

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

NORTH BAY REGIONAL CENTER,

OAH No. 2014100063

DECISION

Administrative Law Judge Perry O. Johnson, Office of Administrative Hearings (OAH), heard this matter on December 15, 2014, in Napa, California.

Claimant's adoptive father represented the interest of Claimant, who was not present for the proceeding.

Attorney at Law Kristin N. Casey represented North Bay Regional Center (service agency).

On December 15, 2014, the parties submitted the matter and the record closed.

ISSUE

Within the meaning of the Lanterman Developmental Disabilities Services Act (Lanterman Act) is Claimant eligible to receive regional center services and supports through service agency?

FACTUAL FINDINGS

1. Claimant was born during July 1992. Currently, he is 22 years old.
2. On September 11, 2014, service agency issued both an Eligibility Statement and a Notice of Proposed Action regarding Claimant. The Eligibility Statement set forth that Claimant was "not eligible for regional center service because the condition [that impacts him] is not a developmental disability" The Notice of Proposed Action specified that

service agency planned to “close [Claimant’s] case” because he “is not eligible for [service agency] services because he is not substantially disabled by cerebral palsy, epilepsy, autism, an intellectual disability, or a condition closely related to an intellectual disability or requiring treatment similar to that required by persons with an intellectual disability.”

3. On September 30, 2014, Claimant’s parents caused to be filed a Fair Hearing Request form, dated September 25, 2014. The reason for requesting a fair hearing was expressed as: “[Claimant] has been rejected for any services based on lack of cerebral palsy, epilepsy, autism, or intellectual disability. We disagree as [Claimant] has been diagnosed [as being] on the autistic spectrum [and he] does suffer from an intellectual disability.” Claimant’s parents stated that the need to resolve their complaint required “a fair hearing to gain services so [Claimant] can lead a more productive life and [so that he] has [some] aid in the functioning in society without being led down negative paths.”

Parent’s Testimony

4. Claimant’s adoptive father offered compelling and poignant testimony at the hearing of this matter.

5. Claimant’s parents took custody of Claimant when he was seven days old. Even though the adoptive parents secured custody within a very short time after his birth, Claimant’s birth mother, who was found to be impaired by a form of schizophrenia, was reluctant to relinquish her parental rights. Only after the passage of about appropriately three years, did Claimant’s adoptive parents acquire legal and permanent custody of the boy.

Within months of beginning to care for Claimant, his adoptive parents claimed that they noticed that Claimant had peculiar behaviors. For a considerable number of years, Claimant has evidenced poor eye contact and he has manifested stereotypical movements including a need to hop around rooms and to show a facial tic. Over the years, Claimant’s parents have been exposed to great stress due to Claimant’s behaviors and suspected disabilities.

6. Claimant’s adoptive father contends that less than a complete, thorough and reasonable review has been made by service agency of Claimant’s history of limitations as well as his behaviors that should render him eligible for regional center services and supports because of either autism or an intellectual disability. Claimant’s parents are distressed that the single paragraph summary in service agency’s NOPA is so cryptic and so lacking in detail so as to operate as an affront to Claimant and the parents’ years of anguish with Claimant, who is impacted by a very real complex disorder. Claimant is gravely in need of supports and services in that his behavior has reduced in his exclusion from the family home. He resides in an adult male group home and has minimal assistance.

Opinions of Experts from Claimant's Childhood and Adolescence

7. Because Claimant's parents are so concerned that the nature and extent of Claimant's disorder has not been objectively reviewed and contemplated by service agency, the following detailed set of findings is provided:

8. On November 23, 1999, when Claimant was seven years, two months old, Gregory Y. Matsumoto, Psy.D., issued a Psychological Assessment-Abbreviated Report regarding Claimant. The reason for the referral to Dr. Matsumoto arose from his parents' concern that Claimant "had a poor attitude." In particular, Claimant would not participate in school assignments; he had expressed that he did not want to complete his schoolwork; and he was "not productive."

Under Dr. Matsumoto's administered tests, Claimant was not found to reflect conditions of either autism or intellectual disability. In particular, by way of the "The Wide Range Assessment of Memory and Learning (WRAML) screener," Claimant performed at or above the average range of performance. The psychologist noted that Claimant did "very well in using verbal abilities to both learn and use memory, in that both "learning and memory [were] within and above the average range." Another test called the "The Kaufman Brief Intelligence Test (KBIT)" showed Claimant to be an "intelligent child" in the view of Dr. Matsumoto. But, the Thematic Apperception Test (TAT) indicated that "anger and aggression themes [were] frequent" in the test findings. Claimant projected a depressed demeanor during the testing process in November 1999.

Dr. Matsumoto concluded that Claimant "presented himself as a depressed youth. He had endless complaints and could not verbalize positive situations." Also the psychologist expressed that Claimant's "test scores are of an intelligent youth with sporadic academic output." Under the TAT scores, Claimant manifested himself as a "depressed youth."

Dr. Matsumoto recommended that a pediatrician and child psychiatrist consider placing Claimant on psychotropic medications. And, the psychologist's report ended with an expressed hope that Claimant "will have a positive response to antidepressant medications" After Claimant had adhered to a course with drug therapy, Dr. Matsumoto suggested a "more in depth assessment" that might be "directed toward the possibilities of a Learning Disorder" being at the basis of Claimant's "poor attitude."

9. On December 12, 2001, when Claimant was nine years, five months old, Cathryn Ross, M.D., a specialist in Developmental and Behavioral Pediatrics, issued a Neurodevelopmental Evaluation report for Claimant.

Dr. Ross noted that the psychiatrist to whom Mr. Matsumoto had referred Claimant confirmed the diagnosis of depression and that the first treating psychiatrist had treated Claimant with Wellbutin, which resulted in his impulsivity being improved. Later Claimant began receiving services from Houghton Learning Center and he started therapy with Del Demezic, CSW, which helped Claimant, who began "smiling and laughing more."

Claimant's parents sought out Dr. Ross because Claimant had "difficulty following through on instructions," also the boy had "failed to finish tasks," further he seemed "not to listen when spoken to directly," and he made careless mistakes and he was "disorganized and forgetful in daily activities" as well as was "easily distracted."

