

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CAROLYN H.,

Claimant,

vs.

REGIONAL CENTER OF THE EAST BAY,

Service Agency.

OAH No. 2007100994

**DECISION**

Administrative Law Judge Nancy L. Rasmussen, Office of Administrative Hearings, State of California, heard this matter on January 12 through 16, February 9 and March 4, 2009, in Oakland, California.

Jessica Cochran and Jay T. Jambeck, of Leigh Law Group, represented claimant Carolyn H.

Fair Hearing Specialist Pamela K. Higgins represented service agency Regional Center of the East Bay (RCEB).

The record was held open for submission of briefs. Claimant's closing brief was received and marked as Exhibit 30 for identification. RCEB's closing brief was received and marked as Exhibit SS for identification. Claimant's reply brief was received and marked as Exhibit 31 for identification. The record closed and the matter was deemed submitted for decision on May 19, 2009.

**ISSUE**

Is claimant eligible for regional center services by reason of having a condition closely related to mental retardation and/or a condition requiring treatment similar to that required by mentally retarded individuals?

## FACTUAL FINDINGS

1. Claimant Carolyn H. is a 36-year-old woman (birthdate: December 21, 1972) who has applied for services from RCEB. She currently resides at the Center for Adaptive Learning in Concord.

2. Claimant has an older brother and a younger sister. Claimant's mother suffered a fever of 105 degrees during the fifth month of her pregnancy with claimant. She hemorrhaged before labor and delivery. Claimant was blue when she was born, reportedly because her airway was obstructed with a blood clot from the hemorrhaging, but she was suctioned and achieved good color.

3. Claimant was slow in learning to crawl and to talk; her development was very different than that of her siblings. She had numerous ear infections and was discovered to have a hearing impairment. Around age four, claimant's hearing was restored after tubes were put in her ears, but her language development remained delayed. Claimant would not allow people to read to her. As a very young child, claimant had a rocking behavior where she rubbed her genital area on the floor. Claimant's mother found this embarrassing because it looked like masturbation. She finally succeeded in teaching claimant not to engage in this behavior when guests were present. After being placid as an infant, claimant became very aggressive between about 12 and 18 months of age, throwing a tantrum if she was disciplined. When out with her mother, claimant had to be harnessed to keep her from darting away. Claimant refused to hold her mother's hand, and she never learned to stay close to her mother. She was toilet trained around age three, but claimant would urinate in her pants if she was playing outside and did not want to come inside to use the toilet. She did not recognize this as socially inappropriate. Claimant could shower by herself at age four or five, but after claimant's shower her mother would find the soap dry and the shampoo bottle emptied. Claimant needed a lot of reminders to take a shower or brush her teeth.

4. In school, claimant did not do well academically or with social relationships. In kindergarten, she began receiving speech and language therapy through the special education program in the Novato Unified School District. An Individualized Educational Program (IEP) from November 1979, when claimant was in first grade, described her as learning handicapped. Claimant was in a regular class with a pull-out for special education. She continued to receive resource specialist services and speech and language therapy through third grade. Despite getting extra help at school and at home, claimant was still falling behind academically. At the end of third grade, claimant's mother disagreed with the resource specialist's recommendation that claimant be promoted to the fourth grade.

5. Claimant's parents sent her to a private school, the 3R School, where she repeated third grade and received more individualized attention. For fourth grade, claimant attended a Montessori School in San Rafael. (The 3R School had closed.) Claimant was the

oldest student and the only fourth grader at Montessori, but she got along well with the younger children. (She had had no friends at the public school.)

6. From fifth grade on, claimant attended public school. Claimant's mother helped her with her school work and hired tutors for her, but claimant still had a lot of trouble academically. On an educational assessment in sixth grade, claimant tested well below grade level but at percentiles too high to qualify for special education. After an educational assessment in seventh grade, claimant was identified in an IEP as having a "poor self-concept around academic work" and "poor organization and motivation." Counseling services were recommended, but claimant's mother does not recall claimant receiving counseling. A comparison of claimant's scores on the Woodcock Reading Mastery Tests in sixth and seventh grades reflects that her scores went down in three out of four tests. Claimant's grade point average (GPA) in seventh grade was 1.92. In eighth grade, her GPA was 1.83 in the first term and 2.33 in the second term. (Her second term GPA went up because she took Foods that term and got an A.)

7. Claimant attended Terra Linda High School for four years, graduating in June 1992 at age 19. She chose college prep classes for the first two years, although her mother felt they were too difficult for her. Claimant's parents graduated from college and claimant's brother was going to college; claimant said she wanted to go to college. Claimant's counselor was doubtful but felt claimant deserved a chance at college prep. By her junior year, claimant was on a non-college track because of her poor academic performance. During her junior and senior years, claimant took Accounting and received grades of B, A-, A and A for the four semesters. Claimant's mother believes this class was very basic. There was no homework, and because most students did not want to be there a good attitude counted for a lot. Claimant's total GPA for the four years of high school was 2.75.

8. When she was growing up, claimant had no friends in her neighborhood and few friends at school. Her mother recalled that claimant "palled around" with special education students. She was clumsy, overweight and lacked physical coordination, and she tended to get picked on by other children. In social settings, claimant often talked too loud, interrupting others and blurting things out at inappropriate times. Claimant was prone to lying, often for no apparent reason, and seemingly without any comprehension of the consequences. She also stole things from her siblings. Once, when claimant's sister confronted claimant about stealing her pen, claimant became very angry and tried to strangle her. This was unusual, however; claimant was more prone to yelling than to violence. When claimant was eight or nine years old, she saw a psychiatrist once a week for a little less than a year. Her mother recalls that claimant did not make much progress in therapy. Claimant's bedroom was next to her brother's, and he recalls that she talked to herself (by herself) for countless hours, often crying and shouting. She talked about all kinds of pain and suffering of herself, her friends and her family, real or imagined. However, if dinner was ready or someone knocked on her door, claimant stopped and acted as if nothing was going on. Claimant's family now believes this was claimant's way of expressing internalized emotions that she could not understand how to manage. When claimant was about 13, her parents got

a divorce and her father moved out of the family home. As a teenager, claimant once shoplifted items from a local drug store because she did not have enough money for what she wanted. She spent two days in Juvenile Hall that weekend.

9. When claimant was 16 or 17, her mother suggested she apply for a job as a junior counselor at a CYO (Catholic Youth Organization) summer camp. Claimant got the job but was later sent home for getting angry with the fifth graders she was supervising. In an effort to help claimant, the family got into family therapy through Catholic Social Services. The therapist recommended that claimant have a psychological evaluation.

