of relationships appeared to be well below his developmental level." In the remaining DSM-5 criteria, Dr. Root found only a mild deficit in social-emotional reciprocity, because claimant he used regular facial expressions and other forms of nonverbal behavior; and he had no repetitive patterns of behavior, interests, or activities.

(c) Intellectual Disability Testing. The WAIS-IV is a standardized test measuring the general cognitive ability of adults. It consists of four composite index scores: Verbal Compression Index (VCI), measuring the ability to think with words; Perceptual Reasoning Index (PRI), measuring the ability to think with visual images; Working Memory Index (WMI), measuring attention and short-term auditory memory; and Processing Speed Index (PSI), measuring the ability to perform simple cognitive or perceptual tasks rapidly. On the WAIS-IV, claimant attained a Full Scale IQ score of 82 (Low Average). His score on the VCI was 91 (Average); on the WMI was 77 (Borderline); on the PRI was 84 (Low Average); and on the PSI was 86 (Low Average). Dr. Root

concluded: "[claimant] does not have an intellectual disability (formerly mental retardation) or any condition similar to intellectual disability." She did find his adaptive functioning to be in the significantly impaired range for his age, but "[i]t appears to this examiner that [claimant's] psychiatric issues continue to greatly impact his adaptive skills."

PREVIOUS INTELLECTUAL EVALUATIONS

5. Claimant attended public school from kindergarten through 12th grade. He received special education services in all grades for Specific Learning Disability (SLD) and Speech and Language Impairment (SLI). In 12th grade, claimant spent 60 percent of his time in a mainstream education environment. He graduated from high school in 2009, passing the California High School Exit Exam for math, but not for English language assessment. From 2009 through 2015, claimant took college courses, earning a 1.407 grade point average.

6. 2008 EGUSD Psychological Evaluation. On May 19, 2008, Anne Rosenberg Main, EGUSD School Psychologist, completed a psychological evaluation of claimant (11th grade). Dr. Main interviewed claimant, his mother, and his teacher, reviewed his school records and administered the Wide Range Assessment of Memory and Learning, Second Edition (WRAML-2), the Bender Gestalt Visual Motor Test (Bender), and the Woodcock-Johnson III Tests of Achievement (WJ-III). The WRAML-2 tests memory impairment commonly associated with learning disabilities. An average score is between 80 and 110. Claimant scored 80 in Verbal Memory and 97 in Attention/Concentration. Dr. Main concluded: "[claimant] has a good memory as long as there are digits or letters. However, when it comes to more complex language and visual stimuli, he had difficulties understanding and retaining the information. This indicates that [claimant] has both language and auditory processing difficulties." On the Bender test, claimant scored 119 or 90 percent, showing "no processing difficulties." The WJ-III

provides a comprehensive diagnosis of individual achievement skills that are necessary to be successful in education. Standard scores range from 80 to 110, and scores below 79 are considered to be a deficit in that skill area. Claimant scored 89 in Broad Reading, 103 in Broad Mathematics, and 95 in Broad Written Language. Dr. Main concluded: claimant's "[r]elative strengths were found on calculations and math fluency. His weakest scores were in reading fluency and writing samples." Dr. Main concluded: claimant "is a very hard working student who is doing well in school and liked by staff and students. Testing demonstrated that [claimant] has exceptional[ly] high skills whenever he works with numbers as well as copying designs presented to him. Average scores were found in the areas of reading, spelling, and attention/concentration. However, difficulties were found in the areas of verbal memory, visual memory, and understanding more complex language. Therefore, he has difficulty with auditory processing when complex language is required to learn. Psychological Processing Disorder (s): Auditory Processing."