Dr. Ross formulated impressions for Claimant in December 2001 that the boy was "suffering from anxiety and depression." He also had problems with "dysgraphia" (difficulty with handwriting) as well as "Developmental Coordination Disorder." Dr. Ross advanced doubt that Claimant had "significant learning disabilities," and the psychiatrist believed that Claimant was struggling academically secondary to an "AD/HD-Inattention form" of malady. Dr. Ross encouraged Claimant's continued therapy and use of medication to treat "his depression and anxiety."

SPECIAL EDUCATION ASSESSMENTS

10. On January 29, 2002, Mary Lucchese, M.S., a school psychologist with Browns Valley Elementary School in Napa, prepared a Psychological Evaluation for the Napa County SELPA¹.

Ms. Lucchese noted that in April 2000, Claimant underwent testing that indicated that he "did not meet eligibility criteria for students with a specific learning disability." At that time in 2000, Claimant did not demonstrate a significant discrepancy between his ability and achievement. Also the past test produced no "evidence of a severe processing disorder."

Ms. Lucchese administered a series of tests for Claimant in January 2002. Under the Stanford-Binet Intelligence Scale – Fourth Edition, Claimant produced for the intelligence and cognitive functioning abilities (verbal reasoning, abstract/visual reasoning, quantitative reasoning, and short-term memory), results of "average," and "low average." His weakness

¹ SELPA means the California Special Education Local Plan Area. Under a law promulgated in 1977, all school districts and county school offices were mandated to form consortiums in geographical regions of sufficient size and scope to provide for all special education service needs of children residing within the region boundaries. Each region, Special Education Local Plan Area (SELPA), developed a local plan describing how it would provide special education services.

SELPA's are dedicated to *the belief that all students can learn* and that special needs students must be guaranteed equal opportunity to become contributing members of society. *SELPA's facilitate high quality educational programs and services for special needs students* and training for parents and educators. The SELPA collaborates with county agencies and school districts to develop and maintain healthy and enriching environments in which special needs students and families can live and succeed.

was only in quantitative reasoning, which measures mathematical reasoning ability.

Under her report's section titled "Conclusions and Recommendations," Ms. Lucchese set out that Claimant possessed an "average to high average range [for] intellectual ability" The school psychologist went on to write that Claimant possessed "many cognitive strengths including . . . verbal expression and comprehension, and short term memory skills."

Ms. Lucchese made several suggestions such as giving Claimant "extra time to complete lengthy written work or in-class essays," and other techniques that Claimant might be exposed to so that an Individual Education Plan (IEP) team might "determine the most appropriate educational program" to address Claimant's academic needs.

11. Approximately nine months after her initial report, Ms. Lucchese prepared a Psychological Evaluation-Supplemental for Claimant, who was subject to the Napa County SELPA jurisdiction.

In the report, dated November 1, 2002, Ms. Lucchese commented that in April 2002, when he was in the fourth grade, Claimant began receiving support through the Resource Specialist Program because he was identified as having the "identified handicapping condition of Specific Learning Disability." Also, Ms. Lucchese observed that Claimant remained a patient of a private psychotherapist, Ms. Del Demezic, and that Claimant was medicated for "ADD and Depression." At the time of her evaluation in late October 2002, Claimant, who was a fifth-grade student, was showing "a high level of overall stress" and frustration with general education classroom work as well as difficulties with peers.

In October 2002, Ms. Lucchese administered several tests to Claimant. Under the "Behavior Assessment Scale for Children – Self Report," Ms. Lucchese found Claimant to manifest a "type of acute psychological distress." By way of "teacher report" for the same behavior assessment scale for children, the school psychologist opined that Claimant had "clinically significant elevations on the Overall Externalizing Problems scale, which includes scales of Hyperactivity, Aggression, and Conduct Problems." And, Ms. Lucchese set out that the Overall Internalizing Problems scale was "clinically significant, with the highest rating on the Depression scale . . ." for claimant.

In the "Conclusions and Recommendations" portion of the November 2002 report, Ms. Lucchese opined that Claimant was "a young man experiencing a significant degree of behavioral and emotional distress." The psychologist recommended that Claimant undergo a "mental health referral" to determine his eligibility to treat his acute distress, depression, social stress and general sense of inadequacy as part of an IEP.

12. In early 2003, Marian Lane Diamond, Ph.D., issued a 24-page Neuropsychological Evaluation report for Claimant, who was 10 years, four months old and a student at the fifth-grade level at Browns Valley Elementary School in Napa.

Dr. Diamond administered tests to Claimant on November 27, December 9, and December 11, 2002, as well as on January 8, 2003.

Dr. Diamond's detailed evaluative report includes several references to Claimant being impacted by a mental disorder. The report notes that a test result for Claimant "suggests a real possibility that [Claimant] is thought disordered." Claimant gave responses that led to an index that appeared "to be elevated in children with confused or disturbed thinking accompanied with behavioral disturbances." And the psychologist advanced that Claimant "has a diagnosable primary affective disorder or a chronic disposition to become pathologically depressed." Another test casts Claimant to be "similar to children who are emotionally immature with self-absorbed, introspective tendencies." They have extremely high levels of anxiety, tenseness, and rigidity combined with a high energy level. In the final paragraph before the "Summary and Recommendations" section of the report, Dr. Diamond made an observation that Claimant "exhibits many of the symptoms found in Pervasive Developmental Disorder Spectrum Disorders (commonly called the Autistic Spectrum Disorders)"

Under the report's "Summary and Recommendations" section, Dr. Diamond concludes that:

[Claimant] is a bright boy who . . . has exhibited increasing academic delays"

As well, [Claimant] exhibits serious neuropsychological deficits in auditory working memory and visual processing He is a stimulus-bound, impulsive learner who has no active strategies for learning, composition, or memory

In these findings, [Claimant] fits the profile for a high functioning child in the Pervasive Developmental Disorder Spectrum. PDD assumes difficulties with attention, executive functioning, oppositional behavior and developmental coordination delays. He is not like most autistic children who do not mind being loners in their worlds. [Claimant] does care about having friends.

Dr. Diamond renders diagnostic impressions that include Pervasive Developmental Disorder Not Otherwise Specified as well as Dysthymic Disorder (depression) as the conditions that adversely affected Claimant in November 2002.

