

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

OAH No. 2011090317

JOYCE B.,

Claimant,

vs.

NORTH LOS ANGELES COUNTY
REGIONAL CENTER,

Service Agency.

DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings, on January 26, 2012, in Lancaster, California. Joyce B. (Claimant) was present and was represented by her authorized representative, Roberta Newton, Director of Area Board 10.¹ North Los Angeles County Regional Center (NLACRC or Service Agency) was present and was represented by its Contract Officer, Rhonda Campbell.

Oral and documentary evidence was received, and argument was heard. The record was closed, and the matter was submitted for decision on January 26, 2012.

ISSUE

Does Claimant have a developmental disability entitling her to regional center services?

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¹ Claimant's and her mother's last initials are used in this Decision, in lieu of their surnames, in order to protect their privacy.

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FACTUAL FINDINGS

1. Claimant is 35 years old. She claims to be eligible for regional center services based on a diagnosis of Mental Retardation, or in the alternative, under the Fifth Category of eligibility.

2. The Service Agency determined that Claimant is not eligible for regional center services because she does not suffer from any qualifying developmental disability. Based on this determination, the Service Agency denied services to Claimant, and Claimant submitted a request for fair hearing. (Service Agency Exhibit 1.)

3. Claimant was born at full term, and her mother recalls her early childhood development as “normal.” When she entered school, her “motor skills were very slow,” and her “attention span was off,” but Claimant was not tested for special education eligibility or placed in special education classes. According to her mother, Claimant had “average” and “passing grades” in school. (Testimony of Deborah B.)

4. In 1999, Claimant obtained her high school diploma and a diploma in the study of business technology from Sierra Nevada Job Corps. She has held several jobs as a security guard, but is no longer interested in pursuing this occupation. (Service Agency Exhibit 4.)

5. Claimant is engaged to be married and has two children, ages five and nine. She holds a California driver’s license, having passed the written portion of the driving examination after numerous failed attempts. For transportation, she drives her fiancé’s automobile. Claimant is able to complete household chores, can use appliances safely and cooks complete meals. Her fiancé helps her with grocery shopping because she has trouble indentifying coins when paying with cash. She can place telephone calls and can order from a menu. She can only tell time on a digital clock. (Testimony of Claimant, Joyce B.; Service Agency Exhibit 5.)

6. Claimant has trouble reading, and describes herself as a very slow reader. She is able to write sentences. She can provide her address and phone number and knows the days of the week and the four seasons. She can engage in conversation and stay on topic with good speech clarity. She is not aggressive and can handle change to her routine. She does become easily confused when asked to make a transition. (Service Agency Exhibit 5.)

7(a). On July 20, 2011, Ann L. Walker, Ph.D., conducted a Psychological Assessment of Claimant when she was 34 years, 11 months old, to determine regional center eligibility. At the time of the July 20, 2011 assessment, Dr. Walker reviewed an April 2011 Los Angeles County GAIN Program Learning Disabilities Evaluation, but was not provided any of Claimant’s school records for review. Dr. Walker administered the Wechsler Adult Intelligence Scale – Fourth Edition (WAIS-IV), the Wide Range Achievement Test – Fourth Edition (WRAT-4), the Vineland Adaptive Behavior Scales – Second Edition (Vineland II)

and the Gilliam Autism Rating Scale – Second Edition (GARS-2). (Service Agency Exhibit 7.) Claimant was able to converse with Dr. Walker for more than 10 minutes.

7(b). Claimant’s cognitive testing scores on the WAIS-IV were in the borderline range in most areas (Full Scale IQ - 69; Verbal Comprehension Index – 70; Perceptual Reasoning – 75; Working Memory Index – 71; and Processing Speed Index – 79). She showed the greatest weakness in verbal comprehension skills and in arithmetic skills. (Service Agency Exhibit 7.)

7(c). On the administration of the WRAT-4, Claimant’s word reading and sentence comprehension skills were at the third grade level. Her math computation skills were at a 2.9 grade level. Her overall performance on the WRAT-4 yielded scale scores in the “mild” range. (Service Agency Exhibit 7.)