10. After she graduated from high school, claimant moved in with her father. He had bought her a car for graduation, and he signed claimant up for driver's education with a driving school. Claimant later passed the tests to obtain a driver's license. Her father paid for the gas and insurance for claimant's car. Claimant enrolled at the College of Marin but never completed any classes there.

11. In March 1993, when claimant was 20, she was evaluated by psychologist Roberta Seifert, Ph.D. Claimant was then taking college classes but not doing well, and she was having conflicts with family members. Dr. Seifert interviewed claimant and administered the Wechsler Adult Intelligence Scale – Revised (WAIS-R), the Rorschach Inkblot Test, the Minnesota Multiphasic Personality Inventory 2 (MMPI-2), the Thematic Apperception Test (TAT), Beck Depression Inventory, Booklet Category Test, Draw-A-Person, Bender Gestalt Test, Sentence Completion Blank, and Adult Diagnostic Screening Test. Dr. Seifert also met with claimant's mother and had a telephone conversation with claimant's father.

In the section of her report on cognitive functioning, Dr. Seifert stated:

Carolyn presents an unusual and contradictory picture in the area of intellectual performance. While her test scores were fairly consistently in the bottom of the Low Average range, her responses within each subtest showed an unusual amount of scatter. Thus, while her overall scores were relative [*sic*] low, she would answer harder items that generally only more intelligent people get right. This suggests that Carolyn has been affected by her early hearing loss in that there are gaps in her knowledge and skills, with bursts of inconsistently bright responses. This would tend to lead to considerable confusion about her real potential. There are some things I can say with some assurance, however. Carolyn has difficulties in concentration and attention (PC=5, A=6, DSp=6) that affect her short term memory and her ability to attend accurately to external stimuli. This is further supported by Rorschach

findings. Her attentional problems are caused by considerable internal “noise,” or disturbing, distracting thoughts, needs, and anxieties (FM=4, m=8). She is experiencing a near-crisis state of stress on a chronic and long-term basis. (D=-4, Adj. D=-1). Carolyn tends to see things in a non-convergent fashion. In other words, she frequently distorts perceptual inputs (X-%=.41, P=3). Carolyn also seems to have difficulty with tasks that require abstract reasoning (S=7). Results of the Booklet Categories Test strongly suggest that neurological difficulties interfere with her abstract concept formation (Errors=73). Carolyn needs to have things explained in very concrete terms. It would not make much sense to have her study something like theoretical economics, for example, but she should be able to operate a cash register and ring up sales. Carolyn demonstrated an above average ability to mobilize energy and follow directions (DSy=11). Her TAT stories demonstrate that Carolyn is imaginative, creative, and a good writer.

Dr. Seifert described claimant as having low self-esteem and a sense of dependency on others. She also stated: “Carolyn has serious problems in thinking that interfere with logic and promote faulty judgment. Her propensity to distort perceptual input tends to take [a] paranoid or mistrustful bent and adds to her mistrust of people.” Regarding interpersonal relationships, Dr. Seifert stated:

While Carolyn is a good observer of other people and seems adept at figuring out their feelings and motives, she is probably not very responsive to their needs. This does not mean Carolyn doesn’t care about other people. She is simply too involved with her own needs to attend to theirs. Rorschach responses show a tendency to split between idealization and devaluation. In other words, Carolyn might put some people on pedestals and see others as bad. Both of these extremes are distortions, but she will tend to see things in black and white and not appreciate the shades of gray. This leaves her vulnerable to disillusionment with those she idealizes and alienation from those she devalues. It will also make it difficult for her to sustain long-term friendships. . . .

Dr. Seifert made the following recommendations:

The overall goal that Carolyn’s family has for her is her eventual independence. It is unclear whether that is a goal that Carolyn herself embraces at this time. Regardless of the

ultimate goal, the steps involved in gaining independence are also those that should lead to meaningful growth. Maintaining a hostile-dependent relationship with her parents, while it serves Carolyn in protecting her from her fears of abandonment and from her difficulties dealing with the world outside her family, ultimately leave her feeling powerless and unhappy. She is paying with chronic anxiety, depression, low self-esteem, and problems in thinking.

It is suggested that college is not a good choice for Carolyn. She is neither interested nor good at general education subjects; serious difficulties in abstract reasoning that college study inappropriate [*sic*]. A first step in reducing situational stress and getting Carolyn moving in a more productive direction would be vocational counseling. She is likely eligible for services through the Department of Rehabilitation, or can get counseling through the College of Marin or one of a number of private vocational counselors. Test results suggest that Carolyn should work around people and not isolated from them. She is not self-motivated and will need structure and support in her work environment. She is good at following directions and enjoys manual tasks. She is not good at understanding abstract concepts and should not attempt a line of work in which that is required. . . .

Individual psychotherapy is recommended to help Carolyn with her emotional difficulties. . . . [¶] As Carolyn gains in self-esteem and her ability to risk relating more to other people, it is highly recommended that she get involved in a support group for adults with learning disabilities. . . .

Finally, answering questions claimant's mother had posed, Dr. Seifert stated:

Is Carolyn capable of managing her own life, making decisions, living independently? Carolyn, you are capable of learning to be independent and managing your own life. You are not yet ready to take that step at this point in time. You are likely to use poor judgment and are not ready to meet your own needs independent of your family. A transition to independence should be planned with some help from an outside professional because your parents sometimes get too enmeshed in conflicts with you or, alternately, help you too much. . . .

12. After claimant graduated from high school, her father tried to find employment for her. She worked at a series of part-time jobs, but she did not last very long at any of them. As part of the RCEB intake screening form submitted by claimant's family in April 2007, they provided the following information about claimant's vocational history:

Following high school Carolyn worked part-time jobs at Doughnut Works, Payless Shoes and Target in Novato, California, and Toys R Us in San Rafael, California, and then for the County of Marin as a Home Health Assistant. Carolyn cannot understand or explain why she was fired from any job. Payless Shoes let her go because they said they could not accommodate her school schedule. Carolyn was not in school at the time. We surmised that Carolyn did not like working and would make up school schedules to minimize her availability and when her school schedule changed more often than courses even last, her employers simply phased her out. Carolyn was fired from Toys R Us for lack of availability but over time she has mentioned problems there because her drawer was short of money. Given her history with “sticky fingers,” it is not improbable that she was stealing. However, her math skills are poor and it is also possible that she had made genuine errors.<sup>1</sup> So it is also possible that she sabotaged this and other jobs when she knew she was “in over her head” and couldn’t really complete the tasks.