13. On December 2, 2003, Emily Jordan, Ph.D., issued a Psychological Evaluation report of Claimant when he was 11 years, three months old, and a sixth-grade student at Harvest Middle School. At the time, his school district provided Claimant with special education services in the form of "resources support services for language arts and study skills" as well as Occupational Therapy support services along with having one behavioral

aide assigned to him during school hours to aid him with “task completion, social skill development and reduction of disruptive behaviors (talking to self, e.g. nonsensical or unrelated comments, talking to stuffed animal, laughing uncontrollably, and wandering around the classroom).” And at the time, Claimant was being treated by a child psychiatrist, William Evans, M.D., and an individual/family therapist, Bill Ruhs, MFT. The psychiatrist was treating Claimant for Pervasive Developmental Disorder, NOS, with episodic depression and anxiety. Claimant was medicated with Zoloft and Seroquel.

After analyzing the tests that were administered to Claimant in December 2003, Dr. Jordan wrote that “using the System for Scoring DSM criteria for Autistic Spectrum Disorders developed by Bryna Siegel, Ph.D., . . . [Claimant’s] symptoms *are subthreshold and do not warrant either the diagnosis of autism or pervasive developmental disorder, N.O.S.* . . . [Claimant] most closely meets the criteria for Asperger’s Disorder (using DSM-IV-TR criteria) due to impairment in eye contact, lack of social reciprocity . . . , impaired peer relationships, stereotyped motor mannerisms . . . , and lack of a clinically significant general delay in language or cognitive development” (Emphasis added.)

Dr. Jordan concluded her report with a diagnosis for Claimant that “observational data, interview data, rating scales, and projective testing appear to point most clearly to a diagnosis of Asperger’s Disorder.”

14. On approximately July 18, 2006, Maria Moleski, Ph.D., prepared a 27-page “Summary of Psychological and Neuropsychological Evaluation” for Claimant, who was 13 years, 11 months old. At the time, Claimant was in the eighth grade and enrolled at Star Academy in San Anselmo.

Dr. Moleski’s psychological and neuropsychological evaluation was to determine Claimant’s functioning in the areas of: intellectual, neuropsychological, socioemotional, and academic achievement.

Dr. Moleski observed that Claimant’s “verbal intellectual ability level fell into the average range, and was significantly higher than his visuospatial/nonverbal reasoning ability. His neurocognitive profile was quite variable, ranging from borderline to high average [Claimant’s] neuropsychological performance in the areas of language processing, memory, and motor skill was commensurate with ability level. Attention, executive functioning, and visuoperceptual/visuospatial processing represent areas of weakness.”

After much insightful findings, Dr. Moleski at page 17 of her report expressed:

[Claimant] exhibits characteristics associated with Pervasive Developmental Disorder, Not Otherwise Specified. ‘Pervasive Developmental Disorders’ (PDD) in a broad diagnostic category that contains specific disorders such as Autistic Disorder and Asperger’s syndrome. ‘Not Otherwise Specified’ means that [Claimant’s] constellation of behaviors does not neatly fit into any

one of these specific categories, and that he presents with subthreshold and atypical symptomatology

Dr. Moleski went on to state that, “Children on the pervasive developmental disorder spectrum differ widely in intelligence, language ability, and academic achievement. Like those with Asperger’s syndrome, [Claimant] is of average ability level Like those with Asperger’s syndrome, [Claimant] has circumscribed areas of interest Unlike those with Autistic Disorder or Asperger’s [syndrome, Claimant] demonstrated a relative strength in social interaction and he is a friendly and polite boy.”

Dr. Moleski administered the WISC-IV Composite Scale for intelligence. The tests showed Claimant to have a Verbal Comprehension IQ of 108, a Perceptual Reasoning score of 90, a Working Memory score of 91, and a Processing Speed of 75. The psychologist decided not to apply to Claimant a Full Scale IQ score.

Of important note, at page 20 of her report Dr. Moleski states, “[Claimant] has many positive qualities, not least of which [is] the great sense of humor he exhibited throughout this evaluation. He also has many other positive qualities that make his psychological prognosis positive. He is friendly and likeable, intelligent and kind, and he demonstrated a willingness to learn despite his difficulties Although [Claimant] has a pervasive developmental disorder, he is very high functioning and, with [special education] intervention, should be able to achieve independence and success as an adult.”

Dr. Moleski ended her July 2006 report by setting out “DSM-IV” diagnostic impressions to include under Axis I: (1) Pervasive Developmental Disorder NOS; (2) Attention-Deficit/Hyperactivity Disorder, Predominantly Inattentive Type; (3) Dysthymic Disorder; [and], (4) Learning Disorder NOS.

15. On February 1, 2010, when Claimant was 17 years old and enrolled in the 12th grade at Napa High School, the Napa County SELPA issued a report under Claimant’s IEP.

The report showed that “with accommodations,” Claimant had passed the California High School Exit Exam with a 352 score in English Language Arts and a 354 score in Mathematics. And because he had passed Algebra, Claimant was able to participate in the high school curriculum leading to a Diploma, rather than only acquiring a certificate of completion. (The only required courses that Claimant had to complete were 12th Grade English 5 units and Government 5 units.) The February 2010 IEP addendum noted that Claimant hoped to train to become either a veterinarian or a veterinarian’s assistant. He planned to enroll in a junior college so as to take courses to meet his objective to work in veterinary medicine.

The February 1, 2010, IEP included a note that read, in part: “At today’s meeting, Mental Health Services were discontinued. Previously existing needs for such services are no longer apparent.” The note went on to observe that Claimant was working on job applications and considering career choices. Also, the note stated that Claimant was

“planning to take the SAT in the next few weeks.” And the note recorded the Claimant was made aware that the State of California’s Department of Rehabilitation had “funds to set up a subsidized work experience and on-the-job training” for Claimant.

2007 REGIONAL CENTER ASSESSMENTS, EVALUATIONS AND DETERMINATION

16. On June 22, 2007, service agency Assessment Counselor, Dale Carr, M.S., conducted face-to-face interviews of Claimant based upon a referral from Maureen O’Shea, Ph.D., and his parents’ request that Claimant receive regional center supports and services. Ms. Carr issued an Initial Assessment report on July 5, 2007.

At the time service agency first considered Claimant’s eligibility for regional center services he was nearly 15 years of age. The assessment began with a suspicion that Claimant was impaired by an autistic spectrum disorder that rendered him eligible for inclusion in regional center programs.

Ms. Carr’s report was thorough and detailed. At page four of the report, Ms. Carr recommend that Dr. Todd Payne review all of the evaluations with the aim of reaching a determination on Claimant’s eligibility for service through service agency.

