

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

In the Matter of:

CLAIMANT

v.

INLAND REGIONAL CENTER

Service Agency

OAH No. 2022080088

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter remotely using the Zoom videoconference application on August 30, 2022.

Keri Neal, Fair Hearings Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

There was no appearance on behalf of claimant.

Oral and documentary evidence was received. The record was closed, and the matter submitted for decision on August 30, 2022.

ISSUE TO BE DECIDED

Is claimant eligible for regional center services under any qualifying category (intellectual disability, autism, cerebral palsy, epilepsy, or a disabling condition closely related to an intellectual disability or that requires treatment similar to that required for individuals with an intellectual disability (fifth category)?

FACTUAL FINDINGS

Background

1. On June 2, 2022, a multidisciplinary team comprised of a medical doctor, a psychologist, and an IRC representative met to review claimant's records. The team determined that, based on what was provided, claimant did not qualify for regional center services because the records did not show he had a substantial disability as a result of a qualifying condition. It is noted also that claimant had previously been found ineligible for regional center services in 2015 and in 2021.

2. On June 16, 2022, IRC issued a notice of proposed action determining that no "intake" services could be provided because the records it had received from claimant's mother did not show claimant had a "substantial disability" as a result of an intellectual disability, autism, cerebral palsy, epilepsy, or the fifth category.

3. On July 13, 2022, claimant's mother filed a fair hearing request that said: "client was denied services, I would want services for my son and get the case renewed." Claimant's mother did not provide any further information concerning the category under which she believed claimant qualified for regional center services.

4. On August 9, 2022, IRC held a telephonic meeting with claimant's mother to discuss the fair hearing request. On a letter memorializing the informal meeting, IRC noted that claimant's mother said she did not receive the notice of hearing from OAH. IRC enclosed a courtesy copy of the notice of hearing with the informal meeting letter. Both the OAH notice of hearing and informal meeting letter with the courtesy copy of the notice of hearing were sent to claimant's mother's e-mail address. At the informal meeting, IRC verified claimant's mother's e-mail and the e-mail address on the information meeting letter matched the e-mail address on file with OAH (and where the notice of hearing was sent).

5. On August 30, 2022, at the informal meeting, claimant's mother did not provide any additional clarification regarding under what category she was seeking services for claimant. The informal meeting letter contained the following information:

[Claimant] is 10 years old and resides with you. Mr.

Plasencia explained that you have been residing in a motel for the past 2 years while you are being assisted to secure housing through Riverside County.

[Claimant] is not currently attending school. You explained that he was expelled on March 17, 2022, and you are currently pursuing due process with the school district. Mr. Gracin and Mr. Plasencia explained that while [claimant] has an Individualized Education Program (IEP), it has not been finalized with the school district. Pending the IEP being finalized the school district is continuing to fund services consistent with the prior IEP including Wraparound services in the home setting.

The last IEP meeting was held in May 2022. The school district is offering residential placement for [claimant], and you denied this service. The school district is now looking at the option of a Nonpublic school in Ontario, however there are concerns with the distance of school from your current residence and transportation issues. According to the IEP dated January 5, 2022, [claimant] qualifies for special education services under the primary condition of emotional disturbance and the secondary condition of other health impairment.

[Claimant] has Kaiser insurance through Medi-Cal. [Claimant] has been diagnosed with the following conditions: Attention Deficit Hyperactivity Disorder, Combined Type, Oppositional Defiant Disorder of Childhood or Adolescence, Parent-Child Relational Problem, Intermittent Explosive Disorder, Behavior Disorder, Karyotype 47, XYY and Autism. He is currently not taking any prescription medication for behavioral management. He currently receives 20 hours per week (2 hours per day) of Therapeutic Behavioral Services (TBS). TBS services assist in addressing [claimant's] maladaptive behaviors. [Claimant] exhibits the following behaviors: elopement, physical aggression, verbal aggression, property destruction and oppositional defiance. . . .

6. Following the informal meeting, IRC adhered to its determination that claimant was not eligible for regional center services.

7. On the day of the hearing, the matter was called at 10:00 a.m. Claimant's mother was not present. After approximately 45 minutes, and no communication from claimant's mother, it was determined that claimant was in default. The matter proceeded as scheduled.