W-2 forms for 1998 reflect that claimant earned \$629.72 from Toys R Us that year and \$938 from Novato Car Wash.

13. Claimant was dependent on her father in numerous ways. He gave her money for shopping and for gas. He took care of vehicle maintenance and repairs, and paid her traffic tickets. Claimant’s father replaced two cars that claimant wrecked. After he died in December 2005, claimant’s brother found in their father’s papers numerous collection notices sent to claimant over the years. These were mostly for mail-order offers for CD’s, DVD’s, books, makeup and other goods, where claimant had bought something at a nominal price but obligated herself to make additional purchases or payments. Claimant’s father kept a copy of a letter he wrote in April 1995 to a collection service that was seeking \$45.95 on behalf of Grolier Enterprises, Inc. He enclosed a check for the delinquent amount and explained: “My child is retarded, and I was unaware that these materials had been ordered.” Claimant’s brother never heard their father refer to claimant as retarded; the term he used was “hopeless.” Claimant’s father opened a checking account for her, but she continued to write checks long after she had gone through all the funds in the account.

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<sup>1</sup> In a page from claimant’s diary dated February 15, 1996, she wrote about work that day (at Toys R Us, apparently). Claimant stated: “Jeanne counted me down. I was even. It is pretty amazing because sometimes I’m not. I’m either over or under some amount. My manager was amazed too because I am almost always short or over some amount. I was glad to be even.” The day before this, claimant had written: “I got to work on time today. It is amazing how I can be one [*sic*] time one time and late another.”



14. Claimant has always felt comfortable with people with Down Syndrome. When she was living with her father, he got her into a junior bowling league. At the bowling alley, she met a young man with Down Syndrome, and they became good friends. At family gatherings with longtime family friends, claimant gravitated to a boy with Down Syndrome who is nine years younger than she. The boy's mother recalls that the two of them seemed to connect and really got along well together.

15. Claimant has also associated with people who manipulate her and take advantage of her. In the RCEB intake screening form, claimant's family wrote:

Carolyn lacks appropriate social skills. She strongly desires to be close to others and reaches out somewhat indiscriminately to others who are not often healthy or wise choices. Before she began living at the Center for Adaptive Learning, her circle of friends and associates had consisted of low achieving individuals – jobless, thieving, homeless, in and out of jail. We (the family) observe that Carolyn is most comfortable among these types of individuals because they do not prescribe to what would be described as mainstream social skills. In social situations outside of her circle of friends, Carolyn is frequently overwhelmed, often fails to follow or comprehend a conversation and withdraws as a reaction.

Claimant had a boyfriend, R.W., who reportedly is five years younger than she. She allowed him to drive her car when he was under the influence of alcohol. R.W. totaled two of claimant's cars.

16. In 1999, claimant followed R.W. and his family when they moved to Salt Lake City. (She was not getting along with her father at the time.) Claimant apparently lived in a two-bedroom condo with R.W., his mother, his older sister and her boyfriend, and his younger brother and sister. In Utah, R.W.'s family got claimant involved with the Mormon Church's Deseret Industries. She apparently worked in two one-year programs, one sorting donated clothing for distribution to organizations in need and the other training in computer data entry. In the latter program, the church arranged for claimant to attend computer classes at a local junior college. After that, the church helped claimant get a job at a Hilton Hotel as a PBX operator on the graveyard shift. In the RCEB intake screening form, claimant's family wrote about her Hilton Hotel job:

This was the only job she was able to maintain for an extended period of time, probably because there was so little activity on the phones over the graveyard shift. After three years, she was fired and we do not know the full story as to why. Over time, she has revealed to family members that she was repeatedly

counseled for falling asleep on the job. More recently, to her counselor at the Center she related that she was requesting assistance from her boss more frequently than one would expect of an operator of three years experience. The assistance she needed occurred in the morning hours, probably the time the phones began to be busy.

17. When claimant lived in Utah, her father sent her money and helped pay the rent and utilities for R.W.'s family. He got her a car, and he made trips to Utah to check on her welfare. When claimant once found her car with a "Denver boot" on it, she phoned her father and he called the Salt Lake City police to straighten things out for her. Regarding claimant's inability to manage on her own in Utah, her family wrote the following:

At one point while Carolyn was in Utah, her father had secured a trailer for her in an effort to extricate her from [R.W.] and his family. She was ultimately evicted for lease violation by keeping cats. The landlord entered the trailer at Carolyn's father's request and found the place completely unkempt with dirty and moldy dishes in the sink, dirty clothes piled everywhere, an overflowing cat litter box, and hungry cats. She apparently was not staying in the trailer but staying with [R.W.] and his family.

18. In 2004, after claimant lost her job at Hilton Hotel, her father helped her move back to California. She brought R.W. with her, and they both lived in claimant's father's home. Claimant's father kicked R.W. out after he crashed claimant's car; then he bought claimant another car. The following information is from claimant's family:

After returning to California she worked briefly for Sabor of Spain in San Rafael, selling imported foods from Spain. Carolyn claims that she was let go because she had forgotten to lock the back door at closing. However, at Christmas that year the family received an inordinate amount of imported Spanish food items shortly before her dismissal. We believe she stole the items and was consequently fired.

Her father then got Carolyn a job at UCSF Medical Center as a temp from which she was let go ultimately for taking long lunches for which she was repeatedly counseled. Carolyn still insists that she does not know why they let her go, simply that they did not like her there.

19. In early 2005, claimant's father kicked claimant out of his house after she stole

his new credit cards, activated them and used them to make purchases. Claimant then moved in with her mother. Claimant's mother's sister learned of the Bright Minds Institute and told claimant's mother about it. With claimant's agreement, her mother arranged for claimant to be evaluated there. At Bright Minds, claimant was evaluated by neurologist Fernando Miranda, M.D., psychologist Mindy Rosenberg, Ph.D., and speech-language pathologist Shannon M. Craig, M.S., CCC-SLP/L.

20. On April 29, 2005, claimant underwent a digital encephalography and evoked potentials (DEEP) assessment. In his report, Dr. Miranda summarized the results as follows: "This is an abnormal DEEP, in which there is an absent P300, and anterior invasion of alpha, quite abnormal for age, indicating frontal lobe deficit, in addition to a right frontal and temporal lobe foci of abnormal activity, manifested both in the auditory evoked response and in the spectral analysis." Dr. Miranda commented: "This would correlate with behavioral discontrol as well as trouble with judgement, forethought, and emotional reportability."

