

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

**In the Matter of the Fair Hearing of:**

**CLAIMANT,<sup>1</sup>**

**vs.**

**CENTRAL VALLEY REGIONAL CENTER**

**OAH No. 2019090367**

**DECISION**

John E. DeCure, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on October 30, 2019, in Fresno, California.

Tamara Salem, Appeals and Compliance Coordinator, Central Valley Regional Center (CVRC; agency), represented the agency.

Yolanda Reyes, Social Worker III, and Kiersten Handorf, Social Work Supervisor, Adult Protective Services, Fresno County Department of Social Services, represented claimant, who was present.

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<sup>1</sup> Claimant and her relatives' names are omitted to protect their privacy.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on October 30, 2019.

## **ISSUE**

Does claimant have a developmental disability - in particular cerebral palsy, intellectual disability, or a "fifth category" disability<sup>2</sup> - entitling her to receive regional center services?

## **FACTUAL FINDINGS**

1. Claimant is a 24-year-old female. In 1998, at age three, she qualified for CVRC client services under the fifth category. However, her CVRC case was closed in 2001. She now seeks eligibility for CVRC services based on her mother's and Adult Protective Services' request that claimant be presently reevaluated for a disabling condition.

2. On August 21, 2019, CVRC sent a Notice of Proposed Action to claimant, informing her that a CVRC evaluation and assessment had determined she was not

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<sup>2</sup> Among the five categories of eligibility set forth in Welfare and Institutions Code section 4512, the fifth and last category of eligibility is listed as "[d]isabling 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." These types of disabilities are commonly referred to as "fifth category."

eligible for regional center services, and as a result, her application was being closed. On September 10, 2019, claimant requested a fair hearing. All jurisdictional requirements have been met.

## **Background Information and Initial Assessment**

3. In October 1998 CVRC determined that claimant, then three years old, qualified for CVRC services under the fifth category, as a person who functions similar to, or needs treatment similar to, a person with intellectual disability. CVRC's plan was to oversee the provision of services, and reevaluate claimant after approximately one year to obtain a more accurate understanding of her developmental progress and abilities.

4. On November 30, 2000, Nancy Doi, Psy.D., met with and assessed claimant, determining that she did not have a disability qualifying her for regional center services. In particular, claimant's testing using a Leiter International Performance Scale resulted in findings of an IQ of 95 and mental age of five, with "non-verbal intelligence comparable to most children her age," and functioning within the "average range of intellectual functioning." Claimant did display "mild deficits in her adaptive behavior scales," as measured by her inability to communicate and persistent use of diapers at five years old. But overall, Dr. Doi diagnosed claimant as possessing average non-verbal intellectual functioning with certain adaptive behaviors in the "mildly mentally retarded range." A CVRC Eligibility Team reviewed Dr. Doi's findings and determined that the case should be closed.<sup>3</sup>

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<sup>3</sup> At hearing, the parties disputed whether CVRC gave notice to claimant's mother, back in 2001, that the case was closed. On one hand, the Eligibility Team's

## **CVRC's Current Review and Determination**

5. Claimant presently seeks an eligibility determination under the disabling conditions of cerebral palsy, intellectual disability, or fifth category. Tammy Miranda, CVRC's Assistant Director for its Intake and Clinical departments, has worked with CVRC for approximately 17 years. She testified that she was assigned to respond to the referral for a new eligibility assessment by reviewing the referral, as well as information on file from claimant's medical and developmental history. She has assessed many such reviews for CVRC. After each review, she makes a determination as to whether the matter should be referred onward to a physician or other medical professional for new medical and/or psychological evaluations. Ms. Miranda's primary objective at this early stage is to determine whether the available data indicates that a further evaluation process is necessary.