Applicable Diagnostic Criteria

AUTISM

8. The DSM-5 identifies criteria for the diagnosis of autism. The diagnostic criteria include persistent deficits in social communication and social interaction across multiple contexts; restricted repetitive and stereotyped patterns of behavior, interests, or activities; symptoms that are present in the early developmental period; symptoms that cause clinically significant impairment in social, occupational, or other important areas of function; and disturbances that are not better explained by intellectual disability or global developmental delay. An individual must have a DSM-5 diagnosis of autism spectrum disorder to qualify for regional center services based on autism.

INTELLECTUAL DISABILITY

9. Although there was no assertion that claimant is intellectually disabled, because claimant asserts he is eligible for regional center services under the fifth category, the diagnostic criteria for intellectual disability are instructive. 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. Intellectual functioning is typically measured using

intelligence tests. Individuals with intellectual disability typically have IQ scores in the 65-75 range. In order to have a DSM-5 diagnosis of intellectual disability, three diagnostic criteria must be met. The DSM-5 states in pertinent part as follows:

Intellectual disability (intellectual developmental disorder) is a disorder with onset during the developmental period that includes both intellectual and adaptive functioning deficits in conceptual, social, and practical domains. The following three criteria must be met:

A. Deficits in intellectual functions, such as reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience, confirmed by both clinical assessment and individualized, standardized intelligence testing.

B. Deficits in adaptive functioning that result in failure to meet developmental and sociocultural standards for personal independence and social responsibility. Without ongoing support, the adaptive deficits limit functioning in one or more activities of daily life, such as communication, social participation, and independent living, across multiple environments, such as home, school, work, and community.

C. Onset of intellectual and adaptive deficits during the developmental period.

[11] . . . [11]

Intellectual functioning is typically measured with individually administered and psychometrically valid, comprehensive, culturally appropriate, psychometrically sound tests of intelligence. Individuals with intellectual disability have scores of approximately two standard deviations or more below the population mean, including a margin for measurement error (generally +5 points). On tests with a standard deviation of 15 and a mean of 100, this involves a score of 65-75 (70 ± 5). Clinical training and judgment are required to interpret test results and assess intellectual performance.

IQ test scores are approximations of conceptual functioning but may be insufficient to assess reasoning in real-life situations and mastery of practical tasks. For example, a person with an IQ score above 70 may have such severe adaptive behavior problems in social judgment, social understanding, and other areas of adaptive functioning that the person's actual functioning is comparable to that of individuals with a lower IQ score. Thus, clinical judgment is needed in interpreting the results of IQ tests.

Deficits in adaptive functioning (Criterion B) refer to how well a person meets community standards of personal independence and social responsibility, in comparison to others of similar age and socio-cultural background. Adaptive functioning involves adaptive reasoning in three

domains: conceptual, social, and practical. The conceptual (academic) domain involves competence in memory, language, reading, writing, math reasoning, acquisition of practical knowledge, problem solving, and judgment in novel situations, among others. The social domain involves awareness of others' thoughts, feelings, and experiences; empathy; interpersonal communication skills; friendship abilities; and social judgment, among others. The practical domain involves learning and self-management across life settings, including personal care, job responsibilities, money management, recreation, self-management of behavior and school and work tasks organization, among others. Intellectual capacity, education, motivation, socialization, personality features, vocational opportunity, cultural experience, and coexisting general medical conditions or mental disorders influence adaptive functioning. . . .

[¶] . . . [¶]

Criterion B is met when at least one domain of adaptive functioning – conceptual, social, or practical – is sufficiently impaired that ongoing support is needed in order for the person to perform adequately in one or more life settings at school, at work, at home, or in the community. To meet the diagnostic criteria for intellectual disability, the deficits in adaptive functioning must be directly related to the intellectual impairments described in Criterion A.

THE “FIFTH CATEGORY”

10. Under the fifth category, the Lanterman Act provides assistance to individuals with disabling condition closely related to an intellectual disability or that requires similar treatment as an individual with an intellectual disability but does not include other handicapping conditions that are “solely physical in nature.” (Welf. & Inst. Code, § 4512, subd. (a).) 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.

