BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: CLAIMANT, vs. INLAND REGIONAL CENTER, Service Agency.	OAH No. 2017120535

DECISION

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on March 5, 2018.

Stephanie Zermeño, Consumer Services Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

Claimant's parents represented claimant, who was not present.

The matter was submitted on March 5, 2018, but claimant was permitted to submit an addendum to a report written by Carolyn Korbel, Ph.D., that claimant's parents had not yet received. The addendum was submitted on March 7, 2018, and received into evidence as Exhibit L. IRC submitted a response on March 15, 2018, which was marked as Exhibit 20 for identification.

ISSUE

Did IRC properly conclude that its original determination, that claimant had a developmental disability making her eligible for regional center services, is clearly erroneous?

FACTUAL FINDINGS

1. Claimant is a 19-year-old female receiving regional center services as a result of a 2013 diagnosis of intellectual disability made by Thomas Gross, Ph.D. Dr. Gross assessed claimant's cognitive and adaptive skills. He concluded that claimant experienced significant deficits in learning, communication, self-direction, and self-care. According to the evaluation, Dr. Gross did not review any of claimant's past records or psychological evaluations. He recommended reevaluating claimant in three years because claimant exhibited mixed subtest performance on the Wechsler Intelligence Scale for Children-IV (WISC-IV).

2. On November 29, 2017, IRC notified claimant that she was no longer eligible for regional center services because its original determination finding claimant eligible for regional center services is clearly erroneous in light of its "comprehensive reassessment." IRC asserted that claimant does not have a developmental disability and is not "substantially disabled." Claimant appealed that determination and this hearing ensued.

DIAGNOSTIC CRITERIA FOR INTELLECTUAL DISABILITY

3. The American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5) contains the diagnostic criteria used to diagnose intellectual disability. Intellectual disability is a disorder with onset during the developmental period that includes both intellectual and adaptive functioning deficits in conceptual, social, and practical domains. Three diagnostic criteria must be met in order to receive a diagnosis of intellectual disability: Deficits in intellectual functions, such as reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience; deficits in adaptive functioning that result in failure to meet developmental and socio-cultural standards for personal independence and social

responsibility; and, the onset of these deficits must have occurred during the developmental period. Intellectual functioning is typically measured using intelligence tests. Individuals with an intellectual disability typically have intelligent quotient (IQ) scores at or below the 65-75 range.

The essential features of intellectual disability are deficits in general mental abilities and impairment in everyday adaptive functioning, as compared to an individual's age, gender, and socio-culturally matched peers.

DIAGNOSTIC CRITERIA FOR INTELLECTUAL DISABILITY AND THE "FIFTH CATEGORY"

4. Under the "fifth category" the Lanterman Act provides assistance to individuals with a disabling condition closely related to an intellectual disability that requires similar treatment needs as an individual with an intellectual disability, but does not include other handicapping conditions that are "solely physical in nature." A disability involving the fifth category must also have originated before an individual attained 18 years of age, must continue or be expected to continue indefinitely, and must constitute a substantial 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 mental retardation, with many of the same, or close to the same, factors required in classifying a person as mentally retarded. Furthermore, the various additional factors required in designating an individual developmentally disabled and substantially handicapped must apply as well."

IRC'S EVIDENCE

5. Michelle Lindholm, Ph.D., testified at the hearing. Dr. Lindholm holds a Doctorate in Psychology and is a Board Certified Behavior Analyst. She also holds a Master of Arts and Bachelor of Arts in Psychology. In February 2018, Dr. Lindholm

became IRC's behavior analyst. She was previously a staff psychologist at IRC beginning in 2011, and served as a psychological assistant at IRC for eight years prior. Dr. Lindholm has extensive clinical experience in the assessment and diagnosis of individuals suspected of having a developmental disability that would qualify them for regional center services. Dr. Lindholm has attended countless educational conferences and trainings in her field and has achieved several honors. Dr. Lindholm qualifies as an expert in the diagnosis and treatment of persons with an intellectual disability

6. Dr. Lindholm conducted an assessment of claimant on October 17, 2017, and prepared a report on November 8, 2017. In addition to her own testing, Dr. Lindholm reviewed various psychological evaluations and psycho-educational assessments beginning when claimant was 10 years old. She also reviewed Dr. Gross's prior report and other pertinent information provided by claimant. The following is a summary of her assessment and the documents provided.