21. Dr. Rosenberg met with claimant on May 16, May 19 and June 3, 2005, to conduct a neuropsychological evaluation. She interviewed claimant and administered various cognitive and psychological tests. In her report dated June 10, 2005, Dr. Rosenberg summarized her findings as follows:

Carolyn [H.] is a 32 year-old woman with 12 years of formal education who is temporarily living with her mother. She has sought out an integrated medical, neuropsychological, and speech/language evaluation to identify the obstacles that are getting in the way of her leading a positive and productive life. She has struggled all her life with family conflict, poor interpersonal relationships, academic problems, being overweight and now obese, and behavioral problems such as lying and stealing. . . . She feels depressed, anxious, lonely and isolated, and is currently unemployed. A complete neuropsychological evaluation was conducted to identify Carolyn's cognitive and psychological functioning in order to create an appropriate intervention plan.

Based on clinical interview, documents reviewed, and the neuropsychological test results, the following impressions are offered. Overall, Carolyn's cognitive functioning is in the *low average* range, with similarly developed verbal and nonverbal reasoning skills (nonverbal skills are slightly higher than verbal skills but there is not a statistically significant difference).<sup>2</sup> Her verbal comprehension, perceptual organization, and processing speed are all within the *average* range. Even though Carolyn's

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<sup>2</sup> Claimant's full scale IQ on the WAIS-III was 88.

verbal comprehension is in the average range, it is at the 34<sup>th</sup> percentile rank, which means that she scored higher than approximately 34 out of 100 people. She tends to think more concretely, and her academic skills are generally in the low average range as well, with some skills higher (e.g., spelling and editing) and others, lower (e.g., math calculation). Her working memory, which is the ability to attend to, hold, and manipulate information, is in the *low average* range, and significantly lower than her ability to comprehend verbal information and respond, based on that knowledge. In other words, even though she may understand what is being asked of her, she may not be able to respond accurately if she has to rely on her auditory, working memory alone without visual aids (e.g., writing down the information in a clear, organized form). [Italics in original.]

Her ability to attend and concentrate is generally commensurate with her overall cognitive functioning, with the exception of divided attention, particularly auditory divided attention. Although she rated herself as extremely likely to have ADHD, her attentional problems as an adult do not necessarily take the form of ADHD or ADD, but appear to be secondary to other cognitive and emotional difficulties. When asked to sustain her attention, Carolyn does relatively well, although there are indications of some inattention, impulsive responding, and a tendency toward making more errors as time progresses. This is an important finding to take into consideration when Carolyn begins to think about employment and the type of job she would like to have. Doing more than one thing at a time would be extremely difficult for her, particularly if it involved auditory material, as would focusing for moderate periods of time without regularly spaced breaks. Carolyn needs to learn how to self-monitor (check) her work, since she is likely to make errors that she will likely not be able to identify as they are happening. Carolyn's auditory memory, however, presents a significant challenge to her, and she will need to identify compensatory strategies to offset the fact that her memory for orally presented materials tends to be limited, and decreases substantially over time.

Carolyn presents with problems in executive functioning, such as planning, problem solving, self-monitoring, and the ability to sustain focus to take in feedback to guide future behavior. In addition, Carolyn presents with significant clinical depression,

anxiety, and behavioral problems that have interfered with her ability to have productive social, intimate and family relationships; a healthy body and body image; positive self regard; the ability to hold employment successfully; and sustain a sense of competence. Based on clinical interview and neuropsychological test findings, Carolyn meets criteria for the following diagnoses:

Axis I 296.3 Major depressive disorder, recurrent  
300.00 Anxiety disorder not otherwise specified (NOS)  
294.91 Cognitive disorder NOS (problems of attention, working memory, and executive functioning)  
305.70 Amphetamine abuse, in remission, by client report<sup>3</sup>  
Axis II 799.9 Diagnosis deferred at present time until Axis I conditions are stabilized  
Axis III Obesity

Dr. Rosenberg noted that claimant had recently started taking Cymbalta, an antidepressant medication, with positive effects, and she was seeing psychologist Dr. Beth Tabakin for weekly therapy. Dr. Rosenberg reported: "According to Dr. Tabakin, Carolyn is very responsive to concrete suggestions and directives." She recommended that claimant see Dr. Tabakin three times a week for cognitive-behavioral therapy, weight management and supported movement (pre-exercise and light exercise). Dr. Rosenberg's other recommendations for claimant included joining a support group for people trying to lose weight, and learning compensatory strategies to help with her auditory memory difficulty. She did not think claimant should seek employment until she stabilized her health.

22. Claimant saw Shannon Craig on May 6, 2005, for a speech-language evaluation. In her report dated June 5, 2005, Ms. Craig summarized her findings as follows:

Within this assessment she demonstrated many strengths including: problem-solving and oral expression, a desire to be social and to make changes to become more independent. Within this particular assessment, using informal tools, Carolyn did very well in all domains. The environment was calm, quiet and had minimal to no distractions. During extended conversation in regards to her daily activities it is clear that Carolyn has not generalized and/or does not apply some of these skills into those activities. She mentioned having significant difficulty following a time schedule, staying on task especially

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<sup>3</sup> Claimant told Dr. Rosenberg that she had used methamphetamine in Utah, on a weekend basis, but she had been clean for the last three to four months.

if it is non-preferred, reading is challenging for her and she does not enjoy it. She mentioned that she would prefer not to read anything, and instead has her mother read it for her (e.g. medication prescriptions, menus, etc.). She demonstrates a significant pragmatic language delay stating she has trouble relating to others and often lies compulsively.

Ms. Craig's recommendations included the following:

It is recommended that Carolyn work with the team to learn compensatory strategies/techniques to aid her ability to gain independence and confidence throughout her day including: simple techniques to aid in scheduling, having scripts to aid in answering the phone/taking messages, role-playing activities to aid in social skills, keeping written cues in her purse/wallet and around the house to help remind her of important dates, meetings, etc. Other compensatory strategies to work on would include: asking her communication partner to step outside to talk if the room they're in is too loud or distracting so that she can listen and respond more accurately; asking for repetition or clarification if she is unsure of what was said versus guessing or making up a response. When these strategies were presented she was resistant saying "been there done that. It doesn't work." Therefore these strategies need to be presented in a concrete and clear fashion, and it is recommended that she have input in the development of the details within these strategies to aid her desire to carry them through to her day to day experiences outside of therapy.