6. Ms. Miranda reviewed claimant's medical history as reflected in the CVRC documents on file. She noted that in 1998, claimant had presented in the "borderline" range of intellectual disability and CVRC's reviewing multidisciplinary eligibility team had designated her disabled with the purpose of reviewing her progress as a young child. She was not diagnosed with cerebral palsy at that time. In 2001, when claimant was reevaluated, she presented with low-average motor functioning and average intellectual functioning. These findings no longer qualified her for regional center

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Review and Closure Summary, which was received in evidence, indicated that CVRC phoned claimant's mother and informed her of its eligibility determination. Yet, claimant's mother testified that she was never so informed. As such, the evidence was inconclusive; because this discrepancy had no factual or legal bearing on the issue of claimant's present eligibility, the effect of this conflicting evidence was immaterial.

services under a disabling condition of intellectual disability or fifth category. Claimant's mother could have appealed CVRC's determination, but there is no record that she ever did so.<sup>4</sup> Welfare and Institutions Code section 4512, subdivision (a), defines developmental disability, in significant part, as meaning a disability that originates before an individual turns 18 years old. Therefore, had mother appealed CVRC's closure of claimant's case, mother would have been required to establish that any disabling condition claimant presently claimed to suffer from would have originated before claimant turned 18. Reviewing claimant's CVRC case file, Ms. Miranda noted that it contains no such information, data, results, or findings.

7. Becky Kawashima, M.D., is a pediatrician and has been employed by CVRC as a Medical Consultant for approximately 16 years. She previously worked as a pediatrician at the Charlie Mitchell Clinic in Madera and Kaiser Permanente. Dr. Kawashima is very familiar with CVRC's process of determining whether a person is eligible for regional center services.

8. Dr. Kawashima explained that cerebral palsy, which refers to weakness or problems associated with the brain, is a group of disorders that affect how a person moves and maintains her balance and posture. Cerebral palsy symptoms vary from one patient to another, and a person with severe cerebral palsy may need the aid of special equipment to walk or might be unable to walk. CVRC measures a child's physical capability using the Gross Motor Functioning Classification System (GMFCS), which groups children with cerebral palsy into one of five categories of functioning, from

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<sup>4</sup> Ms. Miranda noted that CVRC's standard practice is to include and maintain any documentation regarding such client appeals in the client's file.

levels I through V. Claimant fell under the clinical classification of level II, which the GMFCS describes as:

Children walk in most settings and climb stairs holding onto a railing. They may experience difficulty walking long distances and balancing on uneven terrain, inclines, and crowded areas or confined spaces. Children may walk with physical assistance, a hand-held mobility device or used wheeled mobility over long distances. Children have only minimal ability to perform gross motor skills such as running and jumping.

Dr. Kawashima noted that claimant's classification as falling within level II indicated that she suffered from mild cerebral palsy symptoms not considered to be severely handicapping.

9. Dr. Kawashima reviewed other medical records from claimant's early childhood and noted that when claimant was at age 15 months, evaluators at Valley Children's Hospital made findings of perinatal encephalopathy, or abnormal neurological function. However, claimant demonstrated age appropriate development on the Denver Developmental Screening test, which measures four developmental functions: gross motor, language, fine motor-adaptive, and personal-social.

10. George Crowl, M.D. evaluated claimant again at Valley Children's Hospital when she was two years old, and noted claimant had a crude grasp and delayed motor skills, but in other respects her progress was good and she was "doing quite well." He recommended no occupational or physical therapy at the time. When Dr. Crowl reevaluated claimant approximately 18 months later at approximately three years and

seven months old, he noted claimant "does not show any upper motor neuron signs to suggest a spastic cerebral palsy." Nonetheless, he recommended that a physical therapist and occupational therapist evaluate her.

11. Dr. Kawashima also reviewed an occupational therapy report from Children's Hospital when claimant was four years and eight months old. She noted that claimant was still having great difficulty with coordinating muscle control but was otherwise making regular progress toward meeting her occupational therapy goals. Dr. Kawashima noted that this evaluation, Dr. Crowl's evaluations, and claimant's other early medical history did not include a diagnosis of cerebral palsy. Dr. Kawashima opined that this lack of an early diagnosis was "significant," because in moderate to severe cases of cerebral palsy, the diagnosis is usually made earlier in the patient's life. Cerebral palsy is also a disability that may have fluctuating symptoms, but tends not to substantially change in terms of improvement or regression over the course of the patient's life.