7. The Sewall Diagnostic and Evaluation Clinic conducted an evaluation[1] in September 2009, when claimant was 10 years old. The evaluation provided some background information regarding claimant. She was adopted by her parents at approximately 17 months old, after having suffered severe neglect that precipitated removal from her birth mother's care. Prenatal alcohol exposure was suspected but not confirmed. Claimant had been previously diagnosed with reactive attachment disorder. In 2009, she was placed in a therapeutic foster home due to severe behavioral and emotional issues.

Cognitive testing during the evaluation indicated very low intellectual abilities. She obtained a Full Scale IQ score of 67 on the WISC-IV. However, her index scores in

[1] The evaluation was signed by a speech-language pathologist, physical therapist, developmental pediatrician, and licensed clinical psychologist.

three areas, verbal comprehension, perpetual reasoning and working memory fell in the borderline range of functioning, while her processing speed index score fell in the extremely low range. Variability in skills was noted within some domains. Finally, the evaluation noted that claimant did not present with potential growth delays or facial features associated with prenatal alcohol exposure. In addition to the reactive attachment disorder, the evaluator diagnosed claimant with borderline intellectual functioning with a rule-out of mild mental retardation.

The evaluator diagnosed claimant with static encephalopathy, which is permanent and unchanging brain damage. Although prenatal exposure to alcohol was unknown, the evaluator believed a number of factors could have contributed to claimant's cognitive and behavioral problems.

8. On June 2, 2010, Edward Frey, Ph.D., performed a psychological evaluation for IRC to determine eligibility for services. Dr. Frey noted claimant had a number of psychological and psychiatric diagnoses, including reactive attachment disorder, specific learning disability, mood disorder, attention deficit hyperactivity disorder (ADHD) and overanxious disorder. At the time, claimant received special education services due to specific learning disability and other health impairment. Dr. Frey administered the WISC-IV and claimant had a full scale IQ of 73, which falls in the borderline range of intellectual functioning. All composite scores were also in borderline range. Dr. Frey administered the Wide Range Achievement Test-IV, which assessed reading and spelling. Reading was assessed at the average range and spelling at the high borderline range. Finally, Dr. Frey reviewed the Vineland-II Adaptive Behavior Scales (Vineland-II) which were based on information reported by claimant's parents. Dr. Frey found claimant had adaptive deficits, but those appeared related to her psychiatric diagnoses rather than developmental disability. Dr. Frey believed that claimant's functioning was within the range of intellectual disability. Cognitive functioning was in the borderline

range and academic function was low average to borderline. He noted that the strengths claimant had cognitively and adaptively argued against the presence of intellectual disability. Dr. Frey concluded claimant had borderline intellectual functioning but did not have a developmental disability that would qualify her for regional center services.

9. Claimant's school district prepared a triennial psycho-educational report in March 2012, when claimant was 13 years old, to assess claimant's continued need for special education services. The evaluator obtained information from claimant's teacher and parents, conducted assessments, and performed classroom observations. The evaluator concluded that claimant had intellectual ability in the average range and academic achievement in the below average to far below average range. A social emotional assessment revealed concerns in the areas of behavior, such as hyperactivity, aggression, depression, emotional self-control, executive functioning, among other issues. The evaluator found claimant had the handicapping conditions of emotional disturbance, specific learning disability, other health impairment, and speech and language impairment. None of these conditions qualify a person for regional center services.

10. A psycho-educational report was prepared a year later, in May 2013. The evaluation was performed to update information in the area of executive functioning. The school psychologist administered two assessments, the NEPSY-II and Delis-Kaplan Executive Function System (D-KEPFS). The evaluator noted difficulty in getting claimant to take assessments, but in the end, her efforts improved and the evaluator believed she became focused and her attention improved. The evaluator found that claimant had many strengths when asked to complete concrete tasks, but when tasks became more complicated, her ability dropped exponentially. He found her ability to plan, organize,

problem solve and communicate directly affected her behaviorally and emotionally. The evaluator recommended that claimant be referred to IRC for an evaluation for eligibility.