23. Dr. Miranda testified at the hearing about claimant's abnormal DEEP results, which indicate deficits in the frontal lobes of her brain. Dr. Miranda has a lot of experience with patients with frontal lobe deficits, and he has prepared the following list of frontal lobe functions to show what can be affected in such patients:

- (1) **Inhibit**, which is the ability to inhibit, resist, or not act on impulse or stop one's behavior at the appropriate time;
- (2) **Shift**, which is the ability to move from one situation, activity or aspect of a problem as circumstances demand;
- (3) **Emotional control**, which is the [individual's]<sup>4</sup> ability to modulate their emotional responses;
- (4) **Initiate**, which relates to beginning a task or activity, or independent generation of ideas, or problem solving

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<sup>4</sup> Dr. Miranda's list refers to a child but is equally applicable to an adult.

- strategies;
- (5) **Working memory**, which is the capacity to hold information in the mind for purposes of completing a task;
  - (6) **Plan/Organize**, which is the [individual's] ability to manage current or future tasks such as goal setting or develop steps to complete a task;
  - (7) **Organization of materials**, which refers to the orderliness of work, play and storage spaces;
  - (8) **Monitor**, which involves work-checking habits.

The problems Dr. Rosenberg identified with claimant's executive functioning are attributable to her frontal lobe impairment. Claimant's poor working memory affects her ability to learn, and her poor emotional reportability and lack of insight and judgment mean she is unlikely to benefit from psychotherapy. She lacks the function to know what is contrary to social inhibition or to judge effectively what the consequences of her actions will be. Impairment of her ability to organize and classify interferes with her ability to think abstractly. Rigid and concrete thinking are a consequence of frontal lobe impairment.

Dr. Miranda testified that a person with frontal lobe damage may have a low average IQ but be unable to access their intelligence in real life; that person will function like someone with a lower IQ. Persons with frontal lobe damage may develop co-morbid psychiatric problems, like depression.

Determining the cause of frontal lobe impairment is by process of elimination. In claimant's case, Dr. Miranda ruled out a tumor, significant congenital damage to the brain, encephalitis or a metabolic problem. (On May 8, 2005, an MRI of claimant's head revealed no abnormalities.) Based on claimant's developmental delays and early abnormal behavior and lack of control, he believes there was a problem in utero which caused her to be born with a frontal lobe defect.

Claimant's frontal lobe impairment is permanent. Dr. Miranda put her on medications to increase her levels of serotonin and norepinephrine, but this did not improve claimant's function.

24. Dr. Tabakin worked with claimant for about six months on behavior modification, but this treatment was not effective. Claimant's mother had lots of rules for claimant at her house, and she assigned her specific tasks. Despite her mother constantly leaving notes and reminders for her (claimant's mother worked full-time), claimant did not follow through on what she was supposed to do.

25. Claimant's father died in December 2005 after a heart attack. The family then faced the question of what to do with claimant. They tried letting her live in her father's house by herself, but after two weeks a neighbor alerted the family that strange people had

been observed coming and going from the house. When claimant's sister went to check on claimant, she found the house in complete disarray. Claimant was not there, but four of her friends were sleeping in various bedrooms. A locked door had been kicked in, a toilet was broken and leaking water, and jewelry and electronic appliances were missing.

26. Claimant's brother moved into their father's house to live with claimant, with the idea of getting her set up to live independently. (He assumed their father had been enabling claimant to remain dependent.) Claimant's brother gradually came to the realization that claimant would never be able to live on her own. He had to remind her to take a shower and brush her teeth. She would not do any household chores unless he was overseeing her. She made unhealthy food choices and seemed unable to understand the negative health consequences of her obesity. Claimant was unable to make a medical or dental appointment, despite her brother explaining how to do so. When she had an underarm cyst that became infected, she did not know what to do and she delayed asking her family for help. Claimant received more collection notices for book club purchases and other mail order offers. Claimant worked for the County of Marin as an in-home support service provider. The details of this work are not known except that claimant drove one client to appointments and took her shopping, and she performed household tasks at the client's direction. Claimant was fired from this job, apparently for not being available as she had promised and because the client suspected claimant had stolen money from her.

27. The insurance company sent a notice in February 2006 that the policy on claimant's car would not be renewed because her driver's license had been suspended in October 2005. When her brother asked her about this, claimant did not know why her license was suspended. Claimant continued to drive, with no regard for potential consequences or liabilities. The family decided it was not in her interest to own or have access to a car, and claimant accepted this decision. When her brother cleaned out her car before it was sold, he found a large amount of trash from fast food restaurants.

28. Claimant is unable to pay bills or manage a bank account. After he came to live with her, claimant's brother set up a checking account which he held in trust for her and a separate savings account in her name with an ATM card. The bank inadvertently linked up the two accounts, and claimant began making transfers at the ATM from the trust account into her separate account, and making cash withdrawals. According to the family, claimant has now been blacklisted by all California banks because of her past actions, including depositing empty envelopes at the ATM. Claimant understands that she is not good with money. On May 8, 2006, she executed a durable power of attorney for financial management appointing her brother to manage her financial affairs. Claimant also executed a durable power of attorney for health care decisions and advance health care directive naming her brother as her agent.

29. Claimant's family offered the following as another example of claimant's poor judgment and need for oversight:



Sometime after she returned to her father's home from Utah, Carolyn became occupied with writing inmates in California prisons. It is unclear how this began, although Carolyn has told her counselor at the Center that she learned of the website through a high school teacher (which we do not believe). Since she was always the first to intercept the mail at her father's house, it is not clear when this started. The family became aware of it while Carolyn was staying at her mother's house in 2005 and letters began arriving there. These prisoners had been incarcerated for a variety of crimes, including murder. Some of them seemed merely pen pals, but several were very intent on pursuing romance providing very explicit sexual fantasy material, providing information on how to come visit, and proposing marriage. All of them seemed to know the circumstances of her father passing, who her family members were and what they were doing, along with details of her father's will. After having the concern for her personal safety created by this occupation explained to her by her mother as well as her counselor, Carolyn agreed to cease writing. But she continued in secret until she entered the Center where she currently resides. It is clear that she does not and cannot grasp the potential ramifications of giving unknown felons the private details of her life. It is her brother's belief that Carolyn had basically found a kind of 'diary' that would write back, telling her over and over how much she was loved. This is not only a bad social choice, but seems to be indicative of emotional coping problems and a cognitive inability to see beyond the immediate gratification of her choices.