12. By age 13, claimant was being diagnosed with cerebral palsy, but her functional status was mostly measured as being independent and modified independent, indicating she was not substantially handicapped. She could walk for up to 15 minutes alone, and did not use a wheelchair at school due to perceived peer pressure. At age 17, her functional status was still mostly independent and modified independent, which did not indicate a substantially handicapping condition for purposes of regional center eligibility. At age 18, claimant's occupational therapy reevaluation showed some decreases in functional status, for which she needed moderate assistance. She still preferred to walk on campus when at school, but used her wheelchair for longer distance within the community.

13. Dr. Kawashima noted that other health factors, rather than cerebral palsy, may have caused decreases in claimant's functions. In 1997, Valley Children's Hospital had diagnosed claimant with glutaric aciduria type II, a disorder that interferes with the body's ability to break down proteins and fats to produce energy. Also, more than 20 years later, in 2019, claimant was diagnosed with major depressive disorder, recurrent, unspecified, and schizophrenia. Dr. Kawashima opined that these conditions likely resulted in decreasing functions and more difficulty with everyday living skills. These factors also may have hampered claimant's ability and motivation to follow directions and put forth effort when tested. Because cerebral palsy is more or less a static condition and does not improve or worsen over time, it is far less likely that it contributed to claimant's decreased functions and living skills.

14. CVRC also reviewed claimant's educational records, including her school district's Individualized Education Program (IEP) reports. Those records show she progressed along a Regular Education track, taking several college preparatory courses, and graduated with a high school diploma rather than a mere certificate of completion. Claimant participated in state and district assessments with no modifications, and the district did not place her in Special Education coursework. Dr. Kawashima opined that none of this educational data indicated that claimant suffered from substantial mental handicaps relevant to regional center eligibility.

15. Kao Yang is a clinical psychologist licensed in California, and has been a CVRC Staff Psychologist for approximately 13 years. She is experienced doing assessments, diagnostic testing and evaluations, and helping CVRC with eligibility determinations. She reviewed CVRC's file on claimant and noted that a multidisciplinary-discipline team, including a psychologist, a physician, and a social



worker, had determined claimant's eligibility issues for CVRC. Dr. Yang testified regarding her impressions of claimant's CVRC case history.

16. Dr. Yang opined that CVRC's determination upon reevaluation to terminate claimant as a client was correct and supported by the information in her case file. In particular, in 2000 the Sullivan Center for Children performed a psychological evaluation of claimant at five years and three months old, and found that she "functions within the average range of intellectual functioning," with adaptive behaviors in the mild mentally retarded range." Her intelligence quotient (IQ) was noted to be 95, which does not indicate a mental disability, but is in the average IQ range of 90 to 110. In 2001, CVRC noted claimant to have "[a]verage nonverbal intellectual functioning." These findings suggest claimant does not have intellectual disabilities which would make her eligible for regional center services.

17. Dr. Yang also reviewed subsequent records from claimant's latter childhood years, including claimant's school-district IEP reports. These educational records showed claimant was receiving speech disability services, but no services for developmental disabilities. She was also taking and completing college-preparatory course work at her high school, and graduated with a standard high school diploma. Claimant's level of academic rigor and achievement in high school do not suggest that she suffers from either an intellectual disability or a fifth category disability.

18. Although claimant had been diagnosed with major depression and schizophrenia in 2019, Dr. Yang observed that such psychiatric disorders do not meet the statutory definition of developmental disability found in California Code of

Regulations, title 17, section 54000, subdivision (c)(1).<sup>5</sup> Because this is the legal standard CVRC follows in determining eligibility, claimant's mental health diagnoses do not impact whether she suffers from one of the five disabilities qualifying a person for regional center services.

## **Claimant's Evidence**

19. Claimant's mother, M.M., testified that claimant did not use leg braces or a walker as a small child, but did start using a wheelchair and a calf brace at approximately 13 years old. When claimant was living at home, M.M. would help her with showering daily. Sometimes claimant would have trouble with "shaking" while getting dressed, so M.M. would help her with dressing. M.M. recalled claimant taking medication for seizures. She also recalled the time when claimant was very young and a CVRC client. M.M. did not recall CVRC ever phoning her to tell her it was closing its file on claimant and terminating claimant's regional center client status. Nor did M.M. recall ever receiving correspondence by mail from CVRC to inform her it was closing claimant's case.