The fifth category is not defined in the DSM-5. In *Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, the appellate court held that the fifth category condition must be very similar to intellectual disability, with many of the same, or close to the same, factors required in classifying a person as intellectually disabled. Another appellate decision has also suggested, when considering whether an individual is eligible for regional center services under the fifth category, that eligibility may be based largely on the established need for treatment similar to that provided for individuals with an intellectual disability, notwithstanding an individual’s relatively high level of intellectual functioning. (*Samantha C. v. State Department of Developmental Services* (2010) 185 Cal.App.4th 1462.) In *Samantha C.*, the individual applying for regional center services did not meet the criteria for intellectual disability. The court understood and noted that the Association of Regional Center Agencies had set forth guidelines (ARCA Guidelines)¹ which recommended consideration of fifth

¹ On March 16, 2002, in response to the *Mason* case, the Association of Regional Center Agencies approved the *Guidelines for Determining 5th Category Eligibility for the California Regional Centers* (ARCA Guidelines). Of note, the ARCA

category for those individuals whose “general intellectual functioning is in the low borderline range of intelligence (I.Q. scores ranging from 70-74).” (*Id.* at p. 1477.) However, the court confirmed that individuals may qualify for regional center services under the fifth category on either of two independent bases, with one basis requiring only that an individual require treatment similar to that required for individuals with intellectual disability.

The assistance provided by the ARCA Guidelines in assessing an individual under each prong of the fifth category are discussed below.

Functioning Similar to a Person with an Intellectual Disability

11. A person functions in a manner similar to a person with an intellectual disability if the person has significant sub-average general intellectual functioning that is accompanied by significant functional limitations in adaptive functioning. Intellectual functioning is determined by standardized tests. A person has significant sub-average intellectual functioning if the person has an IQ of 70 or below. Factors a regional center should consider include: the ability of an individual to solve problems with insight, to adapt to new situations, and to think abstractly and profit from experience. If a person’s IQ is above 70, it becomes increasingly essential that the person

guidelines have not gone through the formal scrutiny required to become a regulation and were written before the DSM-5 was in effect. Thus, while they are used to help guide professionals in evaluating a person who claims eligibility under the fifth category, the ARCA guidelines are not entitled to be given the same weight as regulations.

demonstrate significant and substantial adaptive deficits and that the substantial deficits are related to the cognitive limitations, as opposed to a medical or some other problem. It is also important that, whatever deficits in intelligence are exhibited, the deficits show stability over time.

Significant deficits in adaptive functioning are established based on the clinical judgements supplemented by formal adaptive behavioral assessments administered by qualified personnel. Adaptive skill deficits are deficits related to intellectual limitations that are expressed by an inability to perform essential tasks within adaptive domains or by an inability to perform those tasks with adequate judgement. Adaptive skill deficits are not performance deficits due to factors such as physical limitations, psychiatric conditions, socio-cultural deprivation, poor motivation, substance abuse, or limited experience.

Treatment Similar to a Person with an Intellectual Disability

12. In determining whether a person requires treatment similar to a person with an intellectual disability, a regional center should consider the nature of training and intervention that is most appropriate for the individual who has global cognitive deficits. This includes consideration of the following: individuals demonstrating performance based deficits often need treatment to increase motivation rather than training to develop skills; individuals with skill deficits secondary to socio-cultural deprivation but not secondary to intellectual limitations need short-term, remedial training, which is not similar to that required by persons with an intellectual disability; persons requiring habilitation may be eligible, but persons primarily requiring rehabilitation are not typically eligible as the term rehabilitation implies recovery; individuals who require long-term training with steps broken down into small, discrete

units taught through repetition may be eligible; and the type of educational supports needed to assist children with learning (generally, children with an intellectual disability need more supports, with modifications across many skill areas).

Substantial Disability

13. The ARCA Guidelines also refer to California Code of Regulations, title 17, sections 54000 and 54001, regarding whether a person has a substantial disability. This means the person must have a significant functional limitation in three or more major life areas, as appropriate for the person's age, in the areas of: communication (must have significant deficits in both expressive and receptive language), learning, self-care, mobility, self-direction, capacity for independent living, and economic self-sufficiency.