30. On March 6, 2006, Dr. Tabakin wrote a letter supporting claimant's brother's request for family medical leave. She described claimant as "a dependent adult due to neurological and emotional issues . . . who is unable to provide for herself and . . . not able to live independently." Dr. Tabakin stated: "It is crucial that [claimant's brother] find a supported living environment for his sister."

31. Psychologist Michael Grogan, Ph.D., M.S.W., is a family friend and neighbor who gave claimant's brother a flyer he received from the Center for Adaptive Learning (CAL) in Concord. When claimant's brother asked Dr. Tabakin about CAL, she told him she thought it sounded good for claimant. On its website, CAL is described as a "supported living program for adults with developmental neurological disabilities."

32. Claimant's brother called CAL and spoke to clinical director Nancy Perry, Ph.D. Dr. Perry's specialty is neuropsychology, and she has extensive experience with

clients who have executive function impairments. She questioned claimant's brother about claimant and her history, including her weight, her lying and how she formed relationships with family and friends. Claimant's brother remembers feeling relief because Dr. Perry seemed to already know who claimant was and because it seemed that there was a future for claimant at CAL.

33. CAL has 44 clients who live in apartments at the Concord facility and (per the CAL service agreement) receive assistance in the following areas:

- (a) Living skills, money management, grooming, and appropriate dress.
- (b) Monitoring of medication.
- (c) Health maintenance, maintaining health care.
- (d) Menu planning, food purchasing and preparation.
- (e) Vocation, education and IPP/Annual specified remedial needs.
- (f) Use of community facilities and public transportation.

According to Dr. Perry, CAL eligibility criteria match the "fifth category" (having a condition closely related to mental retardation and/or a condition requiring treatment similar to that required by mentally retarded individuals), although a few clients are not in the fifth category but function in a similar manner. A small number of clients have autism or Asperger's; none has a diagnosis of mental retardation. Almost all have impaired executive functioning. Two-thirds to three-quarters of CAL clients are regional center consumers.

34. On July 17, 2006, at age 33, claimant moved to CAL, where she shares an apartment with another client. When Dr. Perry first talked to claimant's brother, she was concerned about claimant's being older than most CAL clients and having done a lot in her adult years; she was afraid claimant might not give up her bad habits, like writing to prison inmates. However, Dr. Perry has found that claimant has such a profound problem with initiation (an aspect of executive functioning) that she does what she is told. Claimant needs cueing for almost all activities. Her other executive function deficits include concrete thinking and inability to think abstractly (anticipating consequences involves abstract thinking), inability to plan and organize, difficulty shifting her attention, flattened emotions, poor working memory, and poor judgment, self-awareness and self-monitoring. Dr. Perry gave numerous examples of claimant's poor executive functioning. In October 2007, claimant and her boyfriend (another CAL client) went on a shoplifting spree at Half-Priced Books, loading books, CD's and DVD's into a wheeled suitcase. They were promptly apprehended by store employees when claimant and her boyfriend stopped outside the glass doors of the store to take the goods out to look at what they had stolen. Claimant could not stop and think about what she was doing and the consequences, either when she was stealing the merchandise or when she stopped right outside the store to look at what she had stolen.

CAL gave claimant a job answering phones in the office. She knows to answer the phone when it rings (that is her cue), but she can do only two things. If the caller asks for a person by name, claimant can transfer the call, and if the person is not there, she can put the caller into voice mail. If the caller wants anything else, such as information about CAL, claimant hands the phone to a staff person. When she is on the job and the phone is not ringing, claimant does not have the self-awareness to compose her face. (This is similar to a mentally retarded person.)

35. CAL teaches clients by repetitive learning and trying to build habits. They provide structure for clients, with scheduled activities, classes and counseling sessions, plus “Living Skills” time for doing household chores. A staff person goes to the client’s apartment to help them get organized and remind them to do their chores. Claimant needs assistance, to varying degrees, in all the areas listed above in Finding 33. CAL’s goals for her include improving her living skills, losing weight and eating healthier, continuing her current social relationships, and getting employed. Claimant is not currently capable of being employed, but Dr. Perry thinks she could eventually work in a highly structured job or sheltered workshop.

Dr. Perry has some familiarity with interventions for mentally retarded individuals. These include a lot of repetition, task analysis (breaking a task down step by step), and a lot of direct, concrete instruction. She believes these interventions are very similar to what CAL provides for its clients, although mentally retarded persons are typically more trainable than CAL clients because they do not have the “big ideas” CAL clients have. Dr. Perry thinks mentally retarded persons would do well at CAL except socially, because CAL clients are very “glib” (superficially verbally fluent).

36. Dr. Perry believes claimant suffers from some depression, due to what has happened in her life, but it is not a major problem. Claimant takes a mild antidepressant, and she reports that she is happy. Claimant’s lack of initiation and lethargy can be misunderstood as symptoms of depression. Her main problem, i.e., the reason for her low level of adaptive functioning, is the executive function impairment related to her frontal lobe deficits.

37. In February 2007, claimant began receiving SSI benefits based on a finding that she became medically disabled on April 28, 2005.

38. In April 2007, claimant applied to RCEB for regional center services. In June 2007, RCEB assessment counselor Paula Freedman, M.S.W., met at CAL with claimant, her mother and brother, Dr. Perry, a CAL counselor and a CAL case manager. Ms. Freedman gathered information about claimant’s current level of functioning in different domains, utilizing the client development evaluation report. She questioned claimant, and then excused claimant and questioned CAL staff. Ms. Freedman thought claimant was quite friendly and handled herself well during the meeting. She prepared a social assessment

report summarizing the information obtained from the meeting as well as from the intake screening form provided by claimant's family. She also gathered all available medical reports and school records for claimant. (Most of the school records had not been received at that time.) The RCEB eligibility team consisted of Ms. Freedman, staff psychologist Myles Friedland, Ph.D., and staff physician Paul K. Fujita, M.D., and they reviewed the information and materials. The team met on September 17, 2007, and determined that claimant was not eligible for regional center services.

39. On September 28, 2007, Ms. Freedman sent Dr. Perry a letter notifying her that the RCEB Assessment Team had determined that claimant was not eligible for regional center services.<sup>5</sup> The letter stated:

The Team finds that Carolyn has a diagnosis of low functioning due to psychiatric rather than cognitive problems. [¶] Although Carolyn has special needs, she is not significantly handicapped due to a diagnosis of developmental disability (mental retardation, autism, cerebral palsy, epilepsy) which would qualify her for Regional Center services. [¶] The Team recommends Carolyn continue with psychiatric treatment and psychotherapy and vocational rehabilitation.