20. C.V., claimant's brother, is two years her senior and grew up with her in the family home. He recalled that when claimant was between approximately seven and 18 years old, she needed assistance with toilet training, used specialized bathroom handles for safety, used a leg brace, and did not use a wheelchair in the home. He did

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<sup>5</sup> Section 54000, subdivision (c)(1), states, in relevant part, that "Developmental Disability shall not include handicapping conditions that are . . . [s]olely psychiatric disorders where there is impaired intellectual or social functioning which originated as a result of the psychiatric disorder . . ." or treatment for such a disorder.

not recall whether she had seizures, but she consistently took her medications. In his opinion, she cannot live alone, partly because she cannot manage her finances.

21. Claimant testified that she needs a wheelchair “all the time,” and cannot walk by herself for long without needing help. She struggles with independence, and cannot shower, eat, change clothes, drive a car, go shopping, and manage her finances without assistance. She can use the toilet alone but needs diapers. She presently lives at a Dycora nursing home in Fresno.

22. Claimant submitted several records in support of her claim. This documentation included self-performance charts from the Dycora nursing home where she currently resides, which show various day-to-day living functions claimant performed during the month of October 2019. The charts indicate that in many instances, claimant required assistance from Dycora staff to carry out basic functions. A Dycora medical progress note indicates that when claimant was admitted to the facility on September 25, 2019, she was initially diagnosed with a fractured femur, major depressive disorder, epilepsy, constipation, cerebral palsy, wheezing, pain, muscle weakness, dysphagia, cognitive communication deficit, and schizophrenia.

23. Claimant also submitted a September 2019 pharmacy summary showing that she currently takes medications for pain, wheezing, epilepsy, constipation, schizophrenia, and major depressive disorder. In a Capacity Declaration dated May 7, 2019, Stephen Horwitz, M.D., stated that claimant “has diagnoses of intellectual disability, chronic schizophrenia and cerebral palsy,” and that her family could no longer care for her “due to frequent behavioral exacerbations.” He opined that she therefore lacked the capacity to give informed consent to medical treatment.

## Discussion

24. Ms. Miranda, Dr. Kawashima and Dr. Yang demonstrated that they engaged in a capable and thorough assessment of records and documents regarding claimant's testing, home life, and schooling. All three witnesses credibly opined that such information does not support a finding of a qualifying disability based on intellectual disability, fifth category, or cerebral palsy; nor, in the second analysis, is there evidence of a substantial disability resulting from any of those three disabilities. Furthermore, the records and documents detailing claimant's condition after she was no longer a CVRC client did not establish that she subsequently developed a developmental disability originating before she turned 18 years old. While claimant's current day-to-day struggles are identifiable, they do not serve to establish that she suffered from a qualifying developmental disability before she turned 18. CVRC's reassessment of claimant's case status in 2001 was, by all indications, thoughtful and appropriate at that stage of claimant's development. At hearing, CVRC's reviewers demonstrated that its denial of claimant's current claim of eligibility was similarly based upon careful consideration and well-reasoned analyses.

25. At hearing, claimant, her mother, and her brother all engaged in what appeared to be a thoughtful, sincere effort to prove that she is qualified to receive regional center services. Her evidence showing the daily medical and psychological challenges she faces was credible and not in question. However, the regional center does not have the discretion, under the Lanterman Developmental Disability Services Act (Lanterman Act) and Title 17 regulations, to accept any new client that does not meet the qualifying criteria.

26. The totality of evidence did not establish that claimant suffers from an intellectual disability, or other type of developmental disability linked to intellectual

disability, or cerebral palsy, to the extent that such developmental disability, originating before age 18, would qualify her for regional center services. Nor did the evidence establish that claimant has functional limitations in three or more areas of major life activity which would collectively amount to a substantial disability, pursuant to Welfare and Institutions Code section 4512, subdivision (l). For all these reasons, CVRC's determination denying claimant's eligibility for regional center services was appropriate.