7(d). Claimant’s adaptive behavior scores from the Vineland (with Claimant as the informant) ranged from mild to moderately deficient (Communication Domain – 35; Daily Living Skills Domain – 54; Socialization Domain – 45; Adaptive Behavior Composite - 43). Dr. Walker noted the following:

[Claimant] is able to dress and bathe independently. She cooks. She told the examiner that she enjoys making fried chicken and fried pork chops. She reports that she launders the clothing. [Claimant] has her own cell phone. She was not able to tell time with the examiner’s analog watch. She does like to go on the Internet and likes to check her email. [Claimant] does not use a checking or savings account. She does not usually travel independently, but can go to a familiar destination by bus.² [Claimant] does not manage her money. She does not pay expenses. She is not sure if she is receiving the right change when she makes a purchase.

[Claimant] does not have many friends. She keeps to herself. [Claimant] reported that she often feels that people are laughing at her because she repeats herself and has trouble remembering things. [Claimant] likes watching television. She likes to go to movies. Sometimes, she likes to play with her children. On television, she enjoys watching sports like basketball and football. [Claimant] reported that if she is angry, she goes and sits down.

(Service Agency Exhibit 7.)

² Although Claimant testified that she does not know how to use public transportation, this assertion was questionable given her statement to Dr. Walker that she can travel by bus, which was corroborated by a notation in a Los Angeles County GAIN Program Learning Disabilities Evaluation, dated April 2011, indicating that Claimant reportedly “relies on public transportation.” (Service Agency Exhibit 4.)

7(e). The GARS-2 was completed by interviewing Claimant. She obtained an Autism Index of less than one percent. She did not demonstrate any behavior consistent with a diagnosis of Autistic Disorder. (Service Agency Exhibit 7.)

7(f). Dr. Walker diagnosed Claimant as follows:

AXIS I: No Diagnosis.

AXIS II: Borderline Intellectual Functioning³

AXIS III: Defer to Medical Evaluation.

(Service Agency Exhibit 7.)

7(g). Dr. Walker recommended the following:

It is recommended that [Claimant] be considered for eligibility for Regional Center Services as an individual with conditions similar to Mental Retardation, since she shows significant delays in nearly every area of her development. [Claimant's] self-help skills were significantly delayed in the mild range. Communication and social skills were significantly delayed in the moderate range. Academic skills were significantly delayed in the mild range and were at a 2nd to 3rd grade level. [Claimant] did perform in the low moderate range on the WAIS-IV in most areas.

In many ways, [Claimant] presents as an individual very similar to those with Mental Retardation. For example, at the present time, [Claimant] is extremely upset because her 9 year old son already knows more about math skills and reading skills than [Claimant]. He teases her and this hurts her feelings. [Claimant] cried when talking about this and her tears gave the impression of an individual who seems much younger than her chronological age. It is recommended that [Claimant] be referred to the Eligibility Team to consider Fifth Category.

(Service Agency Exhibit 7.)

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³ The diagnosis was derived from the Diagnostic and Statistical Manual of Mental Disorders, 4th ed., Text Revised (DSM-IV-TR), published by the American Psychiatric Association. The Administrative Law Judge takes official notice of the DSM-IV-TR as a generally accepted tool for diagnosing mental and developmental disorders.

8(a). On August 2, 2011, Mark D. Pierce, Ph.D., conducted a Psychological Evaluation of Claimant when she was 35 years old. Dr. Pierce listed Claimant's "Presenting Complaints" as follows:

The claimant endorses suffering "severely" for a history of learning disability indentified from elementary. She surprisingly indicates she graduated high school with a diploma and was not in special education, "But they wanted to put me in." This appears to be for her family not wanting her to be so labeled. She reports she has worked security, but "I cheated on paperwork and tests to get those jobs." However she was released each time in less than a year's employ, because "The clients didn't like me because I kept to myself."

(Service Agency Exhibit 11.)

8(b). During the Mental Status Examination, Dr. Pierce observed:

ORIENTATION AND INTELLECT: The claimant was oriented to time, place, and person, if not the specific purpose for today's visit. The claimant comprehended all aspects of the evaluation. Her verbal responses time was slowed. Speech was not dysarthric and the tone was under-modulated. Thoughts were organized if verbally under-productive.