Claimant's brother recalls thinking that because claimant presents very well at an initial meeting, Ms. Freedman may not have gotten "the full picture."

40. On or about October 30, 2007, claimant submitted a fair hearing request appealing RCEB's determination of ineligibility.

41. RCEB decided to revisit the issue of claimant's eligibility by having the clinicians meet with her and her family. On November 29, 2007, Dr. Friedland and Dr. Fujita interviewed claimant as well as her family members and Dr. Perry. They found claimant to be quite articulate, cogent, and able to provide lots of details in response to their questions. She did not seem like a person with mental retardation. In their confidential eligibility interview report, Dr. Friedland and Dr. Fujita wrote the following about their private interview with claimant:

She reported a longstanding history of depression dating back to her high school years. She reported that she didn't do well in school and didn't care. She reported that she would spend money to make herself happy. She reported a history of suicidal ideation and suicide attempts.<sup>6</sup> She reported hiding her depression and that she was not diagnosed until she was seen at Bright Minds. She reported that she had Anxiety and had been diagnosed to have Major depression. She also has Trichotillomania and has a history of pulling out her scalp hair and eyelashes and eyebrows. She is being treated by Dr. Silver a psychiatrist at the Kaiser Walnut Creek facility. She is seen every 3 months. She had previously been seen by Beth

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<sup>5</sup> Ms. Freedman was new and did not realize she should have sent the letter to claimant.

<sup>6</sup> Claimant also told Dr. Rosenberg that she had twice attempted suicide between ages 20 and 24. Claimant's mother is unaware of any suicide attempts.

Tabakian [*sic*] a therapist at Bright Minds. She is being treated with Abilify and Cymbalta. [¶] . . . [¶] Her father recently died and she reported having a “deep depression” resulting in her not wanting to get out of bed or do things such as take a shower.

42. On February 7, 2008, Dr. Friedland and Dr. Fujita met to reconsider claimant’s eligibility. They determined that claimant did not meet the criteria for eligibility, i.e., she did not have a developmental disability.

43. On March 12, 2008, an informal appeal meeting was held at RCEB. Pam Thomas, Associate Director of Consumer Services, and Lisa Kleinbub, R.N., M.S.N., Director of Health and Behavior Services, were there from RCEB. Claimant’s mother, brother and sister were there, as well as Dr. Nancy Perry, Dr. Michael Grogan and James Huyck, a consultant and advocate. On March 17, 2008, Ms. Kleinbub sent a letter to claimant’s mother informing her: “After much consideration of the information provided at our meeting as well as the information in Carolyn’s file, I must let you know that I cannot change the initial decision of the RCEB eligibility team. I do not find that Carolyn has a developmental disability . . . .”

44. Upon Mr. Huyck’s recommendation, claimant underwent a neuropsychological evaluation by Teresa Bailey, Ph.D., on April 8, 2008. The issue she was asked to address was whether claimant was eligible for regional center services under the fifth category. Dr. Bailey referred claimant to Sarah Cheyette, M.D., for a neurological consultation.<sup>7</sup>

45. On March 28, 2008, Dr. Cheyette examined claimant and interviewed her and her mother. Her report mentions claimant’s history of behavior problems and her difficulties with school and jobs. On examination, Dr. Cheyette measured the circumference of claimant’s head (54.5 centimeters) and described this as “relative microcephaly.” In her assessment, Dr. Cheyette cited claimant’s relatively small head as indicating “problems with brain growth early on.” This along with claimant’s learning problems in school and her inability to live independently appear to be the basis for the conclusion that “Carolyn has evidence of developmental disability going back to her early childhood.” The conclusion to which Dr. Cheyette appears to have jumped is supported by scant and faulty evidence. Dr. Fujita testified that claimant’s head circumference is well within the normal range for women, and claimant does not have absolute microcephaly. Further, microcephaly correlates only very roughly with intellectual problems.

46. Dr. Bailey administered numerous tests to claimant, including those in the Extended Halstead-Reitan Neuropsychological Battery. She interviewed claimant and her mother, and spoke to Dr. Perry, Dr. Miranda and Dr. Rosenberg. She also reviewed all of the

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<sup>7</sup> Dr. Bailey also referred claimant to audiologist Judith W. Paton, M.A., for a central auditory processing evaluation. That evaluation is not particularly relevant and will not be discussed.

available reports and records. Dr. Bailey issued a report of her evaluation, in which she discussed her findings and reviewed and commented on previous reports and school records. She also testified at the hearing. Dr. Bailey believes claimant has a serious neurological impairment, based upon her test results on the Halstead-Reitan Neuropsychological Battery and the findings of Dr. Miranda and Dr. Cheyette. On the WAIS-R, claimant's verbal IQ score was 78 and her performance IQ score was 98. (Because of the large difference between these two scores, a valid full-scale IQ could not be derived.) Claimant's score on the Vocabulary sub-test was 6, which was a marked drop from her 2005 score of 9 on that sub-test when the WAIS-III was administered by Dr. Rosenberg. On tests of memory for visual-spatial and tactual material, claimant also showed deterioration from 2005 to 2008. Dr. Bailey administered the Vineland Adaptive Behavior Scales by questioning claimant's mother. She instructed claimant's mother to answer based on what claimant actually does when she is on her own, not what she can do when someone is telling her to do it. The results show claimant impaired in all areas, but most severely in Receptive and Expressive Language (ages 3.1 and 3.5, respectively). Her scores indicate that claimant functions between the <0.01 and 0.05 percentiles in adaptive living skills. Dr. Bailey believes claimant is substantially disabled in the areas of self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living and economic self-sufficiency. One of the recommendations in her report is as follows:

With regard to the specific regional center qualifications in the state of California, history supports that Ms. [H.] has had a lifelong disability based on medical findings of microcephaly, abnormal EEG, DEEP, and Evoked Potential studies, and both parental and professional assessments that consistently document failure to meet developmental milestones in the areas of cognition, self-care, and interpersonal relationships. These developmental delays are of such severity such that she will require specialized services and support, including residence and supervision in a monitored facility such as the Center for Assisted Living [*sic*], where she is already considered to be one of its lowest functioning residents.

Dr. Bailey's opinions are undermined by an obvious lack of objectivity and slant in her report toward finding that claimant meets regional center eligibility criteria. There is selective accounting of previous reports and testing, interspersing of opinion or supposition with test results, and a lot of generalization and jargon. And some of Dr. Bailey's statements are so exaggerated as to make no sense. For example:

Yes, Ms. [H.] has pockets of cognitive and emotional strengths, but collectively, they are not enough to overcome the well-documented, including by this team, severe developmental impairments in basic cognitive-emotional processes that have

resulted in a charming ability to mimic normal behavior and thought through parroting and imitation, while never having been able to self-manage and apply the principles underlying the behaviors to independent thought, problem-solving, and impulse control that ever resulted in fully functional behavior much above the pre-school and kindergarten levels.