11. James Koeppel, Psy.D., conducted a comprehensive psychological-educational evaluation in April 2015, when claimant was 16 years old. At the time, claimant was living in a residential facility in Utah. Dr. Koeppel reviewed extensive school records, conducted interviews of claimant's parents, therapist, school principal, teacher, case manager at the facility, and claimant. Dr. Koeppel administered the Woodcock-Johnson IV Test of Cognitive Abilities (WJ-IV Cog), which contains 13 clusters to assess strengths and weaknesses. Claimant received a general intellectual ability score of 71, which was at the lower end of the borderline range to below low average, yet above the range for someone to be considered intellectually disabled. Dr. Koeppel also administered the Kauffman Assessment Battery for Children, Second Edition (KABC-II) which consisted of 18 subsets. Claimant had an overall score of 79, which was in the 8th percentile and in the borderline range. The KABC-II had another intellectual ability score, the non-verbal intelligence score, for which claimant scored a 73, again in the borderline range. Dr. Koeppel noted that claimant displayed a number of strengths in cognitive processes which were well within the average range, suggesting to him it was highly probable that her true overall intellectual ability score should not be interpreted as falling within the intellectual disabled range. In summary, he assessed claimant's intellectual ability at the borderline to below low average level.

Dr. Koeppel also assessed claimant's adaptive behavior, by administering the Vineland-II to claimant's teacher and mother. The average of all three domains, communication, daily living skills, and socialization, was 66, which was in the first percentile. Dr. Koeppel assessed claimant's academic ability at approximately a 3.5 grade level. With the exception of written language, all areas of academic ability were far below average.

12. Dr. Lindholm conducted her own assessment on October 17, 2017. Dr. Lindholm noted that initially, claimant was "sullen" and questioned why she had to complete more tests. Dr. Lindholm informed her that she wanted to assess claimant's strengths and weaknesses. After some reluctance, claimant willingly began testing and appeared to give it her best effort. At one point during the testing, claimant struggled and wanted to give up. With some gentle coaxing by Dr. Lindholm, claimant agreed to continue.

Dr. Lindholm administered the Wechsler Abbreviated Scale of Intelligence-II (WASI-II) in the areas of verbal comprehension and perceptual reasoning. Claimant had a full scale score of 91, indicating average intellectual skills in these areas. Dr. Lindholm explained that she administered the abbreviated test because she had reviewed the prior test results and noticed that claimant would sometimes refuse to continue parts of the test. Dr. Lindholm wanted to assess the areas in which claimant had previously scored high, because this would indicate that claimant did not have an intellectual disability. Dr. Lindholm testified that it is possible to see false-lows in IQ scores because a person might not give a test his or her best effort. However, it is not likely that there would be a false-high, unless the test was improperly scored. Dr. Lindholm testified that had claimant scored low in the areas she assessed with the WASI-II, she would have administered the full intelligence test. However, since claimant scored high in these areas, confirming her past relative high scores in these areas, administering the full test was not necessary.

Dr. Lindholm also had claimant's mother complete the Vineland Adaptive Behavior Scales-3 Domain, in the areas of communication, daily living, and socialization. Claimant scored in the low 70s in each area, and had an adaptive behavior composite of 72, which is borderline.

Dr. Lindholm concluded that claimant did not qualify for IRC services under intellectual disability or the fifth category. She also does not show substantial disabilities in adaptive functioning. Dr. Lindholm testified that she did not believe claimant qualified under the fifth category because claimant had relative strengths in many areas that were in the low average area. She said there were a number of areas that were higher than borderline. For intellectual disability, it is typical to find all scores below 70, which is two standard deviations below the mean. For borderline functioning, one would typically find all scores below the mid-70s. Dr. Lindholm believes that the treatment claimant is received is similar to someone with psychiatric disturbances and not intellectual disabilities. Dr. Lindholm explained that claimant has been receiving IRC services since she was 14, and has not shown any marked improvements. Dr. Lindholm would expect to see improvements in certain areas. However, Dr. Lindholm was unaware of the specific kinds of treatment claimant was receiving in her special education class and group home. Dr. Lindholm said she does not look at the treatment side, and only conducts diagnostic evaluations. Dr. Lindholm did not interview claimant, apart from administering the evaluation; claimant's parents, claimant's teachers; or staff at her residential home.

Dr. Lindholm said she did not consider Fetal Alcohol Spectrum Disorder (FASD) in her evaluation because at the time she conducted her assessment, claimant had not been diagnosed with it. Dr. Lindholm stated that she did see a letter from Dr. Jones, stating he diagnosed claimant with a form of FASD. Regardless of the diagnosis, Dr. Lindholm believed that claimant does not qualify under the fifth category.

There was no information presented regarding who was on the clinical team that made the determination that claimant was no longer eligible for IRC services.