17. On November 5, 2007, Joan Harris, Ph.D., M.P.H., issued an Autism Diagnostics Evaluation report regarding Claimant. At the time of his interaction with Dr. Harris, Claimant was 15 years old.

Dr. Harris administered to Claimant the Autism Diagnostic Observation Schedule- Generic (ADOS-G) test. He received the ADOS-G Module 4, which is oriented for adolescents and adults with fluent speech. Dr. Harris wrote, “[o]verall scoring on the ADOS resulted in the score in the Autism Spectrum classification in the area of communication. [Claimant] scored ‘just in’ the Autism Spectrum classification in social interaction The resulting ADOS classification for this particular ADOS administration was that of “non-spectrum.”

Dr. Harris noted that scores at or above the cut-off score in all three areas: social, communication, and repetitive behavior, are required for consideration of an autistic classification on the ADOS.

Under the caption “Impressions,” Dr. Harris set out that Claimant “is a friendly young man who appears to be succeeding in his current school placement. Although, he has some social awkwardness and repetitive behavior, he does not . . . meet the DSM-IV criteria for Autistic Disorder. [Claimant] is sub-threshold on some autistic items and does meet the diagnosis of Pervasive Developmental Disorder, Not Otherwise Specified”

COUNTY MENTAL HEALTH AGENCIES

18. On June 7, 2010, Napa County Health and Human Services issued a Mental Health Discharge Summary for Claimant. The report summarized Claimant's benefit from a seven-year provision of "AB 3632 mental health services" under a Child and Family Client Plan. The report noted that because Claimant had "significantly improved" over the years with regard to his "mood, self-esteem and behavior at home, school" that services at the expense of Napa County would end with the mutual agreement of Claimant's parents and the county providers. The "Mental Health Clinician-Lic," Ms. Pamela Walton, MFT, provided Claimant's family with a list of community referrals in the event Claimant manifested new mental health problems.

19. On March 10, 2011, Napa County Health and Human Services issued a Mental Health Discharge Summary that pertained to a suicide attempt by Claimant, who was then 19 years old. The treating emergency room counselor noted that Claimant had "struggled with the loss of a job, loss of a college dream, loss of a military dream [and] loss of a girlfriend." Claimant was "seeking mental health services" due to his depressive symptoms and because he was "easily angered," and was impacted by "low frustration tolerance [and] recent suicidality." The mental health provider noted that Claimant "has had on-going difficulties since childhood - Asperger's, mood, ADHD and Pervasive Developmental Disorder."

The mental health provider made notes, in pertinent part, as follows:

Final Treatment Considerations: Per previous client record, [Claimant has] been able to overcome many of the difficulties he encountered as a result of his learning disabilities and difficulties understanding social interaction He made a smooth transition to a mainstream campus this year after attending a non-public school for the past several years. [Claimant] has been able to learn how to control his repetitive, stereotyped body movements and [he has] learned how to initiate and maintain conversations, maintain eye contact when talking, etc. He is currently creating chaos in his home. He and his girlfriend do not listen to [their] parents' directions or follow rules Most of [Claimant's] friends are still in high school.

Vocational Information: [Claimant] was fired from his last job at Boys and Girls Club but [he] has refused to tell his parents or anyone else what happened.

[Claimant] most recently worked as a day laborer doing landscaping.

[Claimant] has \$3,000 saved up When [Claimant attained] 18 [years of age] he demanded he be given full access to his [bank] account. [Claimant] has since spent the money on gifts for his

girlfriend, a tattoo, and other unknown purchases, and the money is now gone.

[Claimant] . . . is friendly and talkative.

UCSF MENTAL HEALTH TREATMENT

20. On February 15, 2011, the University of California, San Francisco (UCSF) medical center issued an evaluation summary that pertained to a 72-hour involuntary mental health hold under Welfare and Institutions Code section 5150 because of Claimant's expressions that he would commit suicide by jumping off a bridge. Claimant's emotional outburst, agitation and distraught condition arose from a dispute with a girlfriend and Claimant's adoptive mother. And he was rendered vulnerable because he had stopped taking medication with a hope of enlisting in the United States Navy. During his hospital stay, treating doctors resumed Claimant's dosage of Abilify, which aided his recovery. The UCSF note made reference to Claimant having a "long standing history of ADHD and Asperger's syndrome."

21. On February 22, 2012, Kim Norman, M.D., Clinical Professor of Psychiatry, UCSF, issued a handwritten note, which identified Dr. Norman as Claimant's "attending psychiatrist." The note indicated treatment for "Asperger's, ADHD, and Mood Disorder NOS."

OUT-OF-STATE (ARIZONA) EVALUATION

22. On August 22, 2011, Christopher J. Nicholls, Ph.D., ABPhN, ABPP (CI), of The Nichols Group in Scottsdale, Arizona, issued a report of a psychoeducational evaluation of Claimant when he was 19 years old. Claimant sought to attend the Spectrum College Transition program, which contemplated his enrollment in the Scottsdale Community College. The report indicated Claimant's enrollment in The Nichols Group program so that he could attain "an ultimate goal" of transferring to Northern Arizona University, where Claimant would study fire science.

Dr. Nicholls' report indicates that Claimant graduated from Napa High School with "approximately a 3.5 grade point average, and was top of his senior class." According to the psychologist, Claimant received "an English award and an award for athleticism and senior achievement." While in high school, Claimant played football as well as club lacrosse and he wrestled.

Although Claimant acknowledged to the evaluating psychologist that had been diagnosed with an Attention-Deficit/Hyperactivity Disorder and Asperger's syndrome, Claimant denied having "trouble with specific academic subjects, but has primary challenges with focused attention."

In August 2011, Claimant told Dr. Nicholls that he consumed 20 mg of Stratters and 50mg of Abilify, each month, to help him focus his attention.

In August 2011, Claimant had “signed up” to take classes at Scottsdale Community College in: Hazardous Materials; Rock Culture and History; and, Introduction to College Success.

Dr. Nicholls administered to Claimant the Weschsler Adult Intelligence Scale, Fourth Edition, which the evaluator observed, “resulted in a profile of scores that had wide variability, rendering the Full Scale Intelligence Quotient non-meaningful.” But on the test score chart, Claimant is given “84” as a “Full Scale” IQ. And, Claimant scored well within the Average range on the Verbal Comprehension cluster. In contrast, Claimant “demonstrated substantial challenges on tasks that required nonverbal reasoning, visual spatial analysis of presented information, and fluid reasoning.