Intellectual functioning is estimated to be in the deficient range, based on claimant interview.

MOOD AND AFFECT: The claimant's mood and affect were sober to dysthymic. She reports depressive adjustment, "because I can't get a job to support my family." She lost her mother through a gas leak in her home.⁴ She feels her depression is "sometimes severe, because I cant' get away from it." She also indicates that persistent migraines depress her. She has no history of mental health treatment. There was no indication of imminent dangerousness to self or others or of frank psychotic-like thought processes.

[¶] . . . [¶]

CONCENTRATION AND ATTENTION-SPAN: Attention and concentration are mildly challenged during interview, and continue so per attentionally-mediated testing. Formal measures of attention and

⁴ This sentence in Dr. Pierce's report was erroneous, per Claimant's testimony, and based on the fact that Claimant's mother testified telephonically at the fair hearing.

concentration (WAIS-IV Working Memory and Processing Speed Composites) are both within the well deficient range, commensurate with other I.Q. composite scores.

(Service Agency Exhibit 11.)

8(c). In assessing Claimant's "Current Level of Functioning," Dr. Pierce noted:

The claimant is able to dress and bathe herself, perform household chores, and she picks out items for purchase with shopping, though apparently does not pay at the end and does not do cooking.^[5]

She does not pay her own bills or handle her own money, [*sic*] her boyfriend does.

The claimant is unable to drive^[6] but moves about within the community alone.

The claimant reports getting along "good" with family and relatives and "good" with friends and neighbors. However, on follow up she acknowledged she has no friends outside of her family.

(Service Agency Exhibit 11.)

8(d). Apparently unaware that Dr. Walker had done so less than a month prior, Dr. Pierce administered the WAIS-IV and the WRAT-4. He also administered the Wechsler Memory Scale-IV. Dr. Pierce did not administer any instrument to measure Claimant's adaptive functioning (e.g. Vineland). (Service Agency Exhibit 11.)

8(e). On the WAIS-IV, Claimant obtained a Full Scale IQ of 55, a Verbal Comprehension Index of 66, Perceptual Reasoning of 58, Working Memory Index of 58, and Processing Speed Index of 65.

⁵ This assertion was contrary to Claimant's statements during her Social Assessment and Dr. Walker's July 20, 2011 evaluation confirming that she "cooks complete meals," (Service Agency Exhibit 5) and that she "cooks [and] enjoys making fried chicken and fried pork chops." (Service Agency Exhibit 7.)

⁶ This assertion was contrary to Claimant's statements during her Social Assessment and during her testimony confirming that she has a driver's license and drove herself to the assessment and the fair hearing. (Service Agency Exhibit 5; Testimony of Claimant, Joyce B.)

8(f). On the administration of the WRAT-4, Claimant's word reading and sentence comprehension skills were at the 4.9 and 2.4 grade levels, respectively. Her math computation skills were at a 3.5 grade level. Dr. Pierce stated:

The claimant shows mixed capacity with language-related achievement screening, with Reading, Sentence Comprehension and Spelling scores from the well deficient to mid borderline range. Mathematical achievement is also deficient range. This is *not* a profile of learning disorder for language-related or mathematics achievement, for these limitations being best subsumed under primary mild mental retardation.

(Service Agency Exhibit 11.)

8(g). Dr. Pierce reviewed the April 2011 Los Angeles County GAIN Program Learning Disabilities Evaluation, and noted:

Achievement testing finds parallel challenges to her efforts today, with her achieving a [Test of Non-verbal Intelligence-Third Edition (TONI-III)] nonverbal I.Q. equivalent of 63 while Woodcock-Johnson-III abilities testing showed cognitive (*not* achievement) abilities surprisingly from the bottom borderline to even bottom low average range.

(Service Agency Exhibit 11.)

8(f). Dr. Pierce diagnosed Claimant as follows:

AXIS I: Dysthymic disorder (moderate to severe depression secondary to difficult academic history, unable to currently gain a job, loss of her mother, not treated).