CLAIMANT'S EVIDENCE

13. Following IRC's determination that claimant was no longer eligible for services, claimant's parents obtained a neuropsychological evaluation from Carolyn Korbel, Ph.D., at Rady's Children's Hospital. Dr. Korbel authored a report dated January 22, 2018. Dr. Korbel conducted a thorough review of claimant's psychological, educational, and developmental history. Dr. Korbel noted that claimant has been tested numerous times over the years, and most of the evaluations have indicated concerns about borderline intellectual functioning, with some pockets of average to below average ability.

Dr. Korbel administered the WAIS-IV to determine current cognitive functioning and intellectual ability. The testing showed that overall intellectual ability fell within the below average range, with a standard score of 81, with subsets in the borderline and above average ranges. Dr. Korbel noted difficulties in working memory and cognitive processing speed in particular.

Dr. Korbel assessed claimant's academic achievement with the Wechsler Individual Achievement Test-Third Edition. Claimant's overall academic achievement skills spanned the average to borderline ranges overall.

In terms of adaptive functioning, Dr. Korbel estimated claimant's functioning to fall within the borderline level overall in parental ratings. Skills fell within the borderline range across conceptual, social, and practical domains. These ratings fell below that anticipated by claimant's overall intellectual ability estimate, but were more consistent with her academic achievement challenge areas. In an addendum to the report submitted by claimant after the hearing, Dr. Korbel reviewed BASC-3 results obtained from claimant's teacher. The teacher's ratings were remarkable for various concerns regarding hyperactivity, aggression, conduct problems, anxiety, and depression. The evaluations by claimant's teacher suggested claimant had significant difficulties with

emotional and behavioral regulation across a number of domains and confirmed Dr. Korbel's conclusion that claimant had borderline adaptive functioning skills.

Dr. Korbel assessed claimant's executive functioning skills and found concern over her inattention, hyperactivity, and impulsivity. Significant concerns with executive functioning were identified on measures requiring higher order organizations, and planning. Given claimant's difficulties with executive function, Dr. Korbel diagnosed claimant with Other Specified Neurodevelopmental Disorder and recommended specialized intervention to help improve her executive functioning skills. Based on the evaluations provided by claimant's teacher, Dr. Korbel confirmed these diagnoses.

In conclusion, Dr. Korbel found that claimant does not meet the criteria for a diagnosis of Intellectual Disability, but she believed claimant would benefit from services and supports available to regional center consumers that have conditions similar to those with an intellectual disability. She also recommended claimant be evaluated at University of California, San Diego, for FASD. Dr. Korbel's assessment did not evaluate whether claimant is substantially disabled in three or more areas of a major life activity, as set forth in California Code of Regulations, title 17, section 54001.

14. Claimant submitted an Individualized Educational Program (IEP) completed on March 2, 2018. Claimant receives special education services under the categories of emotional disturbance and other health impairment. Neither one of those categories renders a person eligible for regional center services. Claimant is currently in a transition program focused on providing her vocational training and skills for independent living. The IEP outlined some of claimant's emotional and behavioral issues. The IEP noted that claimant's lack of impulse control is one of the biggest obstacles to her independence, and she requires a dedicated staff person to accompany her in the community at all times. She was able to complete a three-month internship,

but required a dedicated instructional assistant to help keep her on task and control her impulses.

15. Claimant submitted a book chapter in *Fetal Alcohol Spectrum Disorders in Adults: Ethical and Legal Perspectives*. The chapter outlined how individuals with FASD have adaptive skills and support needs similar to people with intellectual disability. However, because individuals with FASD typically have higher IQ scores than those with intellectual disability, they are often deemed ineligible for services.

16. Claimant submitted a short letter by Kenneth Lyons Jones, M.D., from UCSD. Dr. Jones wrote that claimant is a patient with the Fetal Alcohol Spectrum Disorder Clinic at Rady's Children Hospital and has been diagnosed with Alcohol-Related Neurodevelopmental Defects (ARND), a condition under the FASD. Dr. Jones noted individuals with ARND do not have all of the FASD facial abnormalities but do have behavioral and learning problems. Dr. Jones wrote that claimant would greatly benefit from IRC services.

17. Claimant submitted an evaluation performed by Arsalan Daramal, M.D., a board certified child, adult, and adolescent psychiatrist, at the Amen Clinics. As part of his evaluation, Dr. Daramal performed two brain Single Photon Emission Computer Tomography (SPECT) studies. Based on the evaluation, Dr. Daramal diagnosed claimant with ADHD Ring of fire pattern and cyclothymic disorder.