Dr. Nicholls’s report includes an observation that Claimant’s “academic skills are essentially within the Average range.”

The impression reached by Dr. Nicholls is that Claimant’s evaluation is similar to the evaluation dating back a decade when Claimant was 10 years old. In particular, Claimant has a form of learning disability that has been called Nonverbal Learning Disability Syndrome, which falls within the autism spectrum of disorders. But, Dr. Nicholls went on to state that Claimant “appears to have age-appropriate academic competency.”

RECENT COUNTY MENTAL HEALTH ASSESSMENTS

23. On April 11, 2014, that is approximately six months before the hearing in this matter, the Napa County Health and Human Services agency prepared a Mental Health Crisis Assessment for Claimant. On that date, Claimant had been at the Napa Shelter following a nine-day period of jail confinement. In a state of fear and paranoia, Claimant telephoned his adoptive father who came to his aid. The father found Claimant in a disheveled and took him to a hotel for a shower.

The Mental Health Crisis Assessment recorded Claimant reporting auditory hallucinations and voicing his paranoia. Also the county mental health employee heard Claimant’s father state that Claimant had had two past hospitalizations (2011 and 2012) due to Claimant’s making suicide threats.

SERVICE AGENCY’S RECENT ASSESSMENT AND DETERMINATION

24. On May 28, 2014, service agency’s Assessment Counselor Catherine Mahler, Ph.D., issued an Initial Social Assessment report. The three-page report sets out a thorough yet abbreviated history regarding Claimant. Dr. Mahler noted that in 2007 service agency had found Claimant ineligible for regional center services, but Claimant’s parents were

requesting that the then 21-year-old man be re-evaluated because Claimant had ongoing difficulties with maintaining employment and living independently without “lots of support.”

Dr. Mahler recommended that Claimant undergo an autism spectrum disorder evaluation so as to again determine Claimant’s eligibility for regional center services.

25. On approximately August 13, 2014, Robert Horon, Ph.D., prepared a 31-page Psychological Evaluation report for Claimant.

Dr. Horon’s report is thorough and vividly written. He fills in gaps that other evaluators have glossed-over in reporting about Claimant.

Among the many insightful observations by Dr. Horon are the summaries of the ADOS-2 score ratings and Claimant’s social interaction score. On these matters, Dr. Horon showed that Claimant is not impaired by either autism or intellectual disability. The psychologist wrote on these topics as:

[With regard] to ADOS-2, [Claimant] exhibited an ability to use complex sentences and phrases in an appropriate manner. Some of his responses were brief but grammatically correct. He did not echo words and did not use idiosyncratic or stereotyped phrases or words. There were no abnormalities to [Claimant’s] speech, and [the psychologist] did not detect any stereotypically autistic speech abnormalities

[With regard] to reciprocal social interaction, [Claimant’s] eye contact was scored as well modulated. [Claimant] did squint frequently, but this did not seem to reflect a deficit in eye contact or gaze. The behavior also may have represented a motor tic
. . . .

Near the conclusion of his report, Dr. Horon declared, “[o]verall, [Claimant] evidenced few behaviors with each of the major symptom areas common in Autism Spectrum Disorders. [Claimant’s] scores on the ADOS-2 are below the cut-off scores for autism spectrum disorders for each test domain and for the overall total score [Claimant’s] classification on the ADOS-2 is *non*-Autism Spectrum Disorder per the diagnostic algorithm for Module 4” (Emphasis added.)

Dr. Horon gave his diagnostic impression for Claimant as follows:

- Bipolar I Disorder, Most Recent Episode Depressed, With Psychotic Features, provisional (Primary Diagnosis);
- Social (Pragmatic) Communication Disorder;

- Attention-Deficit/Hyperactivity Disorder, Predominantly Inattentive Presentation, by history;
- Specific Learning Disorder, with impairment in Mathematics, by history;
- Unspecified TIC Disorder, by history.

Under the section of the report titled “Explanation of Diagnosis,” Dr. Heron wrote:

[Claimant] has been found to have sub-threshold findings regarding [autism spectrum disorders] in this and several past evaluations. The diagnosis of PDD-NOS is no longer accepted nomenclature within the DSM-V. The diagnosis of Social (Pragmatic) Communication Disorder is recorded to indicate that persistent difficulties with social communication remain and continue to impact functioning in areas such as occupational performance and the ability to judge social intentions.

And, Dr. Heron opined that Claimant is diagnosed provisionally with Bipolar I Disorder, and this appears to be the primary disorder or disorder most related to functional impairment. Under the “Summary” section of his report (page 28), Dr. Heron reiterates his view of the disorders affecting Claimant.

Dr. Heron recognizes that Claimant is impacted with mental maladies. He recommends: Claimant’s application for Supplemental Social Security Income; Claimant’s money handling be monitored by a public payee because of his past history of becoming paranoid and aggressive when acutely ill; and Claimant’s coaching by the Department of Rehabilitation regarding work-place skill development. But, Dr. Heron does not suggest that Claimant has a disorder that makes him eligible for regional center services and supports.

Diagnostic Criteria by which an Individual Becomes Eligible for Regional Center Supports and Services

26. Under the Lanterman Act, service agency must accept responsibility for persons with developmental disabilities. A developmental disability is a disability that originates before age 18, that continues or is expected to continue indefinitely and that constitutes a substantial disability for the individual. Developmental disabilities include intellectual disability, cerebral palsy, epilepsy, Autism and what is commonly known as the “fifth category” - a disabling condition found to be closely related to intellectual disability or to require treatment similar to that required for mentally retarded individuals. (Welf. & Inst. Code, § 4512, subd. (a).)

I. AUTISM

To diagnose autistic disorder, a competent evaluator must find that the affected individual has qualitative impairments in social interaction; at least, one qualitative impairment in communication; and at least one restricted repetitive and stereotyped pattern of behavior, interest, or activity. Also the evaluator must find a total of at least six of these items. Further the evaluator must find that the impairments in social interaction and communication are marked and sustained. And the evaluator must find that there are delays or abnormal functioning, with an onset prior to three years, in social interaction, language as used in social communication, or symbolic or imaginative play.