AXIS II: Mild mental retardation (claimant consistently performs within mildly to greater deficient range with most all testing administered).

AXIS III: Report of persistent migraines.

(Service Agency Exhibit 11.)

9(a). After Dr. Walker's and Dr. Pierce's evaluations were completed, Complainant provided the Service Agency with her school records from the Compton Unified School District (for ninth grade) and from the Clark County School District (for grades 10 through 12). (Service Agency Exhibits 8 and 9.)

11(b). Dr. Walker changed her prior diagnosis to the following:

AXIS I: Cognitive Disorder [Not Otherwise Specified (NOS)]

AXIS II: No Diagnosis

AXIS III: Defer to Medical Evaluation.

(Service Agency Exhibit 17.)

11(c). Dr. Walker explained her changed diagnosis as follows:

[Claimant's] school records suggest much more strength than she presented during the Psychological Evaluation. The [school records] indicate average performance in general education placement with resource room support. With this minimal support, her performance yielded a 2.028 GPA, or a "C" average. This is consistent with normal intelligence. For this reason, the diagnosis of Borderline Intellectual Functioning is no longer recommended, and the diagnosis of Cognitive Disorder NOS is recommended.

(Service Agency Exhibit 17.)

12. Heike Ballmaier, Psy.D., testified on behalf of the Service Agency. Her credible testimony established the following:

(a). The Los Angeles County GAIN Program Learning Disabilities Evaluation provides information regarding Claimant's level of functioning with regard to potential employment, but does not provide information about her functioning prior to age 18. The Learning Disabilities Evaluation established that Claimant has transferable skills in customer service and security. She possesses virtually all noted job readiness skills, except for an appropriate work pace. Her test results indicate low cognitive (TONI-III – score of 63) and academic functioning except for her results on the Woodcock Johnson III, which indicate cognitive efficiency ranging to low average (80). Claimant's work history and the ability to earn her high school and business diplomas are indicative of higher cognitive functioning as an adult. (Testimony of Dr. Ballmaier; Service Agency Exhibit 4.)

(b). Vineland scores obtained by Dr. Walker were not consistent with information contained in the other records reviewed. At face value, the Vineland scores are indicative of a moderately to possibly severely mentally retarded person. However, given Claimant's presentation and the findings in the Learning Disabilities Evaluation, she appears to be higher functioning than a person with Mental Retardation. (Testimony of Dr. Ballmaier; Service Agency Exhibits 4 and 7.)

(c). Dr. Pierce's diagnosis of Mental Retardation is not based on sufficient findings as required for a DSM-IV-TR diagnosis. A diagnosis of Mental Retardation requires a finding of significantly sub-average intellectual functioning accompanied by significant limitations in adaptive functioning, which originated prior to age 18. It is typically not appropriate to make a diagnosis of Mental Retardation after age 18 without information regarding the person's cognitive functioning prior to age 18. Dr. Pierce did not review any of Claimant's records prior to age 18. Additionally, it is not appropriate to make a DSM-IV-TR diagnosis of Mental Retardation without administering standardized tests for adaptive functioning. Dr. Pierce did not administer any tests to measure Claimant's adaptive functioning. Moreover, with regard to Claimant's much lower scores on Dr. Pierce's administration of the WAIS-IV than Dr. Walker's administration, it is noted that an individual cannot score higher on cognitive testing than their potential, but could score lower than their cognitive potential. It is important to note that there were factors that could limit a person's ability to function on standardized testing, including psychiatric conditions, mood disorders or anxiety. A person who is suffering from depression will show slow processing, so the evaluating psychologist must differentiate and rule out factors other than cognitive deficits which could have caused low scores. Dr. Pierce did not address how Claimant's depression or her lack of concentration (e.g. "mildly challenged during interview") impacted her testing performance and her low WAIS-IV scores. Dr. Pierce's evaluation did not meet the minimum standards of quality for psychologists who conduct psychological assessments. (Testimony of Dr. Ballmaier; Service Agency Exhibits 7, 11, 14 and 17.)