7. 2005 EGUSD Psychological Evaluation. On April 13 and 14, 2005, Billie Amis Reichle, EGUSD School Psychologist, completed a psychological evaluation of claimant (8th grade). Dr. Reichle interviewed claimant, reviewed his school records, and administered the Matrix Analogies Test (MAT), the Beery-Buktenica Developmental Test of Visual-Motor Integration, Fifth Edition (VMI-5), and the WRAML-2. The MAT measures nonverbal ability with minimum motor involvement and verbal comprehension requirements. An average score is between 90 and 110. Claimant scored an 88 or low average range. The MAT includes four subtests: Pattern Completion, Reasoning by Analogy, Serial Reasoning, and Spatial Visualization. The average score is between 8 and 12. Claimant scored below average on Pattern Completion (6) and Serial Reasoning (5), and average on Reasoning by Analogy (11) and Spatial Visualization (8). Claimant tested in the average range on the VMI-5. As a result, Dr. Reichle found claimant's "fine motor coordination skills are adequate for the work in the regular classroom." The WRAML-2

tests memory impairment commonly associated with learning disabilities. Dr. Reichle administered several WRAML-2 subtests, finding claimant's General Memory Index score in the developmentally delayed range; his Verbal and Visual Memory and General Recognition Index scores to be in the developmentally delayed range; his Attention/Concentration score in the below average range; and his Working Memory Index score in the average range. Overall, Dr. Reichle found: claimant's "visual reasoning skills fall in the low average range. His perceptual-motor coordination skills are age appropriate. [Claimant] has deficits in both the general memory and general recognition skills. During the WRAML-2, [claimant] appears to have difficulty processing verbal information. [Claimant] appears to be overwhelmed when too much verbal information is presented. He has difficulty retelling a story or recognizing information from that score after a delay in time. He also has difficulty repeating sentences back verbatim. He does better repeating digits and letters. He was able to manipulate the order of words as well as letters and numbers so as to reorganize how he said them back to the examiner. His working memory skills fall in the average range. He has difficulty remembering visual information. He earned a borderline score when it came to recognizing visual information after a delay in time. Psychological Processing Disorders: Visual Processing, Auditory Processing, and Cognition. [Claimant's] language skills will need to be assessed by the speech and language therapist. The IEPT will need to determine the most appropriate program for [claimant.]

PREVIOUS MEDICAL ASSESSMENTS

8. Psychiatric History. Claimant has four prior psychiatric hospitalizations, not including his current hospitalization. The earliest was on February 25, 2011, when claimant was admitted to Sierra Vista Hospital on a 5150 hold after "pulling a knife" on his brother in an altercation. Julie Motosue-Brennan, M.D., Sierra Vista noted: claimant "continues to believe that people are controlling him and can know his thoughts. He has

fears of being in public, that people are going to manipulate him and cause him harm. . . . He fears that the public fears people that are strange and that fear turns into anger and he can be very impulsive. When asked specifically about who could know his thoughts, he thought that other people could read his mind, as well as perhaps the federal government. This has been ongoing for many years now. When I asked him whether he had any special powers, he quickly answered that others may have special powers and somehow they can lock his head so that he can't concentrate." Claimant's discharge diagnosis were "schizophrenia, paranoid type, history of pervasive developmental disorder, depression [not otherwise specified] NOS, mental retardation, by history."

9. No evidence was submitted regarding his current hospitalization. Prior to his current stay, on January 24, 2016, claimant was admitted to Fremont Hospital on a 5150 hold after calling 911 and reporting suicidal thoughts with a plan to hang himself and vague homicidal ideation without a plan. Claimant was discharged after 15 days. Claimant's discharge diagnosis was "schizoaffective disorder/autism spectrum disorder."

10. 2013 Autism Evaluation. On September 13, 2013, Fawzia Ashar, M.D., Director, Kaiser Autism Spectrum Disorder Clinic, assessed claimant. Based on her interview with claimant and his mother, Dr. Ashar concluded claimant "did not present with any ASD related features." Reviewing the DSM-5 criteria for ASD, Dr. Ashar did not find claimant met any of the categories. Dr. Ashar found claimant to have "social phobia, sensitivity to rejection, social anxiety, learning issues with some language delays."