II. EPILEPSY

Epilepsy involves “paroxysmal² transient disturbances of brain function that may be manifested as episodic impairment or loss of consciousness, abnormal motor phenomena, psychic or sensory disturbances, or perturbation of the autonomic nervous system. Symptoms are due to paroxysmal disturbance of the electrical activity of the brain. On the basis of origin, epilepsy is idiopathic³ (cryptogenic,⁴ essential, genetic) or symptomatic (acquired, organic).” Epilepsy is sometimes referred to as a seizure disorder. Epilepsy is usually controlled, but not cured, with medication.

III. CEREBRAL PALSY

“Cerebral palsy is a nonspecific, descriptive term pertaining to disordered motor function that is evident in early infancy. Most of these problems associated with the disorder occur as the baby grows in the womb, but they can happen at any time during the first two years of life, while the baby’s brain is still developing. Premature infants have a slightly higher risk of developing the disorder. Cerebral palsy is characterized by changes in muscle tone - usually spasticity, involuntary movements, ataxia, or a combination of these abnormalities. Although the limbs are most commonly involved, the trunk may also be affected. The condition is the result of brain dysfunction and is not episodic or progressive. Although tone and postural abnormalities may become more pronounced during early childhood, qualitative changes are uncommon. The full extent of motor disability may not be

² “Paroxysm” is “1. a sudden recurrence or intensification of symptoms. 2. a spasm or seizure.” (Dorland’s Dictionary, p. 1141.)

³ “Idiopathic” is “of the nature of idiopathy; self-originated; of unknown origin.” And “idiopathy” is “a morbid state of spontaneous origin; one neither sympathetic (an influence produced in any organ by disease or a disorder in another part) or traumatic.” (Dorland’s Dictionary, p. 761.)

⁴ “Cryptogenic” is “of obscure, doubtful, or unascertainable origin.” (Dorland’s Dictionary, p. 381.)

evident until three or four years of age. Intellectual, sensory, and/or behavioral difficulties may accompany cerebral palsy; however, they are not included in the diagnostic criteria.” (*Pediatric Neurology Principles & Practice*, by Kenneth E. Swaiman, M.D. and Stephen Ashwal, M.D., Third Ed. (1999), Chapter 19, “Cerebral Palsy”.)

IV. INTELLECTUAL DISABILITY

Intellectual disability is defined as significantly sub-average cognitive functioning, together with concurrent deficits or impairments in present adaptive functioning (the person’s effectiveness in meeting the standards expected for his or her age by his or her cultural group) in at least three of the following areas: Communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety, all of which have an onset before the age of 18.

V. THE FIFTH CATEGORY

Under the fifth category, the Lanterman Act provides assistance to individuals with a condition “closely related to intellectual disability” or who require “treatment similar to that required for individuals with intellectual disability.” In *Mason v. Office of Administrative Hearings* (2001) 89 CalApp.4th 1119, 1129, the California Court of Appeal held that the fifth category was not unconstitutionally vague and set down a general standard: “The fifth category condition must be very similar to intellectual disability, with many of the same, or close to the same, factors required in classifying a person as mentally retarded.” And, given the disjunctive definition – a condition closely related to intellectual disability *or* requiring similar treatment to that required for individuals with intellectual disability – the fifth category encompasses two separate grounds for eligibility.

Service Agency’s Assessment

27. After Dr. Horon issued his August 13, 2014, Psychological Evaluation report for Claimant, service agency engaged a social worker, psychologist and another competent professional to function as an interdisciplinary team to execute an assessment to determine whether Claimant meets the criteria for eligibility to receive regional center supports and services.

Claimant’s Evidence

28. At the hearing of this matter, Claimant offered no new competent evidence. Claimant did not appear for the proceeding. And in particular, through his adoptive parents who came to the hearing, Claimant presented no new medical report or medical treatment record to establish that he has a disorder that renders him eligibility for regional center services and supports.

Reasonable Conclusions by Service Agency's Professionals

29. Service agency called a single witness, Staff Psychologist Todd Wilson Payne, Psy.D., to offer evidence at the hearing of this matter. Dr. Payne was a member of services agency's Eligibility Assessment Team that met to make a determination of Claimant's eligibility for regional center services and supports following receipt of the report by Dr. Horon and the gathering of all the reports identified in this decision.

The findings and determinations made by Dr. Payne as a member of the Eligibility Assessment Team, were reasonable and persuasive. His testimony at the hearing of this matter was reasonable and persuasive.

Discussion

INTELLECTUAL DISABILITY

30. Claimant's most recent psychological testing with Psychologist Horon reflects that he has a degree of intelligence and verbal acumen, which is above the threshold for determining intellectual disability. Most important, there is no evidence that Claimant's IQ, in itself, has impacted his ability to pursue activities of daily living. Of importance is that he has a record of graduating from high school with a 3.5 grade point average and that he passed an Algebra course so as to earn a high school diploma.

31. No evidence establishes that Claimant was affected by intellectual disability before he reached his 18th birthday.

CEREBRAL PALSY

32. No evidence exists that Claimant suffered a birth defect that affected his brain. And there is no evidence that within his first two years to three years of life that he sustained a brain injury that could be characterized as a developmental disability. No evidence establishes that Claimant was affected by cerebral palsy before he reached his 18th birthday.

33. Insufficient evidence was produced to establish that Claimant has a condition, diagnosed as cerebral palsy, that constitutes a substantial disability/substantial handicap, and which impacts Claimant's pursuit of daily living. Accordingly, Claimant is not eligible for regional center services on the basis of cerebral palsy.

AUTISM

34. No competent evidence establishes that Claimant was affected by Autism before he reached his 18th birthday.

35. Insufficient evidence was produced to establish that Claimant has a condition, diagnosed as Autism, that constitutes a substantial disability/substantial handicap, and which impacts Claimant's pursuit of daily living. Moreover, the most recent test by Dr. Horon show that his ADOS-2 score cause him to be deemed to have a "non-Autism Spectrum Disorder." Accordingly, Claimant is not eligible for regional center services on the basis of Autism.

FIFTH CATEGORY

36. As Claimant seeks eligibility based upon a contention that his condition is closely related to intellectual disability, to resolve this matter the primary focus is placed a review of whether his impairments impact adaptive functioning. 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, socio-cultural background, and community setting.