18. Claimant submitted a Psychoeducational report from her school district completed on January 27, 2004, when claimant was four years old. The report indicated that as early as age four, claimant had behavioral issues and qualified for special education services based on emotional disturbance and other health impairment.

TESTIMONY OF CLAIMANT'S MOTHER

19. Claimant's parents adopted claimant at 17 months of age. Claimant first qualified for special education services at age four. Claimant had a number of behavioral

issues that forced her parents to send her to residential treatment centers. However, her cognitive difficulties hindered the treatment that she could receive. Although claimant has some strengths intellectually, claimant is most significantly impaired in assessing the world around her. Claimant's mother believes that claimant's psychiatric problems have stabilized over the last several years, but she still exhibits deficits in her executive functioning.

Claimant's mother believed that IRC's evaluation was not comprehensive, and IRC should have considered additional information such as interviews with claimant's teachers and those who work with her at the residential center. She noted that Dr. Lindholm's assessment lasted a little more than an hour.

TESTIMONY OF PEDRO SOLORZANO

20. Pedro Solorzano is a transition specialist at claimant's school district. He has taught transition students (18 to 22 years old) for the past seven years. He also taught special education in middle school for five years. He has been claimant's teacher for a year and three months. The transition program takes students out into the community to focus on vocational and life skills. Claimant requires additional special attention because of her emotional issues and lack of impulse control. Consequently, she has a one-on-one instructional aide assigned to her at all times. Mr. Solorzano believes that claimant is able to succeed in meeting her educational goals, but requires specialized support to prevent putting herself in danger.

In particular, if a situation becomes overwhelming, claimant's communication skills begin to falter. She is often defensive when a teacher attempts to guide her. He frequently has to go over directions with her multiple times. One of the reasons an instructional aide is required to be with her at all times is because she sometimes loses track of what she is doing and becomes impulsive. On one occasion, she ran across a busy street. Claimant has difficulty with certain every-day tasks. She is able to buy items

but has no concept of budgeting or wise spending. If she has money she will want to spend it all and has no concept of saving or reserving the money for later in the week.

LEGAL CONCLUSIONS

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

2. Welfare and Institutions Code section 4501 provides:

> 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

3. Welfare and Institutions Code section 4643.5, subdivision (b), provides:

> An individual who is determined by any regional center to have a developmental disability shall remain eligible for services from regional centers unless a regional center, following a comprehensive reassessment, concludes that the original determination that the individual has a developmental disability is clearly erroneous.

4. In a proceeding to determine whether a previous determination that an individual has a developmental disability "is clearly erroneous," the burden of proof is on the regional center to establish that the individual is no longer eligible for services. The standard is a preponderance of the evidence. (Evid. Code, § 115.) Thus, IRC has the burden to establish by a preponderance of the evidence that its previous eligibility determination "is clearly erroneous."

5. Welfare and Institutions Code section 4512, subdivision (a), defines developmental disability as a disability that originates before an individual attains 18 years of age; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for that individual. A developmental disability also includes "disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability." (*Ibid.*) Handicapping conditions that are "solely physical in nature" do not qualify as developmental disabilities under the Lanterman Act. (*Ibid.*)

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

(a) "Developmental Disability" means a disability that is attributable to mental retardation,[2] cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation.

(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

[2] Although the Lanterman Act has been amended to eliminate the term "mental retardation" and replace it with "intellectual disability," the California Code of Regulations has not been amended to reflect the currently used terms.

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 mental retardation, 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 mental retardation.

7. 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

8. Welfare and Institutions Code section 4643.5, subdivision (b), provides that an individual who is determined by any regional center to have a developmental disability "shall remain eligible for services from regional centers unless a regional center, following a comprehensive reassessment, concludes that the original determination that the individual has a developmental disability is clearly erroneous." Claimant was initially found eligible for regional center services based on Dr. Gross's determination that claimant had an intellectual disability. Dr. Lindholm's review of claimant's past testing and present scores established that claimant does not meet the DSM-5 criteria for intellectual disability. Claimant has consistently tested in the borderline and low average range in cognitive abilities and the borderline range in adaptive functioning. This conclusion was corroborated by Dr. Korbel in her own evaluation of claimant's intellectual functioning. Under this category, the determination that claimant has an intellectual disability is clearly erroneous.

However, the inquiry does not end there. In order for IRC to terminate claimant from its services, Welfare and Institutions Code section 4643.5, subdivision (b), requires it to conduct a "comprehensive reassessment" and conclude that its original determination that claimant has a "developmental disability" is clearly erroneous.