11. 2016 Treating Psychiatrist Diagnosis Summary. On November 22, 2016, Patrick Wong, M.D., Kaiser Psychiatrist, signed a questionnaire in which he responds, in typeface as well as handwritten notes, to questions regarding claimant's conditions, diagnosis, and abilities. Dr. Wong believes claimant to have autism, indicating "he was diagnosed with Asperger's;" an intellectual disability, citing a "[h]istory of Pervasive Development Disorder [PDD];" and a disabling condition closely related to intellectual

disability/mental retardation. To support his conclusions, Dr. Wong points to "medical documentation in the patient's electronic chart at Kaiser Permanente (outpatient visit notes)." Dr. Wong describes claimant's disability as follows: "He has learning disabilities for which he received Special Education in school. He has slow processing and paranoia. He understands he is handicapped and this upsets him, as he has difficulties accepting his handicaps. He cannot understand interactions at times and becomes angry. He has been diagnosed with Asperger's. He is incapable of self-support. [His] lifelong patterns: Impaired interpersonal reciprocity. No friendship patterns. Impaired perceptions of affects and impaired perceptions of social cues." Dr. Wong finds claimant to have significant functional limitations in "learning mobility, self-direction, capacity for independent living, economic self-sufficiency. Social/interpersonal skills, communication and connection." As evidence of claimant's functional limitations, Dr. Wong points to "[d]ocumentation from clinic visits, Emergency Room visits, reports from Sierra Vista, inpatient psychiatric facility & Discharge Summary from St. Joseph's Behavioral Health for inpatient psychiatric hospitalization from 7/28/16 – 7/30/16."

TESTIMONY

12. Dr. Root and Ms. Wheelwright testified on behalf of ACRC. Claimant's mother testified on claimant's behalf.

13. Dr. Root. Dr. Root completed a Bachelor of Arts in Communication in 1997 from Michigan State University; a Master of Science in Marriage and Family Therapy in 2002 from San Francisco State University; and a Doctorate of Philosophy in Clinical Psychology in 2007 from the California School of Professional Psychology, Alliant International University, San Francisco. Dr. Root then completed a one-year postdoctoral residency in neuropsychological assessment and adult outpatient psychiatry at Kaiser Permanente San Francisco. In 2008, she became licensed to practice psychology in California and began working as a psychologist for ACRC, conducting psychological

assessments for children and adults with suspected developmental disabilities and consulting with ACRC staff. Dr. Root completes one to two assessments per month for ACRC and has consulted on 800 to 900 cases per year.

14. At hearing, Dr. Root provided a review of her evaluation, testing, report, and impressions regarding claimant. Dr. Root found claimant not to have an intellectual disability, or a condition similar to intellectual disability, because claimant's test scores were in the low average range, and above the cutoff for an intellectual disability. In addition, Dr. Root found no indication that claimant needed treatment similar to that required for individuals with an intellectual disability. While Dr. Root found claimant's adaptive functioning to be in the impaired range for his age, she noted: "[i]t appears to this examiner that [claimant's] psychiatric issues continue to greatly impact his adaptive skills."

15. Dr. Root also found claimant not to have autism or ASD, because claimant's test scores on the ADOS-2 were consistent with a "classification of non-spectrum." She noted: "His scores on the Communication and Reciprocal Social Interaction scales were both at the cutoff score of autism spectrum. However, his Overall Total score (Communication and Reciprocal Social Interaction combined) was below the cutoff for autism/autism spectrum, and thus received a classification of non-spectrum." Further, Dr. Root found claimant only met one DSM-5 criteria for ASD, noting "[a]lthough he was noted to have very flat affect at times and immature social skills, he did not exhibit the significant deficits in social communication and restricted or repetitive behaviors that are seen in individuals with autism spectrum disorder."

16. Dr. Root reviewed Dr. Wong's Diagnosis Summary, as well as claimant's medical records provided to ACRC, but Dr. Root could not locate any objective findings in claimant's medical files for a diagnosis of autism, ASD, or Asperger's Syndrome. In addition, Dr. Root reviewed claimant's education records and could not locate any

testing to suggest claimant had an intellectual disability, or similar condition. Instead, claimant's IEPs identify his learning disabilities as Specific Learning Disability (SLD) and Speech and Language Impairment (SLI). Dr. Root testified that a specific learning disability is mutually exclusive with an intellectual disability. Furthermore, Dr. Root highlighted the differences between eligibility for Special Education services and eligibility for services under the Lanterman Act (i.e., qualification for Special Education services is not a guarantee of eligibility for services under the Lanterman Act.).