The record demonstrated that Claimant is not effectively coping with common life demands and that he does not meet standards of personal independence expected of an individual in the community. His adaptive functioning is substantially impaired. But, under controlling principles, Claimant does not fall into the fifth category.

In *Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, the appellate court held that "the fifth category condition must be very similar to intellectual disability, with many of the same, or close to the same, factors required in classifying a person as having an intellectual disability. Furthermore, the various additional factors required in designating an individual developmentally disabled and substantially handicapped must apply as well." (*Id.* at p. 1129.) It is therefore helpful to review the factors required for a diagnosis of intellectual disability. The DSM-IV-TR provides that the "essential feature of Mental Retardation is significantly sub average general intellectual functioning . . ." It must be 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.

Significantly sub-average intellectual functioning is defined as an IQ of about 70 or below - approximately two standard deviations below the mean. It is undisputed that Claimant's general intellectual functioning was sub-average when Dr. Horon and other psychologists administered psychological testing to him.

A well-known appellate decision has suggested, when considering whether an individual is eligible for regional center services under the fifth category, that eligibility may be based largely on the established need for treatment similar to that provided for individuals with mental retardation, and notwithstanding an individual's relatively high level of intellectual functioning. (*Samantha C. v. State Department of Developmental Services* (2010) 185 Cal.App.4th 1462.) In *Samantha C.*, the individual applying for regional center

services did not meet the criteria for intellectual disability. Her WAIS-III test results scored her above average in the areas of abstract reasoning and conceptual development, and she had good scores in vocabulary and comprehension. She did perform poorly on subtests involving working memory and processing speed, but her scores were still higher than persons with intellectual disability. The court understood and noted that the Association of Regional Center Agencies had guidelines that recommended consideration of fifth category for those individuals whose “general intellectual functioning is in the low borderline range of intelligence (I.Q. scores ranging from 70-74).” (*Id.* at p. 1477.) However, the court confirmed that individuals might qualify for regional center services under the fifth category on either of two independent bases, with one basis requiring only that an individual require treatment similar to that required for individuals with intellectual disability. Here, Claimant believes he requires treatment similar to that required for individuals with intellectual disability. It may be inferred that Claimant’s believes that his condition is closely related to intellectual disability.

Fifth category eligibility may also be based upon a condition requiring treatment similar to that required for individuals with intellectual disability. Preliminarily, “treatment” and “services” do not mean the same thing. They have separate meaning. Individuals without developmental disabilities, including those without any diagnosed disabilities, may benefit from many of the services and supports provided to regional center consumers. Welfare and Institutions Code section 4512, subdivision (b) defines “services and supports” as follows:

Services and supports for persons with developmental disabilities” means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives.

Regional center services and supports targeted at improving or alleviating a developmental disability may be considered “treatment” of developmental disabilities. Thus, section 4512 elaborates further upon the services and supports listed in a consumer’s individual program plan as including “diagnoses, evaluation, *treatment*, personal care, day care, domiciliary care, special living arrangements, physical, occupational and speech therapy, training, education, supported and sheltered employment, mental health services” (Welf. & Inst. Code, § 4512, subd. (b). Italics supplied.) The designation of “treatment” as a separate item is clear indication that it is not merely a synonym for services and supports, and this stands to reason given the broader mission of the Lanterman Act:

It is the intent of the Legislature that regional centers assist persons with developmental disabilities and their families in securing those services and supports which maximize

opportunities and choices for living, working, learning, and recreating in the community.

(Welf. & Inst. Code, § 4640.7, subd. (a).)

Fifth category eligibility must be based upon an individual requiring “treatment” similar to that required by individuals with intellectual disability. The wide range of services and supports listed under section 4512, subdivision (b), are not specific to intellectual disability. One would not need to suffer from intellectual disability, or any developmental disability, to benefit from the broad array services and supports provided by service agency to individuals with intellectual disability. They could be helpful for individuals with other developmental disabilities, or for individuals with mental health disorders, or individuals with no disorders at all. The Legislature clearly intended that an individual would have a condition similar to intellectual disability, or would require *treatment* that is specifically required by individuals with intellectual disability, and not any other condition, in order to be found eligible.

In *Samantha C.*, no attempt was made to distinguish treatment under the Lanterman Act as a discrete part or subset of the broader array of services provided to those seeking fifth category eligibility. Thus, the appellate court made reference to individuals with intellectual disability and with fifth category eligibility both needing “many of the same kinds of treatment, such as services providing help with cooking, public transportation, money management, rehabilitative and vocational training, independent living skills training, specialized teaching and skill development approaches, and supported employment services.” (*Samantha C. v. State Department of Developmental Services, supra*, 185 Cal.App.4th 1462, 1493.) This broader characterization of “treatment” cannot properly be interpreted as allowing individuals with difficulties in adaptive functioning, and who require assistance with public transportation, vocational training or money management, to qualify under the fifth category without more. For example, services such as vocational training are offered to individuals without intellectual disability through the California Department of Rehabilitation. This demonstrates that it is not necessary for an individual to have intellectual disability to demonstrate a need for services that can be helpful for individuals with intellectual disability.

Individuals with intellectual disability may require many of the services and supports listed in Welfare and Institutions Code section 4512, which could benefit any member of the public: assistance in locating a home, child care, emergency and crisis intervention, homemaker services, paid roommates, transportation services, information and referral services, advocacy assistance, technical and financial assistance. To the extent that the reasoning of *Samantha C.*, afforded an individual, who was found to require assistance in any one of these areas, as being found eligible for regional center services under the fifth category, such was not the intent of the Legislature.

Thus, while fifth category eligibility has separate conditions and needs-based prongs, the latter must still consider whether the individual’s condition has many of the same, or

close to the same, factors required in classifying a person as mentally retarded. (*Mason v. Office of Administrative Hearings, supra*, 89 Cal.App.4th 1119.) Furthermore, the various additional factors required in designating an individual as developmentally disabled and substantially handicapped must apply as well. (*Id.* at p. 1129.) *Samantha C.* must therefore be viewed in context of the broader legislative mandate to serve individuals with developmental disabilities only. A degree of subjectivity is involved in determining whether the condition is substantially similar to intellectual disability and requires similar treatment. (*Id.* at p. 1130; *Samantha C. v. State Department of Developmental Services, supra*, 185 Cal.App.4th 1462, 1485.) This recognizes the difficulty in defining with precision certain developmental disabilities. Thus, the *Mason* court determined: “it appears that it was the intent of those enacting the Lanterman Act and its implementing regulations not to provide a detailed definition of ‘developmental disability’ so as to allow greater deference to the [regional center] professionals in determining who should qualify as developmentally disabled and allow some flexibility in determining eligibility so as not to rule out eligibility of individuals with unanticipated conditions, who might need services.” (*Mason v. Office of Administrative Hearings, supra*, 89 Cal.App.4th at p. 1129.)