## **LEGAL CONCLUSIONS**

1. Throughout the applicable statutes and regulations (Welf. & Inst. Code, §§ 4700 - 4716, and Cal. Code Regs., tit. 17, §§ 50900 - 50964), the state level fair hearing is referred to as an appeal of the Service Agency's decision. Where a claimant seeks to establish her eligibility for services, the burden is on the appealing claimant to demonstrate by a preponderance of evidence that the Service Agency's decision is incorrect. Claimant has not met her burden of proof in this case as she did not establish that she suffers from a developmental disability (intellectual disability, or "fifth category" developmental disability, or cerebral palsy) which would entitle her to regional center services under the Lanterman Act.

2. In order to be eligible for regional center services, a claimant must have a qualifying developmental disability. As applicable to this case, Welfare and Institutions Code section 4512, subdivision (a), defines "developmental disability" as:

a disability that originates before an individual attains age 18, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual.

. . . This [includes] intellectual disability, cerebral palsy, epilepsy and autism. [It also includes] 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.

California Code of Regulations, title 17, section 54000, subdivision (b)(1), provides, in pertinent part, that the developmental disability shall “[o]riginate before age eighteen.” (Cal. Code Regs., tit. 17, § 54000, subd. (b)(1).)

3. To prove the existence of a developmental disability within the meaning of Welfare and Institutions Code section 4512, a claimant must show that she has a “substantial disability.” Pursuant to Welfare and Institutions Code section 4512, subdivision (l):

“Substantial disability” means the existence of significant functional limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person:

(1) Self-care.

(2) Receptive and expressive language.

(3) Learning.

(4) Mobility.

(5) Self-direction.

(6) Capacity for independent living.

(7) Economic self-sufficiency.

4. Additionally, California Code of Regulations, title 17, section 54001 states, in pertinent part:

(a) "Substantial disability" means:

(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.

5. The totality of the evidence did not establish that claimant suffers from an area of substantial disability in any specific category. No areas of significant functional limitation within the definitions set forth above were supported by the evidence. Nor did claimant present evidence establishing that her alleged developmental disabilities originated before she turned 18.

6. In addition to proving a "substantial disability," a claimant must show that her disability fits into one of the five categories of eligibility set forth in Welfare and Institutions Code section 4512. As noted above, the first four categories are specified as: intellectual disability, cerebral palsy, epilepsy, and autism. The "fifth" and last category of eligibility is listed as "[d]isabling 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." (Welf. & Inst. Code, § 4512.)

7. In order to establish eligibility, a claimant's substantial disability must not be solely caused by an excluded condition. The statutory and regulatory definitions of "developmental disability" (Welf. & Inst. Code, § 4512 and Cal. Code. Regs., tit. 17, § 54000) exclude conditions that are *solely* physical in nature. California Code of Regulations, title 17, section 54000, also excludes conditions that are *solely* psychiatric disorders or *solely* learning disabilities. Therefore, a person with a "dual diagnosis" – that is, a developmental disability coupled with either a psychiatric disorder, a physical disorder, or a learning disability – could still be eligible for services. However, someone whose conditions originate from just the excluded categories (psychiatric disorder, physical disorder, or learning disability, alone or in some combination) and who does *not* have a developmental disability would not be eligible.



8. Claimant maintains she is eligible for regional center services under a diagnosis of intellectual disability, or disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability. Neither of these diagnoses was established by the totality of the evidence. The evidence that she suffered from major depression and schizophrenia were therefore evidence of solely psychiatric disorders. That evidence also arose after claimant reached 18 years old. For these reasons, these psychiatric disorders did not establish a disabling condition.

9. In sum, claimant's evidence was not persuasive. A preponderance of the evidence does not support a finding that claimant is eligible to receive regional center services.

### **ORDER**

Claimant's appeal is denied. CVRC's determination that claimant is not eligible for regional center services is upheld.

DATE: November 12, 2019

JOHN E. DeCURE  
Administrative Law Judge  
Office of Administrative Hearings

## **NOTICE**

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.