(d). In determining whether Claimant suffers from a Fifth Category condition, the age of onset of a claimant's condition must be considered; that is, the disability must arise prior to age 18. Claimant's ability to earn a GPA of 2.028 in general education classes prior to age 18 was not consistent with a diagnosis of Mental Retardation or with her placement in Fifth Category eligibility. (Testimony of Dr. Ballmaier; Service Agency Exhibits 8, 9, 14 and 17.)

13(a). Given Dr. Ballmaier's testimony in Finding 12(c), and Dr. Pierce's lack of explanation for (1) his failure to administer standardized testing for adaptive functioning, (2) his failure to consider information regarding Claimant's cognitive functioning prior to age 18, and (3) his failure to address how Claimant's depression or lack of concentration impacted her testing performance and her low WAIS-IV scores, Dr. Pierce's diagnosis of Mental Retardation was given no weight.

13(b). The evidence did not establish that Claimant has Mental Retardation. Consequently, Claimant does not qualify for regional center services under a diagnosis of Mental Retardation.

14. The evidence did not establish that Claimant has a condition similar to Mental Retardation, or that she requires treatment similar to that of people with Mental Retardation. Consequently, Claimant does not qualify for regional center services under the Fifth Category.

LEGAL CONCLUSIONS

1. Claimant has not established that she suffers from a developmental disability entitling her to regional center services. (Factual Findings 1 through 14.)

2. 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 that the Service Agency's decision is incorrect. Claimant has not met her burden of proof in this case.

3. In order to be eligible for regional center services, a claimant must have a qualifying developmental disability. Welfare and Institutions Code section 4512 defines "developmental disability" as:

a disability which originates before an individual attains age 18, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual, and includes mental retardation, cerebral palsy, epilepsy, autism, and disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, but shall not include other handicapping conditions that are solely physical in nature.

4(a). 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."

4(b). 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(a). 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. The first four categories are specified as: mental retardation, epilepsy, autism and cerebral palsy. The fifth and last category of eligibility is listed as “disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation.” (Welf. & Inst. Code, § 4512.) This category is not further defined by statute or regulation.

5(b). Whereas the first four categories of eligibility are very specific, the disabling conditions under this residual, fifth category are intentionally broad to encompass unspecified conditions and disorders. However, this broad language is not intended to be a catchall, requiring unlimited access for all persons with some form of learning or behavioral disability. There are many persons with sub-average functioning and impaired adaptive behavior; under the Lanterman Act, the Service Agency does not have a duty to serve all of them.

5(c). While the Legislature did not define the fifth category, it did require that the qualifying condition be “closely related” (Welf. & Inst. Code, § 4512) or “similar” (Cal. Code. Regs., tit. 17, § 54000) to mental retardation or “require treatment similar to that required for mentally retarded individuals.” (Welf. & Inst. Code, § 4512.) The definitive characteristics of mental retardation include a significant degree of cognitive and adaptive deficits. Thus, to be “closely related” or “similar” to mental retardation, there must be a manifestation of cognitive and/or adaptive deficits which render that individual’s disability like that of a person with mental retardation. However, this does not require strict replication of all of the cognitive and adaptive criteria typically utilized when establishing eligibility due to mental retardation (e.g., reliance on I.Q. scores). If this were so, the fifth category would be redundant. Eligibility under this category requires an analysis of the quality of a claimant’s cognitive and adaptive functioning and a determination of whether the effect on her performance renders her like a person with mental retardation. Furthermore, determining whether a claimant’s condition “requires treatment similar to that required for mentally retarded individuals” is not a simple exercise of enumerating the services provided and finding that a claimant would benefit from them. Many people could benefit from the types of services offered by regional centers (e.g., counseling, vocational training or living skills training). The criterion is not whether someone would benefit. Rather, it is whether someone’s condition requires such treatment.

6. 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 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.

7. The Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revised (DSM-IV-TR) describes Mental Retardation as follows:

The essential feature of Mental Retardation is significantly subaverage general intellectual functioning (Criterion A) that is accompanied by significant limitations in adaptive functioning in at least two of the following skill areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety (Criterion B). The onset must occur before age 18 years (Criterion C). Mental Retardation has many different etiologies and may be seen as a final common pathway of various pathological processes that affect the functioning of the central nervous system.