Regarding claimant's scores on the Vineland Adaptive Behavior Scales, Dr. Fujita and Dr. Friedland question their validity. Her age-equivalent scores in Receptive and Expressive Language (3.1 and 3.5, respectively) are inconsistent with a verbal IQ of 78 and the ability to give a coherent history.

47. Dr. Fujita and Dr. Friedland both testified at the hearing regarding their opinion that claimant is not eligible for regional center services. They point out numerous examples of how different claimant is from a mentally retarded individual. Her academic achievement and regular (not special education) high school diploma are beyond what could be expected of a mentally retarded person. Obtaining a driver's license and driving a car would be extremely rare for someone with mental retardation. Some of the jobs claimant has held (PBX operator, cashier and in-home support provider) are beyond the abilities of a mentally retarded person. Writing checks, activating credit cards and making mail order purchases require a level of cognitive ability inconsistent with mental retardation. Attention and concentration problems, problems with impulse control and emotional expressiveness, and lying and stealing are not associated with mental retardation. Most mentally retarded people do not need constant reminders; they are capable of learning hygiene tasks and housekeeping. Claimant does not have the global intellectual deficits which characterize mental retardation.

Dr. Fujita and Dr. Friedland believe that claimant's impaired adaptive function (particularly as compared with her low average intellectual function) is related to psychiatric disorders and a learning disability. Dr. Fujita testified that claimant's clinical picture is pretty complex. He sees her strengths as her good verbal skills, basic academic skills and capacity for abstract thought (i.e., symbolic thinking and fantasies), and her weaknesses as not following rules, poor math skills, and depression and anxiety. Although RCEB did not perform a psychological evaluation, Dr. Fujita looked at what disorders are similar to claimant's profile. He believes her profile is most similar to chronic or major depression and characteristics of antisocial personality disorder. She also has ADHD-like characteristics (e.g., executive function problems), a learning disability-type disorder, and characteristics of dependent personality disorder. Claimant's profile suggests she needs treatment much different than the treatment needed by the mentally retarded. For anxiety and depression, she needs medications and psychotherapy, particularly cognitive behavioral therapy. Personality disorders are longstanding, enduring patterns of maladaptive behavior, and they are not very amenable to treatment. However, antisocial personality characteristics could be addressed with behavioral therapy or intervention. ADHD and executive function problems require



external life skills supports and perhaps medications. Learning disabilities require bypass strategies and external supports. Dependent personality disorder characteristics can be addressed with psychotherapy and family therapy. Dr. Fujita believes it should be a priority to find the cause of claimant's recent decline in memory and cognitive abilities, because they may be remediable.

Dr. Fujita testified that frontal lobe impairment or involvement is common in all types of disorders, including autism, ADHD and most psychiatric disorders. Generally, the regional center does not see people with the type of frontal lobe syndrome diagnosis that claimant has. Also, people with low average intelligence rarely seek regional center services.

## LEGAL CONCLUSIONS

1. The governing law is found in the Lanterman Developmental Disabilities Services Act,<sup>8</sup> under which “[t]he State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge.”<sup>9</sup> The Legislature has created a comprehensive scheme to provide services and supports for persons with developmental disabilities, with a twofold purpose: (1) to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community;<sup>10</sup> and, (2) to enable developmentally disabled persons to approximate the pattern of living of nondisabled persons of the same age and to lead more independent and productive lives in the community.<sup>11</sup>

2. The services provided by regional centers under the Lanterman Act are not available to every person with a physical or mental handicap who is in need of need of assistance. Rather, a person must be developmentally disabled within the meaning of the following statute:

“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. . . . [T]his term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to

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<sup>8</sup> Welf. & Inst. Code, § 4500 et seq.

<sup>9</sup> Welf. & Inst. Code, § 4501.

<sup>10</sup> Welf. & Inst. Code, §§ 4501, 4509 and 4685.

<sup>11</sup> Welf. & Inst. Code, §§ 4501, 4750 and 4751; see generally *Association for Retarded Persons v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.

that required for individuals with mental retardation, but shall

not include other handicapping conditions that are solely physical in nature.<sup>12</sup>

To constitute a substantial disability, the condition must result 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 significant functional limitations in three or more of the following areas: receptive and expressive language; learning; self-care; mobility; self-direction; capacity for independent living; and economic self-sufficiency.<sup>13</sup> “Cognitive” means “the ability of an individual to solve problems with insight, to adapt to new situations, to think abstractly and to profit from experience.”<sup>14</sup>

Specifically excluded from the definition of developmental disability are handicapping conditions that are solely psychiatric disorders, solely learning disabilities, or solely physical in nature.<sup>15</sup>

3. The evidence established that claimant has a developmental disability under the fifth category. Claimant is not mentally retarded, and she is different from someone with mental retardation in many ways. However, she suffers from frontal lobe impairment, and this condition requires her to receive treatment similar to that required for individuals with mental retardation. Claimant’s frontal lobe impairment originated before she reached age 18 and is permanent. This condition constitutes a substantial disability, because it results in 1) major impairment of cognitive functioning (claimant is seriously impaired in her ability to solve problems with insight, to think abstractly and to profit from experience), and 2) significant functional limitations in learning, self-care, self-direction, capacity for independent living, and economic self-sufficiency. Claimant’s depression and whatever other psychiatric disorders she has are not the primary cause of her adaptive deficits. Similarly, whatever learning disabilities claimant has (which may actually be related to her frontal lobe impairment) cannot be determined to be the primary cause of her disability. Claimant is eligible for regional center services.

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<sup>12</sup> Welf. & Inst. Code, § 4512, subd. (a).

<sup>13</sup> Cal. Code Regs., tit. 17, § 54001, subd. (a).

<sup>14</sup> Cal. Code Regs., tit. 17, § 54002.

<sup>15</sup> Cal. Code Regs., tit. 17, § 54000, subd. (c).

ORDER

Claimant Carolyn H.'s appeal to be found eligible for services from Regional Center of the East Bay is granted.

DATED: \_\_\_\_\_

\_\_\_\_\_  
NANCY L. RASMUSSEN  
Administrative Law Judge  
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Judicial review of this decision may be sought in a court of competent jurisdiction within 90 days.