For all the above reasons, the treatment needs of Claimant will be viewed within the narrower context of those services and supports similar to and targeted at improving or alleviating a developmental disability similar to intellectual disability.

This is a case where deference should properly be given to professionals in determining eligibility. (*Mason v. Office of Administrative Hearings, supra*, 89 Cal.App.4th, at p.1129.) Claimant presented no expert witness, who could be a specialist in the field and who had the educational or professional experience commensurate with service agency’s expert: Dr. Payne.

The record shows that Claimant’s adaptive behavior deficits arise from mental illness, namely Bipolar Disorder, and are not the result of a developmental disability such as either autism or intellectual disability. Under these circumstances, it cannot be determined that Claimant requires treatment similar to that received by individuals with intellectual disability.

37. There is no question that Claimant has significant and substantial challenges that would benefit from some public service programs, such as mental health counseling. But, Claimant did not present competent documents, or call expert witnesses, to establish that he is afflicted with a condition that can be classified as a developmental disability. Rather the weight of evidence supports a conclusion that Claimant’s challenges pertain to the residual effects of a mental illness, namely Bipolar Disorder. The evidence does not support a determination that Claimant is eligible under the Lanterman Act to receive services and supports as funded or provided by and through service agency.

LEGAL CONCLUSIONS

Burden of Proof

1. In a proceeding to determine eligibility for regional center services and supports, the burden of proof is on the Claimant to establish he meets the proper criteria. The standard is a preponderance of the evidence. (Evid. Code, § 115.) Otherwise stated, Claimant had the burden to establish that he has a “developmental disability” within the meaning of Welfare and Institutions Code section 4512, subdivision (a), by a preponderance of the evidence.

Statutory Authority

2. The Lanterman Act is set forth at Welfare and Institutions Code section 4500 et seq.

3. Welfare and Institutions Code section 4501 states:

The State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge. Affecting hundreds of thousands of children and adults directly, and having an important impact on the lives of their families, neighbors and whole communities, developmental disabilities present social, medical, economic, and legal problems of extreme importance
.....

An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community. To the maximum extent feasible, services and supports should be available throughout the state to prevent the dislocation of persons with developmental disabilities from their home communities.

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).)

4. Welfare and Institutions Code section 4512, subdivision (a), defines “developmental disability” as follows:

‘Developmental disability’ means 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. 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 mentally retarded individuals, but shall not include other handicapping conditions that are solely physical in nature.

5. California Code of Regulations, title 17, section 54000 provides:

(a) ‘Developmental Disability’ means a disability that is attributable to intellectual disability, cerebral palsy, epilepsy, Autism, or disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with intellectual disability.

(b) The Developmental Disability shall:

(1) Originate before age eighteen;

(2) Be likely to continue indefinitely;

(3) Constitute a substantial disability for the individual as defined in the article.

(c) Developmental Disability shall not include handicapping conditions that are:

(1) Solely psychiatric disorders where there is impaired intellectual or social functioning which originated as a result of the psychiatric disorder or treatment given for such a disorder. Such psychiatric disorders include psycho-social deprivation and/or psychosis, severe neurosis or personality disorders even where social and intellectual functioning have become seriously impaired as an integral manifestation of the disorder.

(2) Solely learning disabilities. A learning disability is a condition which manifests as a significant discrepancy between estimated cognitive potential and actual level of educational performance and which is not a result of generalized intellectual disability, educational or psycho-social deprivation, psychiatric disorder, or sensory loss.

(3) Solely physical in nature. These conditions include congenital anomalies or conditions acquired through disease, accident, or faulty development which are not associated with a neurological impairment that results in a need for treatment similar to that required for intellectual disability.

6. California Code of Regulations, title 17, section 54001 provides:

(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.

(b) The assessment of substantial disability shall be made by a group of Regional Center professionals of differing disciplines and shall include consideration of similar qualification appraisals performed by other interdisciplinary bodies of the Department serving the potential client. The group shall include as a minimum a program coordinator, a physician, and a psychologist.

(c) The Regional Center professional group shall consult the potential client, parents, guardians/conservators, educators, advocates, and other client representatives to the extent that they are willing and available to participate in its deliberations and to the extent that the appropriate consent is obtained.

(d) Any reassessment of substantial disability for purposes of continuing eligibility shall utilize the same criteria under which the individual was originally made eligible.

Evaluation

7. Claimant has significant challenges. He is excluded from the home of his adoptive parents and has been limited to residing in a group home. Claimant appears to require extensive psychiatric supports and treatment as well as occupational therapy services. But, Claimant's disability condition arises out of a long-term mental illness. And, the evidence did not support a determination that Claimant has a developmental disability that qualifies him for services and supports under the Lanterman Act.

Ultimate Determinations

8. Claimant's eligibility to receive services and supports on the basis of a developmental disability involving Epilepsy was not established by a preponderance of the evidence. No expert testified or provided a written report indicating that Claimant suffered from Epilepsy.

It was not established that Claimant has Cerebral Palsy.

It was not established that Claimant has a disabling condition has been diagnosed as constituting intellectual disability.

Claimant's eligibility to receive services and supports on the basis of a developmental disability under the Fifth Category was not established by a preponderance of the evidence. No expert directly testified or provided a written report directly indicating that Claimant had a disabling condition that was closely related to intellectual disability.

And there is no evidence that he is impaired by Autism.

9. Claimant is not eligible for regional center services and supports as furnished by the North Bay Regional Center under the Lanterman Developmental Disabilities Services Act.

ORDER

Claimant's appeal from the determination by North Bay Regional Center that he is not eligible for regional center services and supports is denied.

DATED: December 30, 2014

_____/s/_____
PERRY O. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

NOTICE: This is a final administrative decision pursuant to Welfare and Institutions Code section 4712.5, subdivision (b)(2). If a party chooses to appeal, an appeal from this decision must be made to a court of competent jurisdiction within 90 days of receipt of this decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)