17. Dr. Root also questioned the diagnosis of PDD given to claimant by Dr. Wong. From the Diagnosis Summary, Dr. Root could not tell how Dr. Wong had reached the conclusion that claimant had PDD. In addition, she stated that PDD is no longer included as a disorder in the DSM-5. Instead, the DSM-5 states:

> Individuals with a well-established DSM-IV diagnosis of autistic disorder, Asperger's disorder, or pervasive developmental disorder not otherwise specified should be given the diagnosis of Autism Spectrum Disorder. Individuals who have marked deficits in social communication, but whose symptoms do not otherwise meet criteria for Autism Spectrum Disorder, should be evaluated for social (pragmatic) communication disorder.

18. Dr. Root testified that there was no indication in Dr. Wong's Diagnosis Summary that he conducted an evaluation of claimant for ASD, or that he utilized any of the assessment tools that have been developed for testing for ASD, such as the ADOS-2. In addition, Dr. Wong did not discuss the DSM-5 diagnostic criteria for autism and how these criteria applied to claimant.

19. In sum, Dr. Root found that claimant did not have an intellectual disability, or any condition similar to an intellectual disability, or ASD. Dr. Root concluded: claimant "has been diagnosed by multiple clinicians over the years with **Schizoaffective Disorder**, and this appears to be an accurate working diagnosis for him. [Claimant] presented as an individual who has experienced chronic trauma (e.g., being bullied, physically abused by family members), and he appears to have developed an inflexible and maladaptive style of interpersonal relatedness that involves schizotypal and borderline features. Therefore, **Unspecified Personality Disorder** is also diagnosed, with a recommendation for further clarification with a mental health provider. [Claimant] continues to be at risk for suicide, and is encouraged to work closely with his mental health treatment team. Although he clearly denied any intent or plan to seriously harm others, he was noted to make very vague threats towards a housemate during this evaluation."

20. Susan Wheelwright. Ms. Wheelwright earned a Bachelor of Arts in Political Science and a Master of Arts in Social Work. She is licensed by the State of California. On June 21, 2016, Ms. Wheelwright conducted a social assessment of claimant and prepared a report. She testified at hearing consistent with her report. To complete her assessment, Ms. Wheelwright interviewed claimant and his mother and observed claimant's behavior. During her assessment, claimant did not exhibit any behaviors typical of ASD, including repetitive behaviors and words, echolalia, or a lack of social interaction.

21. Claimant's mother. Claimant's mother believes claimant qualifies for ACRC services, because he has an intellectual disability, or a similar condition, and autism. She notes claimant has been diagnosed with Asperger's and ASD, and both are documented in his medical records. She also believes he has autism because he has never had any friends; has never been successful; never shared things; and gets "stuck"

on single topics (e.g. in childhood he would get "stuck" talking about dinosaurs). Notwithstanding the above, she also believes claimant has an intellectual disability, or similar condition, because he has no social life; no job; he cannot schedule medical appointments for himself or refill his medical prescriptions on his own; or manage his money. In addition, claimant has received Special Education services from the public schools from kindergarten through 12th grade, and his IEPs identified him as having a learning disability. In school, he was assigned to modified classes, provided extra help, given more time to process directions, and failed standardized tests several times, evidencing an intellectual disability. Claimant's mother believes claimant needs help and ACRC can provide him help.

DISCUSSION

22. When all the evidence is considered, the opinion Dr. Root, that claimant does not qualify for services from ACRC under the Lanterman Act, was persuasive. Dr. Root conducted a thorough evaluation of claimant, using the "gold standard" assessment tools. She thoroughly reviewed the evaluations, assessments and other records received by ACRC relating to claimant, and her conclusions are well supported and unrefuted.