General intellectual functioning is defined by the intelligence quotient (IQ or IQ-equivalent) obtained by assessment with one or more of the standardized, individually administered intelligence tests (e.g., Wechsler Intelligence Scales for Children—Revised, Stanford-Binet, Kaufman Assessment Battery for Children). Significantly subaverage intellectual functioning is defined as an IQ of about 70 or below (approximately 2 standard deviations below the mean). It should be noted that there is a measurement error of approximately 5 points in assessing IQ, although this may vary from instrument to instrument (e.g., a Wechsler IQ of 70 is considered to represent a range of 65-75). Thus, it is possible to diagnose Mental Retardation in individuals with IQs between 70 and 75 who exhibit significant deficits in adaptive behavior. Conversely, Mental Retardation would not be diagnosed in an individual with an IQ lower than 70 if there are no significant deficits or impairments in adaptive functioning. . . . When there is significant scatter in the subtest scores, the profile of strengths and weaknesses, rather than the mathematically derived full-scale IQ, will more accurately reflect the person’s learning abilities. When there is a marked discrepancy across verbal and performance scores, averaging to obtain a full-scale IQ score can be misleading.

Impairments in adaptive functioning, rather than a low IQ are usually the presenting symptoms in individuals with Mental Retardation. *Adaptive functioning* refers to how effectively individuals cope with common life demands and how well they meet the standards of personal independence expected of someone in their particular age group, sociocultural background, and community setting. Adaptive functioning may be influenced by various factors, including education, motivation, personality characteristics, social and vocational opportunities, and the mental disorders and general medical conditions that may coexist with Mental Retardation. Problems in adaptation are more likely to improve with remedial efforts than is the cognitive IQ, which tends to remain a more stable attribute.

(DSM-IV-TR at pp. 39 - 42.)

8. Regarding Mild Mental Retardation (I.Q. level of 50-55 to approximately 70), the DSM-IV-TR states:

[Persons with Mild Mental Retardation] typically develop social and communication skills during the preschool years (ages 0-5 years), have minimal impairment in sensorimotor areas, and often are not distinguishable from children without Mental Retardation until a later age. By their late teens, they can acquire academic skills up to approximately the sixth-grade level. By their adult years, they usually achieve social and vocational skills adequate for minimum self-support, but may need supervision, guidance, and assistance, especially when under unusual social or economic stress. With appropriate supports, individuals with Mild Mental Retardation can usually live successfully in the community, either independently or in supervised settings.

(*Id.* at pp. 42 - 43.)

9. Regarding the differential diagnosis of Borderline Intellectual Functioning (IQ level generally 71 to 84), the DSM-IV-TR states:

Borderline Intellectual Functioning describes an IQ range that is higher than that for Mental Retardation (generally 71-84). As discussed earlier, an IQ score may involve a measurement error of approximately 5 points, depending on the testing instrument. Thus, it is possible to diagnose Mental Retardation in individuals with IQ scores between 71 and 75 if they have significant deficits in adaptive behavior that meet the criteria for Mental Retardation. Differentiating Mild Mental

Retardation from Borderline Intellectual Functioning requires careful consideration of all available information.

(*Id.* at p. 48.)

10. Claimant does not meet the criteria under the DSM-IV-TR for a diagnosis of Mental Retardation. Furthermore, Claimant has not established that she demonstrates significant deficits in cognitive functioning and deficits in adaptive functioning such that she presents as a person suffering from a condition similar to Mental Retardation. Moreover, the evidence did not establish that Claimant requires treatment similar to that required for mentally retarded individuals. Based on the foregoing, Claimant has not met her burden of proof that she falls under the fifth category of eligibility.

11. The weight of the evidence did not support a finding that Claimant is eligible to receive regional center services.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The Service Agency's determination that Claimant is not eligible for regional center services is upheld. Claimant's appeal is denied.

DATED: February 3, 2012

JULIE CABOS-OWEN
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.