Was IRC's original determination that claimant has a developmental disability clearly wrong? As previously noted, IRC established that the diagnosis of an intellectual disability is clearly wrong; however, a "developmental disability" includes not only intellectual disability, but also the fifth category – a disabling condition found to be closely related to intellectual disability or to require treatment similar to that required

for individuals with an intellectual disability. (Welf. & Inst. Code, § 4512, subd. (a); Cal. Code Regs., tit. 17, § 5400.) Thus, even though IRC initially determined that claimant was eligible based on intellectual disability, and not the fifth category, in order for it to discontinue services it must establish that claimant *presently* does not have a developmental disability under *any* category. Construction of the statute in this manner reflects the legislative intent to protect an individual who still suffers from a developmental disability from having services terminated, even if the specific type of developmental disability is different than what initially qualified the individual for services.

There are several reasons to support this construction. When a regional center determines an individual qualifies as having a developmental disability under a specific category, there might not be a reason for it to determine whether there were other qualifying categories that could entitle the individual to services. In another scenario, a person could develop another condition during the developmental period that would qualify him or her for services, a condition that did not exist at the time of the initial evaluation. The legislature could not have intended for a person who no longer qualifies under one category, yet is still developmentally disabled, to lose services while he or she applies for eligibility under another category. As such, IRC is required to show that claimant is ineligible for its services based on *all* qualifying developmental disabilities. IRC *did* in fact do just that - Dr. Lindholm evaluated claimant for continued eligibility under all five categories but determined claimant was ineligible under any.

This leads to the second requirement that the reassessment of eligibility be "comprehensive." Dr. Lindholm's testimony was credible and her evaluation of claimant's past records thorough. There is no question that Dr. Lindholm's assessment regarding whether claimant has an intellectual disability was comprehensive. As noted, claimant has consistently tested in the borderline and low average range in cognitive abilities and

adaptive functioning. Nonetheless, California Code of Regulations, title 17, section 54001, subdivision (b), requires the adaptive functioning, or substantial disability analysis, to be made by, at a *minimum*, a program coordinator, a physician, and a psychologist. No evidence was presented by IRC that a program coordinator and physician, at a minimum, agreed with Dr. Lindholm's conclusions. Put another way, a comprehensive reassessment includes not only finding that the consumer no longer has the signs and symptoms of the original diagnosis; it also includes a determination of whether that individual, assuming they did have that original condition, has a substantial disability in three or more areas of a major life activity. Additionally, "Any reassessment of substantial disability for purposes of continuing eligibility shall utilize the same criteria under which the individual was originally made eligible." (Cal. Code Regs., tit. 17, § 54001, subd. (d).) IRC did not establish it used the same criteria. In these respects IRC's assessment was not comprehensive enough.

Finally, the reassessment was not comprehensive in addressing whether claimant has a developmental disability under the fifth category. The Act does not provide a definition of comprehensive, but it must be assumed that the Legislature intended the word be given some significance. In order to be comprehensive, an assessment must cover a matter completely. For example, Dr. Koeppel conducted an extensive assessment where he interviewed claimant, her parents, her teachers, and others involved in her care. He conducted a battery of tests and produced a thorough and comprehensive analysis. Likewise, Dr. Korbel's assesement contained a thorough and detailed evaluation. In fairness, additional information, such as the diagnosis of ARND, were provided to IRC after it made its determination that claimant was no longer eligible. However, because IRC has the burden of proof, it is under the obligation to comprehensively evaluate this new information.

This decision in no way makes a finding that claimant qualifies under the fifth category, nor does it limit IRC from conducting future comprehensive reassessments in accordance with Welfare and Institutions Code section 4643.5, subdivision (b), to evaluate eligibility under the fifth category. Particularly, in the area of adaptive functioning and whether claimant has a substantial disability, there were significant areas where claimant's functioning was determined to be at a level that would disqualify her from services. There are also open questions as to whether claimant requires treatment similar to that required for individuals with an intellectual disability. However, as IRC has the burden of proof, and because it did not conduct a comprehensive assessment to establish a fifth category qualification is clearly erroneous, its request to terminate claimant's services must be denied.

ORDER

Claimant's appeal from the Inland Regional Center's determination that she is no longer eligible for regional center services is granted. Claimant continues to remain eligible for services under the Lanterman Act.

DATED: March 16, 2018

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ADAM L. BERG

Administrative Law Judge

Office of Administrative Hearings

NOTICE

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