AUTISM SPECTRUM DISORDER

23. According to Dr. Root, when claimant's behavior is viewed in light of the DSM-5 diagnostic criteria, there was not sufficient evidence of persistent deficits in social communication and social interaction, or restricted, repetitive patterns of behavior, interests or activities to find that he has an ASD. In comparison, the Diagnosis Summary of Dr. Wong was not persuasive. Dr. Wong did not testify at hearing. His report did not offer objective findings to support his diagnosis, nor was there any evidence to indicate Dr. Wong conducted the type of assessments and evaluations

needed to diagnose claimant with ASD. Further, Dr. Wong's diagnosis of claimant as having a "[h]istory of Pervasive Development Disorder" is a DSM-4 diagnosis, no longer used in the DSM-5, and requiring a new categorization, coupled with further diagnostic assessment. When all the evidence offered in this matter is considered, claimant's mother did not establish that claimant qualifies for services from ACRC on the basis of autism.

INTELLECTUAL DISABILITY

24. According to Dr. Root, based upon the testing she conducted, claimant does not have an intellectual disability. Instead, claimant tested in the low average range for intelligence, above the cutoff for an intellectual disability. Dr. Root reviewed the educational testing conducted by claimant's schools, finding claimant has a Specific Learning Disability and a Speech and Language Impairment; neither of which supports a finding of intellectual disability, and in fact are mutually exclusive with a finding of intellectual disability, according to Dr. Root. When all the evidence offered in this matter is considered, claimant's mother did not establish that claimant qualifies for services from ACRC on the basis of intellectual disability.

FIFTH CATEGORY

25. Here, Dr. Root's testimony was persuasive, when she opined that claimant does not have a disabling condition that is closely related to an intellectual disability or requires treatment similar to that required for individuals with an intellectual disability. As set forth above, claimant's intellectual ability is in the low average range. Although claimant has impaired adaptive functioning, the evidence established that his deficits in adaptive functioning are not related to intellectual impairments. Instead, they are more likely related to his mental health issues. The treatment that claimant requires is not similar to that required for individuals with an intellectual disability. Instead, his

treatment is the type required for individuals with mental health conditions. When all the evidence offered in this matter is considered, claimant's mother did not establish that claimant qualifies for services from ACRC under the fifth category.

26. It was apparent at the hearing that claimant's mother was seeking services from ACRC in an effort help her child achieve his highest potential. But the legislature made the determination that only individuals with the five specified types of disabling conditions identified in the Lanterman Act are eligible for services from regional centers. The legislature chose not to grant services to individuals who may have other types of disabling conditions, including mental health disorders, if they cannot show that they fall within one of the five categories delineated in the Act. Although the result may seem harsh, especially for individuals with mental health conditions like claimant's, the legislature did not grant regional centers the authority to provide services to individuals whose disabilities fall outside the five specified categories. Because claimant's mother did not show that claimant has ASD, an intellectual disability, or a disabling condition that is closely related to intellectual disability or requires treatment similar to that required for individuals with intellectual disability, she did not establish that claimant is eligible for services under the Lanterman Act.[2] Consequently, her request for services from ACRC must be denied.

[2] There was no indication during the hearing that claimant was eligible for services from ACRC under the developmental disability categories of cerebral palsy or epilepsy.

LEGAL CONCLUSIONS

1. Under the Lanterman Act, regional centers provide services to individuals with developmental disabilities. As defined in Welfare and Institutions Code section 4512, subdivision (a), 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. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability, but shall not include other handicapping conditions that are solely physical in nature.

2. Handicapping conditions that consist solely of psychiatric disorders, learning disabilities or physical conditions do not qualify as developmental disabilities under the Lanterman Act. (Cal. Code Regs., tit. 17, § 54000, subd. (c).)

3. As set forth in the Factual Findings, claimant's mother did not establish that claimant qualifies for services under the Lanterman Act because he is an individual with autism or an intellectual disability, or because he has a disabling condition that is closely related to intellectual disability or requires treatment similar to that required for individuals with an intellectual disability. His handicapping conditions consist of psychiatric disorders. Consequently, claimant's appeal must be denied.

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ORDER

Claimant's appeal is DENIED. Alta California Regional Center's denial of services to claimant under the Lanterman Act is SUSTAINED.

DATED: January 5, 2017

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ERIN R. KOCH-GOODMAN

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)