Evidence Presented at Hearing

14. Ruth Stacy, Psy.D., testified on behalf of IRC. Dr. Stacy is a staff psychologist at IRC. She has also held positions at IRC such as Senior Intake Counselor and Senior Consumer Services Coordinator. She has been involved in assessing individuals who desire to obtain IRC services for over 27 years. In addition to her doctorate degree in psychology, she also holds a Master of Arts in Counseling Psychology, a Master of Arts in Sociology, and a Bachelor of Arts in Psychology and Sociology. She has also had training from Western Psychological Services in the administration of the Autism Diagnostic Observation Scale (ADOS) and training from IRC in the administration of the Autism Diagnostic Interview (ADIR). Dr. Stacy qualifies as an expert in the diagnosis of qualifying conditions for regional center services and in the assessment of individuals for IRC services. The following is a summary of pertinent documents and Dr. Stacy's testimony.

15. According to a developmental quarterly report dated August 20, 2014, regarding an assessment when claimant was 26 months old, claimant had mastered most skills that would be expected for a child of his age at that time. He was described as an active and happy child who willingly participates in activities. Claimant interacted with the examiner and showed enjoyment playing with toys. Nothing in this report was indicative of a qualifying condition for regional center.

16. According to a developmental semi-annual report dated February 10, 2015, when claimant was 32 months old, claimant was slightly delayed in some of his developmental milestones. He was still described as an active, energetic, and happy child. He was starting to exhibit problematic behaviors that resulted in him being released from his daycare. The report showed claimant mastered many of the goals he had been working on during the previous year.

17. According to a developmental closing report dated May 1, 2015, concerning an assessment when claimant was just shy of three years old, he had mastered most of his developmental goals and still described as an energetic and happy child. Claimant was described as enjoying riding a bike, playing puzzles, and was using short sentences. Claimant's behaviors were continuously worsening, but he was learning to be redirected using specified prompts. Claimant's mother was encouraged following the assessment to continue to work with claimant and provided with a behavior intervention plan to assist her.

18. According to a September 15, 2020, report from Kaiser when claimant was eight years old, claimant had the following diagnoses: autism, karyotype 47, XYY (a genetic disorder), behavior disorder, Attention Deficit Hyperactivity Disorder (ADHD), intermittent explosive disorder, and oppositional defiant disorder. The report, however, did not contain any information or assessments regarding how those

diagnoses were reached, what tests were conducted, who performed any tests, or any information that would support those diagnoses.

19. Many of the records provided carried over the above-referenced diagnoses, again, without conducting a separate assessment or any other testing to support those diagnoses. The records provided also showed claimant has a long history of behavioral problems attributable to ADHD. He is also on medication for ADHD.

20. On August 11, 2021, Anthony Benigno, Psy.D., conducted a psychological assessment of claimant. He conducted clinical observations of claimant; an interview; the Adaptive Behavior Assessment System Third Edition (ABAS-3), Parent Form; the Autism Diagnostic Observation Schedule, Second Edition (ADOS-2), Module 3; the Childhood Autism Rating Scale, Second Edition, High Functioning (CARS2-HF) Standard Version; and attempted to conduct the Wechsler Intelligence Scale for Children, Fifth Edition (WISC-5). Claimant was noted to have good eye contact during the testing and although he was amenable to most of the testing, claimant declined to complete the WISC-5. Dr. Stacy pointed out that the ADOS-2 is not validated for mask-wearing and since both the doctor and claimant were wearing masks, it could not be scored. Dr. Benigno therefore completed the test using observations. Those observations of claimant did not show any stereotypical or repetitive patterns of behavior, sensory problems, or speech problems. Claimant was noted to make "extensive" use of both verbal and nonverbal behavior for social interactions. He concluded claimant showed "minimal to no" symptoms of autism. The results were similar on the CARS2-HF, which showed claimant had minimal to no symptoms of autism. Claimant's scores on the ABAS-3, as rated by his parents, showed claimant's adaptive skills were mostly "extremely low." However, ultimately the diagnoses given

to claimant were ADHD and oppositional defiant disorder, which was consistent with the other historical records.

21. Multiple records from the Riverside University Health System were provided from 2021. The first, dated March 29, 2022, which did not contain any assessments, showed diagnoses of ADHD and oppositional defiant disorder. The second, dated April 12, 2022, which similarly did not contain any assessments, showed diagnoses of ADHD, oppositional defiant disorder, and autism.

22. Dr. Stacy explained that, based on the records provided, although there are some mentions in the records of autism, there are no testing or assessments that support that diagnoses. The only psychological assessment that involved specific testing for autism concluded claimant did not meet the criteria for autism, and the full ADOS2 was not properly conducted (could not be validated because the test is not supposed to be performed while wearing masks as it is not validated to be performed in that manner). Moreover, the records do show claimant had a history of disorders that do not qualify a person for regional center services. Given that claimant has had a history of behavioral problems, Dr. Stacy believes that any behavioral problems and functional limitations claimant may have are attributable to his ADHD and oppositional defiant disorder. The records also did not show claimant is substantially disabled so, even assuming he had any qualifying condition, he would not be eligible for regional center services.

LEGAL CONCLUSIONS

Applicable Law

1. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Act (Welf. & Inst. Code, § 4500 et seq.) to provide a pattern of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. The purpose of the statutory scheme is twofold: To prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.) Welfare and Institutions Code section 4501 outlines the state's responsibility for persons with developmental disabilities and the state's duty to establish services for those individuals.

2. The Department of Developmental Services is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.)

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

4. 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 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.*)

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

(a) "Developmental Disability" means a disability that is attributable to intellectual disability², cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with intellectual disability.

(b) The Developmental Disability shall:

(1) Originate before age eighteen;

(2) Be likely to continue indefinitely;

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

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

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

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.

have become seriously impaired as an integral manifestation of the disorder.

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

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

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

(a) "Substantial disability" means:

(1) A condition which results in major impairment of cognitive and/or social functioning, representing sufficient impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential; and

(2) The existence of significant functional limitations, as determined by the regional center, in three or more of the

following areas of major life activity, as appropriate to the person's age:

(A) Receptive and expressive language;

(B) Learning;

(C) Self-care;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living;

(G) Economic self-sufficiency.

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

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

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

7. 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.

Evaluation

8. The records provided did not demonstrate by a preponderance of the evidence that claimant is substantially disabled due to a regional center qualifying diagnosis. None of the records provided by claimant's mother show any information concerning cerebral palsy. Thus, the evidence did not support any finding that claimant qualifies for regional center services under that category. Although there are mentions of autism in the records, no proper assessments were conducted to make that determination. Rather, it appeared that autism was mentioned in historical documents and carried over as a diagnosis over the years. The only formal assessment of claimant that was conducted in 2021 included the ADOS-2 and CARS2, HF. The ADOS-2 was not properly conducted because both the doctor and claimant were wearing masks. As such, the ADOS-2 results could not be validated because the test was not meant to be performed wearing masks. Still, the observations obtained during the ADOS-2 as well as the CARS2-HF showed claimant had minimal to no symptoms of

autism. Claimant is not served in special education for autism or any other qualifying regional center diagnosis. Dr. Stacy, the only expert who testified, indicated that claimant's behavioral problems are likely attributable to his ADHD and oppositional defiant disorder. Moreover, nothing in the records showed claimant is intellectually disabled (or qualifies under the fifth category) because claimant refused to complete the cognitive testing in 2021. None of the other records are indicative of an intellectual disability.

9. Accordingly, claimant is not eligible for regional center services because the records provided do not show, by a preponderance of the evidence, that claimant is substantially disabled as a result of intellectual disability, autism, cerebral palsy, epilepsy, or the fifth category.

ORDER

Claimant's appeal from Inland Regional Center's determination that he is not eligible for services based on being substantially disabled as a result of intellectual disability, autism, cerebral palsy, epilepsy, or a disabling condition closely related to an intellectual disability or that requires treatment similar to that required for individuals with an intellectual disability (fifth category) is denied. Claimant is not eligible for regional center services.

DATE: September 7, 2022

KIMBERLY J. BELVEDERE
Administrative Law Judge
Office of Administrative Hearings

NOTICE

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